

Process for imposing a civil penalty and the right to make representations

Before imposing a financial penalty on a person, we will give the person notice of our proposal to do so (a 'Notice of intent'). A person who is given a notice of intent may make written representations within a 28 day period, this period starting the day after the date on which the Notice of intent was given. After the end of the period for representations we will:

- Decide whether to impose a financial penalty on the person, and
- If it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, we will consider any representations received. An offender's compliance with the identified breach during the representation period would not, in itself, be reason for us to determine that the imposition of a financial penalty was inappropriate i.e. compliance at that stage would be relevant to the amount of any imposed financial penalty.

If we decide to impose a financial penalty on the person, it will give the person a notice (final notice) imposing that penalty. The final notice will set out:

- The amount of the financial penalty,
- The reasons for imposing the penalty,
- Information about how to pay the penalty,
- The period for payment of the penalty,
- Information about rights of appeal, and
- The consequences of failure to comply with the notice

Relevant considerations as to the level of the penalty for particular offences

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide an indicative minimum 'tariff' under the various offence categories, with the final level of the civil penalty adjusted in each case to take into account other relevant or aggravating factors.

Band	Severity of Offence	Band Width (£)
1	Moderate	0-4999
2		5000-9999
3	Serious	10000-14999
4		15000-19999
5	Severe	20000-24999
6		25000-30000

Failure to comply with an Improvement Notice

An Improvement Notice served under part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified category 1 and/or category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more category 1 hazards present.

In most cases, the service of an Improvement Notice will have followed service of a Hazard Awareness Notice, where the landlord had been advised of the existence of the hazards and the required remedial works. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

Maximum Court fine that can be levied for failure to comply with an Improvement Notice	Unlimited
The civil penalty for a landlord controlling five or less dwellings, with no other relevant factors or aggravating features (see below) would be regarded as a serious matter, representing a band 3 offence	£10,000
Where a landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated experience in the letting/management of property the failure to comply with the requirements of an Improvement Notice would be viewed as being a severe matter	£20,000

Aggravating features

- Multiple hazards and/or severe or extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant in the property would justify an increase in the level of the civil penalty.
- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were ‘spent’), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home.

Failure to Licence offences

Under part 2 Housing Act 2004, higher risk HMOs of 3 or more stories, occupied by 5 or more persons forming 2 or more households are required to hold a ‘mandatory’ property licence issued by us.

Mandatory HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, we ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

We would view the offence of failing to licence a mandatory HMO as a significant failing; mandatory licensing was introduced by the Government in order to regulate conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

Maximum Court fine that can be levied for failure to licence an HMO	Unlimited
The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below) would be regarded as a serious matter, representing a band 3 offence	£10,000
Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, the failure to licence a mandatory HMO would be viewed as being a severe matter representing a Band 5 offence	£20,000

Aggravating features

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, a mandatory HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty
- Any demonstrated evidence that the landlord/agent was familiar with their need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises
- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were ‘spent’), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home.

Breach of licence conditions

All granted property licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property, including:

- Undertaking Gas Safe and electrical checks

- Installing and maintaining smoke alarms
- Obtaining tenant references, providing written tenancy agreements and protecting deposits
- Notifying the Council in any specified changes in circumstances
- Carrying out specified measures to prevent or address anti-social behaviour
- Maintaining the property in reasonable repair
- Ensuring that the gardens are tidy and free from refuse
- For HMO, licences granted under part 2, carrying out works that were a condition of the granted licence or reducing occupation levels as necessary

It is important that the manager of a licensed property complies with all imposed conditions but we recognise that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others. In determining the level of a civil penalty, we will therefore consider:

- The number and nature of the licence condition breaches
- The nature and extent of deficiencies within each specified licence condition

Maximum Court fine that can be levied for failure to comply with a licence condition	£5000
The civil penalty for a landlord controlling 1 or 2 mandatory HMOs, with no other relevant factors or aggravating features [see below], for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair would each be regarded as a moderate band 1 offence	£1000
The civil penalty for a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair would each be regarded as a band 2 offence	£5000
The civil penalty for a landlord controlling 1 or 2 mandatory HMOs, with no other relevant factors or aggravating features (see below), for a failure to provide or maintain smoke alarms in working order, to fail to address serious ASB issues such as the use of a licensed premises for illegal purposes or the failure to carry out works/improvements imposed as a condition of a granted HMO licence would each be regarded as a serious band 3 offence	£10,000
The civil penalty where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, for a failure to provide or maintain smoke alarms in working order, to fail to address serious ASB issues such as the use of a licensed premises for illegal purposes or the failure to carry out works/improvements imposed as a condition of a granted HMO licence would each be regarded as a band 5 offence	£20,000

Aggravating features

- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were 'spent'), works in default of the landlord and breaches of

- regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home.

Failure to Comply with an Overcrowding Notice

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that falls outside of the scope of mandatory HMO licensing. The notice specifies, on a room by room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose. We would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenants of an HMO to unacceptably cramped living conditions.

Maximum Court fine that can be levied for failure to comply with an Overcrowding Notice	Unlimited
The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below) would be regarded as a serious band 3 offence	£10,000
The civil penalty for a 'professional landlord or agent controlling a significant property portfolio or having demonstrated experience in the letting of property, with no other relevant factors or aggravating features (see below) would be regarded as a band 5 offence	£20,000

Aggravating features

- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty
- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were 'spent'), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action

Failure to Comply with The Management of Houses in Multiple Occupation (England) Regulations 2006

The HMO Management Regulations impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]

- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

It is important that the manager of an HMO complies with all regulations but we recognise that a failure to comply with certain regulations is likely to have a much bigger impact on the health, safety and comfort of residents than others. Furthermore, and using Regulation 8 as an example, a breach of this regulation could relate to defects to an individual window in one HMO but multiple defects to the structure, fixtures & fittings in number of rooms in a second HMO.

In determining the level of a civil penalty, we will consider:

- The number and nature of the management regulation breaches; and
- The nature and extent of deficiencies within each regulation

Maximum Court fine that can be levied for failure to comply with each individual regulation	£5000
The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below) for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a moderate band 1 offence	£1000
The civil penalty for a ‘professional landlord or agent controlling a significant property portfolio or having demonstrated experience in the letting of property, with no other relevant factors or aggravating features (see below) for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a band 2 offence	£5000
The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below), for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a serious band 3 offence	£1000
The civil penalty for a ‘professional landlord or agent controlling a significant property portfolio or having demonstrated experience in the letting of property, with no other relevant factors or aggravating features (see below) for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a serious band 5 offence	£20,000

Aggravating features

- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were ‘spent’), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.

- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home.

Failure to Comply with The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

The HMO Management Regulations for s257 HMOs impose duties on the persons managing these HMOs in respect of:

- Providing information to occupiers [Regulation 4]
- Taking safety measures, including fire safety measures [Regulation 5]
- Maintaining the water supply and drainage [Regulation 6]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 7]
- Maintaining common parts [Regulation 8]
- Maintaining living accommodation [Regulation 9]
- Providing sufficient waste disposal facilities [Regulation 10]

It is important that the manager of an HMO complies with all regulations but we recognise that a failure to comply with certain regulations is likely to have a much bigger impact on the health, safety and comfort of residents than others. Furthermore, and using Regulation 9 as an example, a breach of this regulation could relate to defects to an individual window in one HMO but multiple defects to the structure, fixtures & fittings in number of rooms in a second HMO.

In determining the level of a civil penalty, we will consider:

- The number and nature of the management regulation breaches; and
- The nature and extent of deficiencies within each regulation

Maximum Court fine that can be levied for failure to comply with each individual regulation	£5000
The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below), for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a moderate band 1 offence	£1000
The civil penalty for a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, with no other relevant factors or aggravating features (see below), for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a band 2 offence	£5000
The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a serious band 3 offence	£10,000

The civil penalty for a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, with no other relevant factors or aggravating features (see below), for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a serious band 3 offence	£20,000
--	---------

Aggravating features

- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions (including recent convictions that were ‘spent’), works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home.

Failure to Comply with a Banning Order

Maximum Court fine that can be levied for failure to comply with a Banning Order – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that we are satisfied that the offence of breaching a Banning Order has occurred, this would normally be the subject of prosecution proceedings. Where it is determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

Discounts

We will reduce the level of any imposed civil penalty by 20% in the event that the offender complied with the identified breach within the representation period at the ‘Notice of Intent’ stage.

Illustrative example

The landlord of an HMO property fails to obtain a licence. They only operate one HMO and there are no other relevant factors or aggravating features. The offence is regarded as a serious matter, representing a band 3 offence, attracting a civil penalty of £10000. Upon receipt of the ‘Notice of

'Intent' to impose a £10000 financial penalty, the landlord makes a complete application for the HMO licence within the period allowed for representations. No other representations (or representations that are up-held) are made. The discount is applied and a 'Final Notice' served imposing a £8000 financial penalty.

Statement of Principles for determining the amount of the Penalty Charge under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 **Appendix 3**

Introduction

The purpose of this Statement of Principles is to set out a framework for determining the amount of a penalty charge to be imposed for breaches of the above Regulations. This statement sets out the principles that we will apply in exercising our right to require a landlord to pay a fixed penalty charge under the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, if we are satisfied that the landlord in question has breached his duty under Regulation 6(1) to comply with the requirements of a Remedial Notice under Regulation 5.

The Legal Framework

Regulation 8 provides that where a local housing Authority is satisfied, on the balance of probabilities, that a landlord on whom it served a remedial notice under Regulation 5 is in breach of their compliance duty under Regulation 6(1), the Authority may require the Landlord to pay a penalty charge. The amount of the charge to be determined by the Authority, up to a statutory maximum of £5000.

Regulation 13 requires us to prepare and publish a Statement of Principles to be followed in determining the amount of such a penalty charge. In particular the council will have regard to:-

- The nature of the breach of the Regulations
- Continued, or repeat, breaches of the Regulations.

The primary aims of financial penalties will be to:

- Recover the Council's costs in carrying out the necessary remedial work, under Regulation 7.
- Lower the risk to tenant's health & safety & wellbeing by ensuring that the property in question benefits from basic early warning in the event of a fire.
- Promote compliance of landlords in the Private Rented Sector.
- Eliminate any financial gain or benefit from non-compliance with regulation.
- Educate Landlords on the associated risks of non-compliance.
- Be proportionate to the nature of the breach of legislation and the risk posed.
- Aim to prevent future non-compliance.

Criteria for the imposition of a penalty charge

In deciding whether it would be appropriate to impose a penalty charge, we will take full account of the particular facts and circumstances of the regulation breach under consideration. Factors which we will take into consideration include, but are not limited to:-

- The extent to which the circumstances giving rise to the contravention were within the control of the landlord.
- The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach.
- The steps that the landlord has taken since being served with the remedial notice,
- Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred.
- Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).

Criteria for determining the amount of a penalty charge

The Regulations set a maximum penalty charge of £5000. A penalty charge will be set at a level which the council considers is proportional to the breach and will take into account all the other circumstances of the case, which may include (the list is not exclusive):-

- The charge will include the costs incurred by the Council in taking remedial action following non-compliance, including officer time and the cost of contractor supervision.
- Whether or not the breach under consideration is a first-time breach.
- Where justified representations have been made to the Council to formally review the penalty charge imposed, under Regulation 10.

Westminster City Council penalty charges

First-time breach **£2,500**. An early payment of the penalty charge, within 14 days from penalty charge notice service, will attract a discount of 50%. (to **£1,250**)

Subsequent breaches by the same landlord **£5,000**. No early payment discount will be available in this case.

We will exercise discretion, and may not make, or may reduce, any penalty charge where the Landlord is a housing charity providing housing services for vulnerable persons.

We will enforce penalty charges, to include obtaining a Court Order for payment, where necessary.

Review of Penalty Charge Notice & Appeals

On receipt of a Penalty Charge Notice a landlord can, within 28 days from Notice service, make a written request to us to review our decision. We will review the facts of the case and will confirm or vary our decision, and will serve notice giving the result of our review.

A landlord can then appeal against the review decision to the First Tier Tribunal; the Tribunal can then quash, confirm, or vary the Penalty Charge Notice (but cannot increase the penalty charge). The operation of the Penalty charge notice is suspended until the Tribunal has determined the appeal.