



**POLICY ON PRIVATE SECTOR HOUSING FEES,
CHARGES AND THE USE OF FINANCIAL
PENALTIES FOR HOUSING ACT OFFENCES**

Version Control Sheet

Title: POLICY ON PRIVATE SECTOR HOUSING FEES, CHARGES AND THE USE OF FINANCIAL PENALTIES FOR HOUSING ACT OFFENCES

Purpose: The purpose of this policy is to ensure compliance with Regulators' Code and the principles of good enforcement. It sets out how fees and charges will be calculated and applied, in relation to the Private Sector Housing enforcement functions and also serves to inform investigating officers and decision-makers of the framework under which the decision to issue civil penalties or charges is made and how they are calculated. The actual fees and charges for any year will be determined and published separately as and when costs are updated.

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Policy On The Use Of Financial Penalties For Housing Act Offences Adopted August 2017	August 2017	V2
Policy On The Use Of Financial Penalties For Housing Act Offences (reviewed V3)	May 2021	V3
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INTRODUCTION

- i. Private Sector Housing has a duty to ensure that private accommodation meets minimum standards. In particular there are regulations for the licensing, management and use of houses in multiple occupation (HMO), carbon monoxide detectors and smoke alarms, electrical safety, energy efficiency standards, and hazards within the home.
- ii. Legislation gives the Council the power to charge for certain enforcement actions, and impose financial penalties, as an alternative to prosecution where responsible persons have failed to comply with various provisions.
- iii. This policy sets out in one document, how fees, charges and financial penalties will be calculated and applied, in relation to the Private Sector Housing enforcement functions. **Part one** deals specifically with fees and charges; **Part two** relates to the use of financial penalties; and **Part three** sets out the Statement of Principles by which decisions will be made.

1.0 PART ONE – FEES AND CHARGES

- 1.1 All enforcement activities and relevant fees and charges are set out in compliance with the legislation and the Public Health Services Enforcement Policy number PH/EP/09/20, adopted in January 2021.
- 1.2 Officer time is calculated using full on cost hourly salary rates.
- 1.3 The table of charges applicable at any time will be published on the Council website.

HMO Licensing

- 1.4 Mid Devon currently has 23 licenced HMOs within the District. The size of these HMO's ranges from town houses with 4 letting units through to a large complex property consisting of 23 letting units and 31 occupants.
- 1.5 Section 63(3) of the 2004 Act gives the Council the power to recover all reasonable costs associated with the administration of the HMO licensing function.
- 1.6 The officer time and resources necessary to process new applications and renewals varies greatly depending on factors, such as the size of the property. It is considered appropriate to set an application fee relevant to the number of units proposed on the licence, as follows:

3-5Units; 6-10 units; 11+units.

1.7 The application process will be further divided to ensure the Council is acting within its powers (see 1.5). It is considered proportionate to require a percentage of the application fee upfront in order to deliver the necessary activities associated with issuing the licence proposal (under Schedule 5 Part 1 of the Housing Act 2004). If the proposal proceeds to a licence being issued the remainder of the fee would then be applied.

1.8 The relevant activities under each part of the process can be defined as follows:

Part 1	Initial	Enquiry phone call, advice, send out application
		Advice on completing the application
	Processing	Application received
		Log application on system
		Check and validate the application and attachments
		Chase for missing documents
		Prepare proposed licence and conditions
		Prepare proposed schedule of works
		Proposal checked by lead officer
		Prepare Proposal Notice
		Service of notice and proposal on applicant and all interested parties
		Receive and consider representations
	Costs	Miscellaneous costs (including printing, postage, publicity to assist compliance)
Part 2	Issue	Prepare changes to proposed licence, conditions and schedule of works
		Service of notice and further proposal
		Receive and consider further representation
		Service of Notice and full licence
	Costs	Miscellaneous costs (including printing, postage, publicity to assist compliance)

1.9 The renewal of an existing licence will be processed in a similar way although there should be no split of the licence fee. The applicant will already be aware that their property is licensable and have the majority of the necessary documentation to proceed. The full fee should be charged upfront.

Mandatory HMO Licensing Public Register

1.10 Section 232 of the Housing Act 2004 allows the Council to make a reasonable fee for supplying a person with a copy of the register if requested.

1.11 A nominal standard administration fee will be charged for providing a copy of the full register in electronic form or hardcopy. The fee is intended to recover costs associated with officer time and printing, postage etc.

1.12 An extract from the register will be provided on the Council website free of charge.

Immigration housing request visits

1.13 Historically applications to live and/or work in the UK have required the local housing authority to undertake an inspection of the proposed living accommodation to check its suitability and ensure there would not be overcrowding. These visits no longer need to be undertaken by the local housing authority as part of an application but occasionally the team will receive a request to carry out a visit and provide a report.

1.14 The Council will charge for the provision of this service to recover costs including the officer time and resources involved in processing a request, inspection of the property, subsequent assessment and providing a follow up report.

Carrying out works with or without agreement (work in default)

1.15 Provisions contained in Schedule 3 of the Housing Act 2004 gives powers to the local authority to carry out works itself, either by agreement of the responsible person or as a result of non-compliance with a notice. Part 3 allows the Council to recover expenses reasonably incurred by taking the action including the cost of the works themselves.

1.16 An administrative fee will be charged in all cases to cover costs for arranging works and service of the appropriate notices.

1.17 The costs will be recovered by formal demand for payment and accompanying invoice.

1.18. Where the demand remains unpaid after the initial 28 days, interest on all costs associated with carrying out works, including the costs of the work itself, will be applied at 3% per annum.

Charging for enforcement action

1.19 The Housing Act 2004 section 49 gives the local housing authority the power to charge for certain enforcement actions. The provisions are clear that only the costs associated with determining whether enforcement action is necessary, identifying the type of action and the serving of the notice can be recovered.

Setting the fee

- 1.20 All charges must be reasonable and there is currently no set maximum fee applicable under the legislation.
- 1.21 The amount of officer time involved in each course of action is difficult to predict as each intervention will present a unique set of circumstances. Therefore, the Council will apply a standard fee incorporating average officer time and resources for carrying out the functions described in 1.19.

Applying the fee

- 1.22 The fee will be applied to all enforcement action under Part one of the Act; Improvement Notices, Prohibition Orders, Emergency Remedial Action, Emergency Prohibition Orders and Demolition Orders.
- 1.23 The Enforcement Guidance to the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No 3208) advises that in deciding whether to make charges and the level of those charges, the Council should take into account the personal circumstances of the person or persons against whom the enforcement action is being taken.
- 1.24 Where discretion is considered this will be determined on an individual basis. The case officer will record the reasons why the fee should be reduced or waived on a decision form which will be reviewed and decided by the Operations Manager.
- 1.25 A charge will not be applied where a hazard awareness notice is considered the most appropriate course of action for low risk hazards. It is a formal recommendation of the work to be carried out and there is no penalty for non-compliance or local land charge.

Recovering the fee

- 1.26 Where an Improvement Notice is served a demand for payment of the fee will only be applied in the case of non-compliance. Taking this approach encourages compliance with notice requirements and will improve housing standards generally.
- 1.27 A demand for payment of the fee will be applied upon service of prohibition orders, emergency remedial action notices and emergency prohibition orders.
- 1.28 Demolition orders will be charged the fee upon service. The demand will also include the professional survey cost that is incurred as part of the serving of the order.

2.0 PART TWO – FINANCIAL PENALTIES (CIVIL PENALTIES)

Penalty Charges for offences under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended 2022

- 2.1 Part 4 of the regulations allows a penalty charge of up to £5,000 to be applied within 6 weeks of non-compliance with a remedial notice served under the regulations.
- 2.2 The Council will follow its Statement of Principles, set out in Part 3 and Appendix 2 of this document, when determining the fine. A 25% reduction will be applied if payment is made within 14 days of the demand for payment, in accordance with the statement of intent.
- 2.3 A penalty charge notice will be issued with the demand, where the recipient can then submit a written request for a review of the penalty imposed. Any such review will be considered and a decision made based on the information supplied and further scrutiny of the statement of principles.
- 2.4 The regulations and guidance are clear and do not allow for the recovery of any costs incurred if the Council is required to carry out remedial works.

Financial penalties for breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

- 2.5 Section 123 of The Housing and Planning Act 2016 makes provision for the local housing authority to impose a financial penalty of up to £30,000 on an owner of a property where they have failed to comply with a remedial notice served under the electrical safety standards regulations.
- 2.6 The decision whether to impose a financial penalty and the level of that penalty, will be made in accordance with Part 3 of this document. However, it should be noted that the absence of the Electrical Installation Condition Report (EICR) does not automatically indicate a high risk to occupiers. It will be appropriate to consider other information, such as an assessment under the Housing Act 2004 Health Safety Rating System (HHSRS) to inform the assessment of risk when determining the level of fine. This could result in a significantly lower (or higher) level of fine than the table at 3.6 indicates.
- 2.7 Section 8 of the electrical safety standards regulations also allows for the Council to recover its costs in taking any remedial action in the case of a breach of a remedial notice served under the regulations.

2.8 Any representations made by a private landlord under Schedule 2 of the regulations will be considered and a decision made based on the information supplied and further scrutiny of the Council's Statement of Principles.

Penalties for offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2016

2.9 The regulations require that private rented domestic properties meet a minimum energy performance rating before they can be rented out. Landlords of certain domestic properties may not grant a new tenancy or continue to let their property if the EPC (energy performance certificate) rating is F or G.

2.10 Local authorities have responsibility for enforcing these regulations which means it can be enforced by either Trading Standards Officers or Environmental Health Officers. The local housing authority is the enforcing body for the domestic private rented part of the regulations which sits within Public Health and Housing Options at the Council, and is the responsibility of authorised officers within the service.

2.11 Non-compliance with any notice served under the regulations allows for financial penalties to be applied. The regulations set the amounts for maximum penalties in 4 individual categories up to a maximum of £5000. The maximum fines for contraventions are set out in Appendix 1.

2.12 A financial penalty may be served up to 18 months after the breach and so the landlord may be served a notice after they cease to be the landlord of the property.

2.13 A landlord may ask for a review of the decision to serve a penalty notice. Any such review will be considered and a decision made based on the information supplied and further scrutiny of the Council's Statement of Principles.

2.14 In addition to a financial penalty the Council may serve a Publication Penalty. This means that we can publish details of the landlords breach on a publicly accessible part of the PRS Exemptions Register and should remain on the register for a minimum of 12 months.

Financial penalties for breaches of a banning order

2.15 The Housing and Planning Act 2016 gives provision under section 23 for the Council to impose a financial penalty if a person breaches a banning order.

2.16 If the breach continues for more than 6 months an additional financial penalty may be applied for each 6 month period.

2.17 The decision whether to impose a financial penalty (or the level of that penalty) will be made in accordance with the Council's Statement of Principles.

Financial penalties for Housing Act 2004 offences

2.18 The Housing and Planning Act 2016 introduced an amendment to the Housing Act 2004 to allow local housing authorities to impose a financial penalty on an owner of a property where they have failed to comply with provisions under the 2004 Act, as an alternative to prosecution. The maximum penalty is £30,000.

2.19 The offences include:

- Failing to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under part 3 of the Act (selective Licensing) (section 95)
- Offences in relation to the contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of House in Multiple Occupation (section 234)

2.20 A financial penalty can only be imposed as an alternative to prosecution. The legislation does not permit the Council to impose a financial penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted the Council cannot impose a financial penalty in respect of the same offence. Similarly, if a financial penalty has been imposed, a person cannot then be convicted of an offence for the same conduct and the Council cannot make an application for a banning order.

Policy approach and decision-making

2.21 The Council is required to have a policy in place that details when to prosecute and when to consider a financial penalty. Although this is partially covered by the current Enforcement Policy PH/EP/09/20 and Appendix J (Supplementary Enforcement Policy Issues - Private Sector Housing) full details of the Council's decision making process in relation to this is set out in the following sections.

2.22 In line with the Enforcement Policy and the formal guidance on civil penalties under the Housing and Planning Act (DCLG April 2017) prosecution may be considered the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed rather than prosecution, is the most appropriate and effective sanction in a particular case.

- 2.23 The decision on whether to use civil penalty powers (and to what extent) or to seek a prosecution will be made by a service manager or other appropriate senior manager in conjunction with Legal Services. It should be proportionate and the following factors considered:
- a) **What outcome we are trying to achieve** – e.g. set an example, get the works done or a deterrent to committing future offences (a civil penalty will not be in the public domain unlike a prosecution);
 - b) **Severity of the offence** – is prosecution a better option based on the significance of the offence and the impact it has had;
 - c) **Type of property and its occupiers** – are the occupiers particularly vulnerable.
- 2.24 Where the Council decides to prosecute, we will consider the scope for working together with other local housing authorities if a landlord has committed breaches across more than one local authority area.
- 2.25 Where a financial penalty is considered the most appropriate course of action the Council must provide guidance on how the fine levels will be set. Part 3 of this document provides a fine setting methodology defining a statement of principles. **Each case will be assessed on an individual basis using these principles and framework as a guide.**

Burden of proof

- 2.26 The same criminal burden of proof is required for a financial penalty as for a prosecution. This means that before formal action is taken the Council must be satisfied that if there was a prosecution there would be a realistic prospect of conviction.
- 2.27 The Council must determine beyond reasonable doubt that the offence has been committed. In the case of a financial penalty this evidence would be required if an appeal is made against the decision.
- 2.28 As also outlined in the Enforcement Policy, the Council must also consult the Crown Prosecution Service Code for Crown Prosecutors when determining whether to take action. There are two stages to this code:
- The evidential test; and
 - The public interest test.

Procedure and appeals

- 2.29 The procedure for imposing a financial penalty is set out at Schedule 13A of the Housing Act 2004 and summarised in the DCLG guidance. There is no scope

for the Council to deviate from this procedure and therefore it is not duplicated for the purposes of this policy.

- 2.30 At any time, if circumstances dictate, the Council may withdraw a notice or reduce the amount specified in a notice in relation to a civil penalty.
- 2.31 A landlord receiving the final notice of a civil penalty may appeal to the First-tier Tribunal against the decision to impose a penalty or the penalty amount. The appeal has the effect of suspending the notice and requirement to pay until determined.

Enforcement and other consequences

- 2.32 Where the landlord or property agent fails to pay a financial penalty, the Council should refer the case to the county court for an order of that Court. If necessary, the Council should use county court bailiffs to enforce the order and recover the debt.
- 2.33 The Council's powers to carry out works in default under the Housing Act 2004 are unaffected by the civil penalty provisions.
- 2.34 If a landlord receives a financial penalty, that fact can be taken into account if considering whether the landlord is a fit and proper person to be the licence holder for a House in Multiple Occupation (HMO) or any other property subject to licensing.
- 2.35 Where a landlord receives two or more civil penalties over a 12 month period, the Council will include that person's details in the database of rogue landlords and property agents brought in by the Housing and Planning Act 2016. While it is not a compulsory requirement, under the DCLG guidance councils are strongly encouraged to do so. An entry must be maintained for at least 2-years. It is the responsibility of local authorities to manage the information on the database and ensure it is current. This will help ensure that other councils are made aware that formal action has been taken against the landlord.

3.0 PART THREE – FINANCIAL PENALTIES (PRINCIPLES & METHODOLOGY)

- 3.1 In setting a financial penalty level the Council will consider the following factors:
- Culpability and track record of the offender;
 - Severity of the offence;
 - The harm caused to the tenant;
 - Proportionate punishment of the offender;
 - Deterring the offender from repeating the offence;
 - Deterring others from committing similar offences;

- Removing any financial benefit the offender may have obtained as a result of committing the offence;
- Assessment of assets and income.

Determining the offence category – Culpability

3.2 An assessment of culpability can be assessed as follows:

- **Deliberate** – An intentional breach by a landlord or property agent or flagrant disregard for the law. For example, by failing to comply with a notice or regulations.
- **Reckless** – An actual foresight of, or wilful blindness to the risk of offending, but decides to take the risk nevertheless. For example, failing to comply with a strict liability in the HMO regulations.
- **Negligent** – The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence. For example, partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.
- **Low or no culpability** – The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

Determining the level of fine – Severity

3.3 The following should be taken into account when considering severity:

- **Level one** – Major impact – Serious and substantial risk, including imminent risk, to the health and safety of the occupiers and/or community as a result of the offence, with potentially life threatening results or loss of major limbs. Housing defects that may present such a risk maybe associated with electrical hazards, carbon monoxide exposure, fire safety risks, risk of explosion or structural collapse, exposure to asbestos or radiation. This is not an exhaustive list and also includes property management failings that could lead to a major risk to the occupiers/neighbours and/or community. Where the risk has been realised the fine is likely to be greater or there may be a decision to prosecute as an alternative.
- **Level two** - Serious Impact – Serious risks to the health and safety of the occupiers and/or immediate neighbours, leading to serious injury or disease requiring prolonged treatment and/or hospital admission. Housing defects that may present such a risk maybe associated with falls, lack of heating, collision and entrapment, any other hazards or management issues that could lead to a serious risk to the occupiers and immediate neighbours.

- **Level three** – Minor impact – Risk of injury or disease to the occupiers resulting in treatment at the doctors. Examples of housing defects that could present such a risk include damp, mould or hygiene issues and any other hazards or management issues that could lead to a risk to the occupiers.

3.4 Table 3.6 provides an indication of the level of fine that is likely to be appropriate and serves as a starting point for any decision. In order for officers and landlords to understand how this assessment could work, the asset assessment grid has been based on the number of properties either being managed or owned by the landlord or agent. The actual amount of fine could change dramatically from the published amounts depending on the outcome of the assessment.

3.5 As part of the considerations mentioned in 3.1 above, the Council should assess all assets including **any** income of the landlord or letting agent and **not just rental income**.

Financial Penalties – Guidance on level of fine

3.6 The table below provides a guide to setting the level of fine to be applied.

Type of landlord/agent	Category of offence	Starting point for penalty		
		level 1 – Major impact	Level 2 – Serious impact	Level 3 – Minor impact
Landlord/Property agent with 1-10 properties (income/asset value of up to approx. £38K per annum/£750K)	Deliberate	£12,500	£10,000	£7,500
	Reckless	£6,500	£5,000	£3,500
	Negligent	£3,000	£2,500	£1,500
	Low culpability	£1,250	£1,000	£750
Landlord/Property agent with 11 – 30 properties (income/asset value of up to approx. £100K per annum/£2million)	Deliberate	£22,500	£20,000	£17,500
	Reckless	£17,500	£15,000	£12,500
	Negligent	£12,500	£10,000	£7,500
	Low culpability	£7,500	£5,000	£2,500
Landlord/Property agent with 31+ properties (income/asset value in excess of approx. £100K per annum/£2million)	Deliberate	£30,000	£25,000	£22,500
	Reckless	£22,500	£20,000	£17,500
	Negligent	£17,500	£15,000	£12,500
	Low culpability	£12,500	£10,000	£7,500

Appendix 1

Maximum Financial penalty amounts

Financial (civil) penalties	
	Penalty
Housing Act offences	Financial penalty as alternative to prosecution up to £30,000
Electrical Safety Standards	Up to £30,000
Breach of a banning order	Up to £30,000

Smoke and carbon monoxide alarms	
	Penalty
Failing to comply with a remedial notice	£5000 reducing by 25% if paid within 14 days of demand

Energy Efficiency Regulations		
	Penalty	
Renting out a non-compliant property	Less than three months in breach	£2000 and Publication penalty
	Three months or more in breach	£4000 and Publication penalty
Providing false or misleading information on the Exemption register	£1000 and Publication penalty	
Failing to comply with a compliance notice	£2000 and Publication penalty	

- These penalties are applied to each property where there is a breach to a maximum of £5000 per property
- Publication penalty – some of the details of the financial penalties are published on the publicly accessible part of the PRS Exemptions Register

Works with or without agreement (work in default)	
	Charge
Interest on works and associated costs	Cost of the work plus officer time (including travel) plus £100 admin fee. 3% interest per annum added where invoice is un-paid after the initial 28 days.

Appendix 2

Statement of Principles

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015



Under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, Mid Devon District Council is required to publish this Statement of Principles to ensure landlords are aware of the manner in which a civil penalty under these regulations will be calculated.

The Council has determined that the following principles will be followed:

Financial penalties	
	Penalty
Smoke and carbon monoxide alarm (England) Regulations 2015	£5000 reducing by 25% if paid within 14 days of demand for non-compliance of the remedial notice

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on the 1st October 2015.

The regulations require a “relevant landlord” of a “specified tenancy” of residential premises to ensure that when the premises are occupied under the tenancy:

- A smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- A carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance (e.g. a coal fire, wood burning stove)

The landlord must ensure the alarms are in proper working order at the start of any new tenancy.

If the local authority is satisfied that a landlord has breached the regulations and has failed to comply with a remedial notice then the authority must arrange for remedial action to be taken. The Council can then impose a civil penalty as determined in the table above.

For further information please refer to the regulations at

<http://www.legislation.gov.uk/id/uk/si/2015/1693>

Separate general guidance on the requirement of the regulations is available at:
www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords