



**Private Sector Housing Team**

**Statement of principles for  
determining penalties for civil  
offences**

**May 2018**

## **1. Introduction**

This statement sets out the principles that the Winchester City Council (the Council) will apply in exercising powers to impose a financial penalty for any civil breaches of housing related legislation for which they are the enforcing authority. A second document deals with financial penalties for criminal offences under the Housing Act 2004.

## **2. The Council's power to impose financial penalties.**

In recent years legislation has been introduced which has provided the enforcing authority with a power to impose and charge a financial penalty in prescribed circumstances.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 are two such enactments that are specifically referred to in this document.

In anticipation of further legislative provisions being introduced enabling the imposition of a civil penalty, the principles detailed in this document will be applied in setting any charge.

## **3. The scope of the document**

Regulation 13 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires the Council to prepare and publish a 'statement of principles' which it proposes to follow in determining the amount of a penalty charge.

The Housing Department of the Council acknowledge that such a statement is a legislative requirement and have produced this document to publicise the principles that will be adopted in any circumstance that permits the imposition of a financial penalty.

The Council may revise its statement of principles and, where it does so, it must publish the revised statement.

Where a financial penalty is charged, the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty.

## **4. General principles and factors to be applied to the imposition of a financial penalty.**

The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public.

The primary aims of any financial penalty will therefore be to:

- Change the behaviour of the landlord / agent concerned.
- Deter future non-compliance by landlords / agents.
- Eliminate any financial gain or benefit from non-compliance with the regulations.
- Be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
- Reimburse the cost incurred by the Council in undertaking work in default and fulfilling its enforcement duties.

In determining the amount of any financial penalty to be charged the Council will consider the following factors:

- The extent to which the non-compliance was the result of direct acts or omissions of the landlord / agent.
- Whether the non-compliance was deliberate or resulted from a matter of which the landlord / agent should reasonably be aware.
- Whether any other body has or is likely to apply sanctions associated with the non-compliance.
- The level of cooperation provided by the landlord / agent concerned.
- Any history of previous contraventions of Housing or Housing related legislation.
- The level of financial gain achieved by the non-compliance.
- The level of risk created by the non-compliance.
- The degree of responsibility held by the landlord / agent for the non-compliance.
- The cost incurred by the Council in enforcing the relevant provision.
- Any additional aggravating or mitigating factors that may warrant an increase or decrease in the financial penalty.

## **5. Financial penalties applicable to specific legislation**

### **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.**

The Regulations impose obligations upon landlords to ensure that tenanted properties are provided with smoke alarms and carbon monoxide alarms.

*Reg 4(1) says; A relevant landlord in respect of a specified tenancy must ensure that -*

- (a) *during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy-*
- (i) *a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;*
- (ii) *a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and*
- (b) *checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.*

Where the Council have reasonable grounds to believe that one or more of the Reg 4(1) requirements have not been met by a landlord the Council has a duty under Reg. 5 to serve a 'remedial notice' on the landlord within 21 days.

A remedial notice must-

- specify the premises to which the notice relates;
- specify the duty or duties that the local housing authority considers the landlord is failing or has failed to comply with;
- specify the remedial action the local housing authority considers should be taken;
- require the landlord to take that action within 28 days beginning with the day on which the notice is served;
- explain that the landlord is entitled to make written representations against the notice within 28 days beginning with the day on which the notice is served;
- specify the person to whom, and the address (including if appropriate any email address) at which, any representations may be sent; and
- explain the effect of regulations 6, 7 and 8, including the maximum penalty charge which a local housing authority may impose.

The remedial notice will confirm the provisions for a review, and the appeal procedures.

In accordance with Reg. 6(1), where the Council is satisfied, on the balance of probabilities, that a landlord is in breach of their duty to take the remedial action specified in the remedial notice, the Council may require the landlord to pay a penalty charge of such amount as the Council may determine. When deciding whether to impose a penalty charge the Council will take into account the principles referred to in Section 4 of this document.

The amount of the penalty charge must not exceed £5,000.

The **starting points** for a penalty charge for breach of duty under Reg. 6(1) will be as follows:

1. For a first breach - £1,500 (the standard penalty charge), but this will be reduced by 50% if paid within 14 days of service of the penalty charge notice.
2. For a second breach - £3,000
3. For a third and any subsequent breach - £5,000

The level of the penalty charge may then be adjusted, as appropriate, having regard to the principles and factors referred to in Section 4 of this document.

Where a penalty charge is considered appropriate and the level has been set, the Council will serve on the landlord a 'penalty charge notice' within six weeks of being satisfied the landlord is in breach of their duty under Reg. 6(1) duty, as set out above.

A penalty charge notice must state-

- the reasons for imposing the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) which an authorised person has installed at the premises;
- the amount of the penalty charge;
- that the landlord is required, within a period specified in the notice—
- to pay the penalty charge, or
- to give written notice to the local housing authority that the landlord wishes the authority to review the penalty charge notice;
- how payment of the penalty charge must be made; and
- the person to whom, and the address (including if appropriate any email address) at which, a notice requesting a review may be sent and to which any representations relating to the review may be addressed.

Should a landlord request a review and submit representations following receipt of a penalty charge notice the Council will -

- (a) consider any representations made by the landlord;
- (b) decide whether to confirm, vary or withdraw the penalty charge notice; and
- (c) serve notice of its decision on the landlord.

The Council will refer to this statement of principles in considering any request for a review and the review will be conducted by an officer not directly involved in the service of the original notice.

The 50% discount for a first breach will apply to any revised charge set should payment be made within 14 days of service of the revised notice.

There is a right of appeal to the First-tier Tribunal against the Council's decision to confirm or vary a penalty charge notice following a review.

The Council will comply with the requirements of the legislation regarding the information to be contained within any penalty charge notice, including provisions for a review, and the appeal procedures.

A penalty charge will be recoverable on the order of a court, as if payable under a court order.

### **The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014**

The Order requires that a person who engages in lettings agency work, or property management work must be a member of a redress scheme for dealing with complaints in connection with that work.

The redress scheme must be one that is-

- approved by the Secretary of State; or
- designated by the Secretary of State as a government administered redress scheme.

Where the Council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by the order it may by notice require that person to pay a 'monetary penalty' of such amount as the authority may determine.

The amount of the monetary penalty must not exceed £5,000.

The Council will comply with the procedure for the imposition of a monetary penalty stipulated within the Order including provisions for the submission of representations and objections and the appeal procedures.

A person who is served with a notice imposing a monetary penalty may appeal to the First-tier Tribunal against that notice.

The grounds for appeal are that-

- the decision to impose a monetary penalty was based on an error of fact;
- the decision was wrong in law;
- the amount of the monetary penalty is unreasonable;
- the decision was unreasonable for any other reason.

Where a person has appealed to the First-tier Tribunal the notice is suspended until the appeal is finally determined or withdrawn.

The Tribunal may -

- quash the final notice;
- confirm the final notice;
- vary the final notice.

A penalty charge will be recoverable on the order of a court, as if payable under a court order.

The standard penalty charge for breach of duty under article 3 or 5 will be set initially at £5,000. The monetary penalty will be reduced by 50% if paid within 14 days of service of the penalty charge notice.

While this monetary penalty is set as a standard the order makes provision for an agent to make representations or objections. The Council will refer to this statement of principles in considering representations or objections received. Reviews will be conducted by an officer not directly involved in the service of the original notice of intent. The 50% discount will apply to any revised charge set should payment be within 14 days of service of the revised notice.

#### **Other legislation.**

Where housing or housing related legislation is introduced which is enforced by the Council and permits the imposition of any financial penalty for a civil offence, the Council will seek to fully implement any duty or power conferred upon it. Charges will be published and will be based on this statement of principles, or the sister document referring to criminal offences.