

# **Oxford City Council Civil Penalty Policy**

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## Introduction

This policy will be used by the Council when undertaking enforcement and regulation of private rented properties. The policy applies to civil penalties under the following legislation:

- Housing Act 2004 as amended by the Housing and Planning Act 2016
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- Tenant Fees Act 2019
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

A civil penalty, often known as a financial penalty, is a penalty imposed by a Local Authority as an alternative to prosecution. Prosecution in serious cases demonstrates that the Council will not hesitate to take formal action where needed and is likely to act as a strong deterrent both to the offender and other rogue landlords. A prosecution also enables the Council to apply for a banning order following a successful conviction.

In developing this policy, the Council have considered the statutory guidance available, precedents set by the Upper Tier Tribunals, Court of Appeal and guidelines published by the Sentencing Council <https://www.sentencingcouncil.org.uk/the-magistrates-court-sentencing-guidelines/>

The Council is mindful that despite its best efforts, many landlords may operate unlawfully for a significant period of time without detection, and only a proportion of landlords committing relevant offences will be discovered. The Council is, therefore, mindful that when deciding to impose a Civil Penalty, it should create an environment where it is clear to the offender and others that operating unlawfully as a landlord will be financially disadvantageous when compared to operating lawfully.

The Council intends to create an environment where, landlords, engage with the Council's requests and demands fulsomely, openly and honestly. This helps create a level playing field which supports the aims of transparency and consistency. No landlord should be able to financially benefit from withholding information the Council deems relevant that is, or should be, in their control to disclose. It is expected that fulsome and complete supporting evidence is provided to support any Written Representations received in response to any Notice of Intent.

In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

In this policy, the terms 'House of Multiple Occupation' or 'HMO' are defined by the Housing Act 2004.

This policy will be updated as required to respond to new legislation and / or case law.

## Determination of most appropriate course of action in Enforcement cases

The Council has to determine the most appropriate course of action in enforcement cases. The Council will consider a number of factors, both negative and positive and each case is considered on its own merits. Enforcement intervention can be described as low or high level, with low level intervention being more appropriate in lower risk situations or where the person has resolved the issue. Table 1 indicates the types of enforcement action; this is not an exhaustive list. The Council may take any number of these courses of action, either simultaneously or consecutively, depending on the circumstances of the case. The Council may undertake “high” actions before determining the final intervention is in the “low” category (e.g. may commence an investigation and then determine the final action is a warning letter).

<b>Table 1 – Determination of appropriate course of action</b>	
<b>Intervention level</b>	<b>Examples of recommended Action</b>
Low	Charge higher licence fees (for both HMO and Selective Licences) Advisory letters Invitation to Landlord events Revoke Accreditation Carry conditions forward on HMO licence renewal Warning Letter Advise tenants of rights to RRO, where applicable
High	As Band 1 and 2 plus: Commence investigation Serve Section 16 and 235 notices Consider revoking licence (for both HMO and Selective Licences) Consider Financial Penalty Consider Prosecution Refuse to licence as not fit and proper (for both HMO and Selective Licences) RRO if LA pays Housing Benefit

## Civil (financial) penalties under the Housing Act 2004

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provide local authorities with the power, through the insertion of section 249A Housing Act 2004, to impose a civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice [section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 [section 72]
- Offences in relation to the Selective Licensing of 'houses' under Part 3 [section 95]
- Failure to comply with an Overcrowding Notice [section 139]
- Failure to comply with a management regulation in respect of an HMO [section 234]

In addition, section 23 of the Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

The Council has the power to impose a civil penalty of up to a maximum of £30,000 for each separate offence. If multiple offenders have committed the same offence at the same property, a separate civil penalty can, and usually will, be imposed on each offender. In each case, the level of civil penalty imposed on each offender will be in line with this policy.

This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.

The Council considers the need for transparency and consistency in the discharge of its functions under the Housing Act 2004 to be of primary importance. The general objective of this policy is, therefore, to promote both transparency and consistency in the imposition of financial penalties under the 2004 Act so that, for example, those managing and having control of rented properties in the city (a) know how the Council will generally penalise relevant offences and (b) are assured that, generally, like cases will be penalised similarly, and different cases penalised differently. The further objectives of using financial penalties in particular as a means of enforcing the above offences are explained below.

### Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 entitled "Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities". The Council has regard to this guidance in the exercise of their functions in respect of civil penalties that are included within this policy.

Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of

the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a. **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b. **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c. **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d. **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- e. **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f. **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The factors detailed in the statutory guidance and policy aims will be considered by the Council when deciding where, within the Civil Penalties matrix (see below), a particular offence and penalty fall.



## Determining the amount of financial penalty for penalties under the Housing Act 2004

The following section sets out how the Council will determine the appropriate level of financial penalty for Housing Act 2004 offences. The determination is undertaken in line with the statutory and non-statutory guidance documents produced by Government as well as relevant precedents.

A Financial Penalty should not be regarded as an easy or lesser option compared to prosecution. The penalty should be proportionate and reflect the severity of the offence and should be set high enough to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

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 indicative 'starting level' under the various offence categories, with the final level of the civil penalty adjusted in each case, taking into account aggravating and mitigating factors the Council deems significant including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants.

In deciding what level of penalty to impose, officers will conduct the following four stage process.

**Stage 1** - consider the seriousness of the relevant housing offence to identify a starting level of the penalty.

**Stage 2** - assessment of the number of rental properties controlled or owned or managed by the landlord and/or their experience in the letting/management of property will be considered, which may have the effect of increasing or decreasing the penalty.

**Stage 3** – Consider aggravating and mitigating factors that may relate to a number of factors including, but not limited to, culpability, track record and harm, which may have the effect of increasing or decreasing the penalty.

**Stage 4** - if any of the Discounts, as set out below, apply, the penalty will be decreased.

Once the seriousness of the relevant housing offence has been identified, the starting level of the penalty will be identified using the table 1 below with the headings 'Seriousness of offence' and 'Starting level [£]'. Consideration of the number and type of rental properties controlled or owned or managed may adjust the penalty.

To reflect the seriousness of the offence(s) in question, the presence of one or more mitigating factors will rarely result in the penalty being decreased in excess of a total of £5000. In exceptional circumstances, officers may determine that the presence of one or more mitigating factors justify a decrease in the penalty in excess of £5000.

The presence of numerous mitigating factors will not automatically be considered as exceptional circumstances.

The Council has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad possible circumstances that might give rise to mitigation.

To ensure that any penalty imposed is proportionate to the offending behaviour the presence of one or more aggravating factors will rarely result in the penalty being increased in excess of a total of £5000. In exceptional circumstances, officers may determine that the presence of one or more aggravating factors justify an increase in the penalty in excess of £5000. The presence of numerous aggravating factors will not automatically be considered as exceptional circumstances.

The Council may, exceptionally, including for the reason given above, increase the penalty by greater than £5000 on account of aggravating factors or, again exceptionally, decrease it by greater than £5000 on account of mitigating factors. In order to meet the objectives of this policy, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty by greater than £5000 on account of aggravating or mitigating factors in exceptional circumstances only (excluding any Discounts as set out below). The Council will consider on a case-by-case basis whether any such circumstances exist.

**Table 1**

<b>Seriousness of offence</b>	<b>Starting level [£]</b>
Mild	2500
Moderate	7500
Serious	12500
Very Serious	17500
Severe	22500
Very Severe	27500

**Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty.**

#### **Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004**

*Maximum Court fine following prosecution that can be levied for failure to comply with an Improvement Notice - Unlimited*

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 some cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. 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.

The seriousness of the offence is viewed by the Council as being a Severe matter, attracting a financial penalty with a starting level of £22500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £22500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £27500.

### ***Aggravating features/factors specific to non-compliance with an Improvement Notice***

- The nature and extent of hazards that are present. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the occupant[s] in the property or their guests would justify an increase in the level of the civil penalty.

### ***Generic aggravating features/factors***

The Council will have regard to general factors in determining the final level of the civil penalty including, but not limited to:

- A previous history of non-compliance would justify an increased civil penalty. Non-exhaustive examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], receipt of financial penalties, rent repayment orders, works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- A failure to cooperate with a Council investigation. Non-exhaustive examples of failure to cooperate would include failing to comply with a s.16 Local Government (Miscellaneous Provisions) Act 1976 notice, failing to comply with

a s.235 Housing Act 2004 notice, failing to provide a substantive response to a letter of alleged offence.

- Deliberate intent when committing the offence. Non-exhaustive examples of deliberate intent would include knowledge that the offence was occurring, committing the offence after relevant correspondence was sent by the Council.
- The number of residents placed at risk
- Offending over an extended period of time i.e. 6 months or longer
- Whether any vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers.

### **Failure to License offences**

*Maximum Court fine following prosecution that can be levied for failure to license an HMO or Part 3 House – Unlimited*

#### **Failure to license a 'HMO' – Section 72(1) of the Housing Act 2004**

Under Part 2 Housing Act 2004, it is an offence to operate an HMO without a licence. The Council has two HMO licensing schemes, mandatory and an additional scheme, which combined mean that most HMOs in the city require an HMO licence. The mandatory scheme applies to most HMOs occupied by 5 or more persons and such HMOs will require an HMO licence. The additional scheme applies to most HMOs in the city occupied by three or more persons forming two or more households sharing one or more basic amenities, such as a WC or kitchen; and all self-contained flats that are HMOs irrespective of the number of storeys in the building that are mainly or wholly tenanted including those with resident landlords. All such HMOs will be required to hold an HMO licence in order to be legally let along with those included in the mandatory scheme.

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, local authorities 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.

The Council would view the offence of failing to license an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding. In Oxford the additional HMO licensing scheme has been operating since 2011.

This seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

***Aggravating features/factors specific to failure to licence offences***

- 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, an 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 the 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

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above.

***Failure to license a property under the Council's Selective Licensing Scheme – Section 95(1) of the Housing Act 2004***

The Council has also exercised their powers under section 80 Housing Act 2004 and has designated the entirety of the city as an Area for Selective Licensing via two licensing designations, both of which came into force on 1<sup>st</sup> September 2022 and expire on 31<sup>st</sup> August 2027. Most privately rented homes which are occupied by a single-family household or by no more than 2 unrelated persons, are required to have a property licence to operate in the city. Through the Selective Licensing scheme, which was introduced to improve property conditions that exist in privately rented homes, the Council intends to improve the professionalism of private landlords and drive-up property standards.

The Council would view the offence of failing to ensure that a rented home was licensed under its Selective Licensing Scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.

This seriousness of the offence is viewed by the Council as being a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

### ***Aggravating features/factors specific to non-licensing offences***

- 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 property that required a Selective Licence and 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 the 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

### ***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above.

### **Breach of licence conditions – Section 72(3) Housing Act 2004 and Section 95(2) Housing Act 2004**

*Maximum Court fine following prosecution that can be levied for failure to comply with a licence condition - unlimited*

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, but not limited to:

- 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 the Council recognises 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.

***Failure to comply with licence conditions related to:***

- ***Signage or the provision of information for tenants***
- ***Provision of written terms of occupancy for tenants***
- ***Procedures regarding complaints***
- ***Procedures regarding vetting of incoming tenants***
- ***Compliance with deposit protection legislation***
- ***The recording and provision of information regarding rent payments***
- ***The provision of information regarding occupancy of the property***
- ***The provision of information regarding change of managers or licence holder details***
- ***The provision of information related to changes in the property***
- ***Requirements relating to the sale of the property***
- ***Attending training courses***

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Mild matter, attracting a financial penalty with a starting level of £2500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

***Aggravating features/factors specific to Licence Condition breach offences***

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

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Failure to comply with licence conditions related to:***

- ***Procedures and actions regarding Inspections***
- ***Procedures regarding Repair issues***
- ***Maintenance and use of common parts (including gardens and outbuildings) and living areas***



- ***Safeguarding occupiers and minimising disruption during works***
- ***Providing information regarding alteration and constructions works,***
- ***Procedures regarding emergency issues***
- ***Waste and waste receptacles, pests, minor repairs, alterations or decoration.***
- ***Giving written notice prior to entry***
- ***Procedures and actions regarding ASB***

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

#### ***Aggravating features/factors specific to Licence Condition breach offences***

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

#### ***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

#### ***Failure to comply with licence conditions related to:***

- ***The provision of documentation regarding energy performance certificates, fire detection, emergency lighting, gas installations and electric installations***
- ***Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status***

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Serious matter, attracting a financial penalty with a starting level of £12,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7,500.



Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5,000, attracting a civil penalty of £17,500.

### ***Aggravating features/factors specific to Licence Condition breach offences***

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

### ***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

### ***Failure to comply with licence conditions related to:***

- ***Minimum floor areas***
- ***Occupancy rates***
- ***Occupancy of rooms that are not to be used as sleeping accommodation.***
- ***Limits on the number of households allowed to occupy the property or part of the property.***

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Very Serious matter, attracting a financial penalty with a starting level of £17,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5,000, attracting a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5,000, attracting a civil penalty of £22,500.

### ***Aggravating features/factors specific to Licence Condition breach offences***

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

### ***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Failure to comply with licence conditions related to:***

- ***The condition or existence of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations, fire detection or other fire safety features or requirements***
- ***The prevention including provision of safe means of escape***

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a Severe matter, attracting a financial penalty with a starting level of £22,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £22,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5,000, attracting a civil penalty of £27,500.

***Aggravating features/factors specific to Licence Condition breach offences***

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

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Failure to Comply with The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007***

***Maximum Court fine following prosecution that can be levied for failure to comply with each individual regulation - unlimited***

The Management of Houses in Multiple Occupation (England) Regulations 2006 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]

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 Housing Act 2004 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 the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.

### ***Failure to comply with the duty of manager to provide information to occupier***

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide information to occupier as a Mild matter, attracting a financial penalty with a starting level of £2,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £2,000, attracting a civil penalty of £500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2,000, attracting a civil penalty of £4,500.

### ***Aggravating features/factors specific to Management Regulation breach offences***

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

### ***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

### ***Duty of manager to take safety measures***

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to take safety measures as a Very Serious matter, attracting a financial penalty with a starting level of £17,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22,500.

***Aggravating features/factors specific to Management Regulation breach offences***

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Duty of manager to maintain water supply and drainage***

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the water supply and drainage as a Serious matter, attracting a financial penalty with a starting level of £12,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5,000, attracting a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17,500.

***Aggravating features/factors specific to Management Regulation breach offences***

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Duty of manager to supply and maintain gas and electricity***

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the gas and electricity supply as a Serious matter, attracting a financial penalty with a starting level of £12,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5,000, attracting a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5,000, attracting a civil penalty of £17,500.

***Aggravating features/factors specific to Management Regulation breach offences***

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Duty of manager to maintain common parts, fixtures, fittings and appliances***

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the common parts, fixture, fittings and appliances as a Moderate matter, attracting a financial penalty with a starting level of £7,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5,000, attracting a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5,000, attracting a civil penalty of £12,500.



***Aggravating features/factors specific to Management Regulation breach offences***

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Duty of manager to maintain living accommodation***

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the living accommodation as a Moderate matter, attracting a financial penalty with a starting level of £7,500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5,000, attracting a civil penalty of £2,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7,500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12,500.

***Aggravating features/factors specific to Management Regulation breach offences***

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above



***Duty to provide waste disposal facilities***

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide waste disposal facilities as a Moderate matter, attracting a financial penalty with a starting level of £7500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £2500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £12500.

***Aggravating features/factors specific to Management Regulation breach offences***

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above

***Generic aggravating features/factors***

As set out under 'Failure to comply with an Improvement Notice' above

***Failure to Comply with an Overcrowding Notice – Section 139 of the Housing Act 2004***

*Maximum Court fine following prosecution that can be levied for failure to comply with an Overcrowding Notice – Unlimited*

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. 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.

The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant[s] of an HMO to unacceptably cramped living conditions.

The seriousness of the offence is viewed by the Council as being a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

### **Aggravating features/factors specific to non-compliance with an Overcrowding Notice**

- 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

### **Generic aggravating features/factors**

As set out under 'Failure to comply with an Improvement Notice' above

### **Failure to Comply with a Banning Order – Section 21 of the Housing And Planning Act 2016**

*Maximum Court fine that can be levied for failure to comply with a Banning Order following prosecution – 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 the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was 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.

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

Before imposing a financial penalty on a person, the Council will give the person a Notice of Intent.

A person who is given a Notice of Intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within a 28-day period, this period starting the day after the date on which the Notice of Intent was given. As the burden lies with the recipient of any such notice to explain why, exceptionally, the Council should, or should not, depart from the Civil Penalties Matrix and guidance above, the Council will expect the recipient of a Notice of Intent to explain and provide fulsome and cogent evidence to support the existence of any such circumstances when they make representations in response to the notice.

In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.

After the end of the period for representations the Council will:

- (a) Decide whether to impose a financial penalty on the person, and
- (b) 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, the Council will consider any written representations received in the appropriate time period, and will also consider the totality principle.

Furthermore, an offender's compliance with the identified breach during the representation period would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate. However, compliance at that stage may be relevant with respect to any mitigating factors that could decrease the amount of any imposed financial penalty.

If, following the receipt of written representations and/or the expiry of the time period to make written representations, the Council decides to impose a financial penalty on the person, it will give the person a Final Notice imposing that penalty.

The Final Notice will set out and summarise:

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,
- d) The period for payment of the penalty,
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

If the offender does not agree with the service of the notice they can appeal to the First Tier Tribunal, the details of which will be contained within the notice. This appeal must be made within the timescales as set out in the notice. The Council will also issue an invoice for the amount specified on the notice.

## Financial penalties under Tenant Fees Act 2019

Oxfordshire County Council (Trading Standards) have the primary duty to enforce The Tenant Fees Act 2019 however District Councils may enforce the Act and enable issue of penalties of up to £5,000 for an initial offence or up to £30,000 for a subsequent offence (within 5 years) for charging prohibited payments under the Act.

Statutory guidance<sup>1</sup> has been issued in relation to determining the level of penalty and Local Authorities must have regard to this when exercising its functions in respect of financial penalties. This policy fulfils the requirement for enforcement authorities to develop and publish their own policy on determining the appropriate level of financial penalties to impose.

### **Aggravating features/factors specific to Tenant Fees Act breach offences**

- Failure to pay tenant back or the amount paid of the excess fees charged

### **Generic aggravating features/factors**

As set out under 'Failure to comply with an Improvement Notice' above

## Financial penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 enable Local Authorities to impose financial penalties of up to £30,000 for the following offence:

- a) Failure to comply with regulation 3 - Duties of private landlords in relation to electrical installations.

Non-statutory guidance<sup>2</sup> issued in relation to these Regulations states that Local Authorities may wish to consult guidance produced by the Ministry of Housing, Communities and Local government (MHCLG) in relation to civil (financial) penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016). This policy fulfils the requirement for enforcement authorities to develop and document their own policy on determining the appropriate level of financial penalties to impose.

### **Aggravating features/factors specific to Electrical Safety Standards Regulation breach offences**

- Failure to provide an Electrical Installation Condition Report (EICR) and/or number of faults found not addressed/ works not completed.

### **Generic aggravating features/factors**

<sup>1</sup> : Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government. Tenant Fees Act 2019 Statutory Guidance for Enforcement Authorities. Updated 2020. <https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

<sup>2</sup> Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government. Guide for local authorities: electrical safety standards in the private rented sector. Updated 2021 <https://www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector#financial-penalties>

As set out under 'Failure to comply with an Improvement Notice' above

## Determining the amount of financial penalty for offences where penalty charge is £5000

Once the seriousness of the offence is determined, the starting level for these penalties is set out in the table 2 below with the headings 'Seriousness of offence' and 'Starting level [£]'. Consideration of the number and type of rental properties controlled or owned or managed may adjust the penalty.

To reflect the seriousness of the offence(s) in question, the presence of one or more mitigating factors will rarely result in the penalty being decreased in excess of a total of £800. In exceptional circumstances, officers may determine that the presence of one or more mitigating factors justify a decrease in the penalty in excess of £800. The presence of numerous mitigating factors will not automatically be considered as exceptional circumstances.

The Council has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad possible circumstances that might give rise to mitigation.

To ensure that any penalty imposed is proportionate to the offending behaviour the presence of one or more aggravating factors will rarely result in the penalty being increased in excess of a total of £800. In exceptional circumstances, officers may determine that the presence of one or more aggravating factors justify an increase in the penalty in excess of £800. The presence of numerous aggravating factors will not automatically be considered as exceptional circumstances.

The Council may, exceptionally, including for the reason given above, increase the penalty by greater than £800 on account of aggravating factors or, again exceptionally, decrease it by greater than £800 on account of mitigating factors. In order to meet the objectives of this policy, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty by greater than £800 on account of aggravating or mitigating factors in exceptional circumstances only (excluding any Discounts as set out below). The Council will consider on a case-by-case basis whether any such circumstances exist.

Table 2

Seriousness of offence	Starting level [£]
Mild	1000
Moderate	2000
Serious	3000
Very Serious	4000

## Financial penalties under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 enable Local Authorities to serve a financial penalty of up to £5,000 for failure to belong to a Redress Scheme.

There is no statutory guidance issued in relation to determining the level of penalty. Non statutory guidance issued in 2015 stated:

The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances<sup>3</sup>.

The Council therefore considers the maximum fine of £5,000 will be the starting point irrespective of Table 2.

## Financial penalties under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 enable Local Authorities to serve a financial penalty of up to £5,000 per property. For domestic properties, a penalty may be issued for either or both of the offences below:

- a) A landlord of a sub-standard domestic PR property must not let the property unless regulation 25, or one or more of the exemptions in Chapter 4, applies
- b) Failure to comply with the requirements of a Compliance Notice served by the Local Authority under regulation 37

The maximum level of penalty varies on the type of breach under the Regulations. There is no statutory guidance issued in relation to determining the level of penalty. In this case, the Council will use the principals in the statutory guidance issued in relation to civil (financial) penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016).

The maximum penalties are as follows:

- a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty. The Council would view the seriousness of the offence as "mild" and a starting level of £1,000.

<sup>3</sup> Department for Communities and Local Government. Improving the Private Rented Sector and Tackling Bad Practice. 2015

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/412921/Improving\\_private\\_rented\\_sector.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/412921/Improving_private_rented_sector.pdf)



- b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty. The Council would view the seriousness of the offence as “serious” and a starting level of £3,000.
- c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty. The Council would view the seriousness of the offence as “mild” and a starting level of £1,000.
- d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty. The Council would view the seriousness of the offence as “moderate” and a starting level of £2,000.

### ***Aggravating features/factors specific to Energy Efficiency Regulation breach offences***

- Whether an EPC has been obtained or if not the length of time it is out of date, and the banding of the EPC, with E, F and G banding being considered the most serious

### ***Generic aggravating features/factors***

As set out under ‘Failure to comply with an Improvement Notice’ above

## **Financial penalties under Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022, enable Local Authorities to require a penalty charge to be paid of up to £5,000 for failing to comply with a remedial notice.

There is no statutory guidance issued in relation to determining the level of penalty. In this case, the Council will use the principals in the statutory guidance issued in relation to civil (financial) penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016).

The Council would view the seriousness of the offence as “Very Serious” and a starting level of £4,000.

### ***Aggravating features/factors specific to Smoke and Carbon Monoxide Regulation breach offences***

- Whether smoke or carbon monoxide alarms provided and located in correct position following service of notice

### ***Generic aggravating features/factors***

As set out under ‘Failure to comply with an Improvement Notice’ above

## Review of the penalty

The Council must check whether the level of any financial is fair and proportionate alongside the general principle of deterring a repeat of the breach and the removal of any gain as a result of the breach. If necessary, the initial amount may be amended to ensure it fulfils the general principles outlined above and within the statutory guidance.

Factors to consider include:

- Impact of the financial penalty on the landlord or agent's ability to comply with the law and whether it is proportionate to their means
- Totality principle. If issuing a financial penalty for more than one breach, or where the landlord or agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches. Where the landlord or agent is issued with more than one financial penalty, the Council will consider the relevant guidance from the Sentencing Council for England and Wales'.

The Council will apply the totality principle in situations where a landlord is identified as having committed multiple breaches of the Tenant Fees Act, with each imposed penalty set at lower reduced level.

The Council will consider the above factors when determining the amount of the appropriate penalty in any given case. However, the Council will consider the principle identified in the statutory guidance that the penalty should not be an easy or lesser option compared to prosecution and it will therefore attach particular weight when deciding the amount of any penalty.

In the event that the Council determines to impose one or more financial penalties, it will apply discounts [see 'discounts' below] including a discount that reflects the offender having remedied the breach that gave rise to the proposed penalty and a second discount for admission of guilt [payment within 28 days of penalty being imposed].

### Discounts

The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:

- A discount of 15% of the original calculated financial penalty will be deducted from the penalty imposed in the Final Notice should the penalty be paid within a specified time period (normally 28 days).

### ***Illustrative example***

The landlord of a Mandatory HMO property fails to obtain a licence. They only operate two HMO properties and there are no other relevant factors or aggravating features. The offence is regarded as a Very Serious matter. Upon receipt of the 'Notice of Intent' to impose a £17500 financial penalty. Written representations are made to the Council.

On account of the written representations received by the landlord, the council imposes a financial penalty of £16000 ("the original calculated financial penalty"). In the event the landlord pays within 28 days of the date of the Final Notice a 15% discount is given so that the landlord makes a discounted payment of £13600.

## Affordability

The Statutory Guidance on Financial Penalties under the Housing and Planning Act 2016 makes it clear that:

*Local housing authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income they receive (not just rental income) when determining an appropriate penalty.*

Representations against estimated incomes will only be accepted where the landlord provides sufficient evidence to support the claims.

The Council can make a full financial assessment of a recipients' assets and any income they receive, not just from rental income, when calculating an appropriate financial penalty. The Council will consider carrying out a full financial investigation where it considers that it is reasonable and proportionate to do so in the circumstances. Full financial investigations will normally only be considered for the more serious cases.

## Payment of the Financial Penalty

The offender must pay the penalty within 28 days from the date the final notice is served. The Council may consider, in exceptional circumstances, a payment plan. If payment is not made; or if a payment plan is not adhered to, the Council will seek to recover the amount owed through the County Court. If an appeal is made, payment will be suspended until the outcome of the appeal.

## Additional Actions

In all cases the Council must consider whether to take additional action following service of a financial penalty notice including

- In the case of HMOs appropriate action under Housing Act 2004 Part 1,
- Interim Management Orders,
- Works in default,
- Inclusion in the national rogue landlords database
- Rent Repayment Orders.
- Refusal to grant a licence
- Revocation of licence

A prosecution case cannot be taken for the same conduct as is the subject of a financial penalty notice.

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