

Housing Services Enforcement & Licensing Policy

2022



**Protecting the health,
safety and welfare of
tenants, home owners and
the general public through
housing enforcement**

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Introduction

Bath and North East Somerset Council is responsible for the enforcement of legislation to protect the health, safety and welfare of tenants, home owners and the general public. Housing Services regard prevention as better than cure and therefore offer information and advice to landlords, tenants and others. However, the Service is concerned with the maintenance of minimum housing standards and the fair treatment of tenants. For this reason the Council will consider taking enforcement action where it is considered appropriate to promote compliance with the law.

This document sets out how Housing Services aim to deal with individuals and organisations who do not comply with housing law.

Our approach

Bath and North East Somerset Council Housing Services will aim to be open, act proportionately, and be consistent and helpful in its approach to enforcement. We will also consider the impact of regulatory intervention on businesses and the business community in accordance with the Regulators' Code. In particular we aim to:

Provide information to aid compliance with legislation

Use a risk based approach targeting enforcement action

Engage and communicate effectively

Support compliance and growth.

Unless immediate action is necessary, for example to ensure the health and safety of tenants, we will usually offer the opportunity to discuss the case before formal action is taken. If a landlord has a history of non-compliance we may go straight to service of a formal notice, civil penalty, or prosecution.

Where action is considered necessary an explanation of what is required and why such action is required will be given in writing. We will help where we can with explaining works to contractors and making clear to tenants their responsibility to allow access for required work to be carried out. Any rights of appeal will be clearly set out when enforcement action is taken.

Enforcement action referred to in this policy includes the formal requirement to carry out remedial work and penalties for offences under housing law. Typically enforcement options could be:

Service of notices/orders

Simple caution

Financial penalty

Prosecution in the Magistrates' Court

Works in default with recovery of costs.

Bath and North East Somerset Council usually charge for the service of notices and orders which is described in the Housing Services Charging Policy available on the Council website: www.bathnes.gov.uk/services/housing/strategy-and-performance

Penalties for non-compliance

Non-compliance with housing law referred to in this policy is a criminal offence. Typical offences include:

- Breaches of regulations such as the Management of Houses in Multiple Occupation (England) Regulations 2006 and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015;
- A breach of a legal Notice or Order without reasonable justification. For example, a Housing Act 2004 Improvement Notice or Environmental Protection Act 1990 Statutory Nuisance Notice;
- Failure to licence a property which is required to be licenced under Part 2 or 3 of the Housing Act 2004;
- Failure to comply with HMO licensing conditions;
- Illegal eviction or harassment by the landlord or any other person responsible.

Several different penalty options are available to the Council dependent upon the circumstances of the offence. The most suitable option will be decided on a case by case basis having had regard to this policy. There may be instances where a decision is taken to depart from this policy however, there must be good reasons for doing so and those reasons will be recorded in writing.

Simple Caution

A Simple Caution is an alternative to prosecution. It may typically be used where it is appropriate to the offence and likely to be effective in preventing further non-compliance with the law. A simple caution may be appropriate for minor offences or where there is a practical expression of regret by the offender. In reaching a decision regard will be to this policy and the Ministry of Justice Guidance on Simple Cautions for Adult Offenders (13 April 2015). However, a caution will only be given where the offender admits the offence, understands the significance of the caution and gives their informed consent to the caution. A simple caution will be recorded and may be used to inform future decisions on prosecution and may be cited in any subsequent court proceedings. [Further guidance on Simple Cautions can be found here:](#)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/416068/cautions-guidance-2015.pdf

Financial Penalty

The Housing and Planning Act 2016 introduced the option of a financial penalty (also known as a civil penalty) for some Housing Act and Housing and Planning Act 2016 offences, as an

alternative to prosecution. The same criminal standard of proof is required for a financial penalty as for a prosecution meaning that if the case were to be prosecuted in the Magistrates' or Crown Court, there would be a realistic prospect of conviction.

A financial penalty may typically be appropriate for offences where the offender has not co-operated with the Council or where there is a serious or flagrant breach of the law and a financial penalty is the most effective and appropriate sanction. In reaching a decision on whether or not a financial penalty should be issued the Council will have regard to the Housing Services Financial Penalty Policy found at Appendix 1 and the statutory guidance entitled '[Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities \(April 2018\)](#)'.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

Specific offences where a financial penalty may be applied include:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with management regulations in respect of Houses in Multiple Occupation under section 234 of the Housing Act 2004;
- Offences in relation to licensing of Houses in Multiple Occupation under section 72 of the Housing Act 2004;
- Offences in relation to licensing of houses under section 95 of the Housing Act 2004;
- Offences in contravention of an overcrowding notice under section 139 of the Housing Act 2004
- Breach of a banning order under the Housing and Planning Act 2016

Circumstances where a financial penalty would be considered include:

- A direct offence where an informal approach has not been successful in achieving compliance. The requirement to first seek compliance through an informal approach does not apply to penalties for non-compliance with HMO licensing requirements. This is on the basis that the scheme has been comprehensively publicised and such an approach could be seen to encourage non-compliance with the scheme;
- A direct offence where there is a history of non-compliance and therefore an informal approach is unlikely to be successful;
- A failure to comply with an improvement notice;
- A flagrant or serious breach of the law;

Housing Services may also issue a financial penalty for other relevant offences. These include:

- An offence under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015;
- An offence under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014* (*Enforced by Trading Standards).
- An offence under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Prosecution in the Magistrates' or Crown Court

Offences will be considered for prosecution with regard to this policy and the Full Code Test for Crown Prosecutors. The Full Code test has two stages: (i) the evidential stage; followed by (ii) the public interest stage. Both stages of the test have to be met to bring a prosecution. A copy of [The Code for Crown Prosecutors](#) can be found below:

<https://www.cps.gov.uk/publication/code-crown-prosecutors-2018-downloadable-version-and-translations>

Prosecution of the offender in the Magistrates' or Crown Court is more likely to be appropriate under similar circumstances to financial penalties for repeat offenders or where the seriousness of the offence is such that it is necessary to draw attention to the need for compliance with the law.

Factors which inform enforcement decisions

The decision on which enforcement option to take will be a judgement based on the circumstances of the case and will take account of several factors which include:

- Any previous history of non-compliance or lack of co-operation with the Council;
- The length of time over which the offence has been committed;
- The condition of the property taking into account Part 1 of the Housing Act 2004 and relevant management regulations including the type and severity of the hazard;
- The likely exposure of vulnerable individuals to the hazard;
- The impact of the action on the occupier of the premises concerned;
- Financial or other gain by not complying with housing legislation, for example, failure to apply for a licence as soon as required to do so.
- Any adverse health and safety and environmental impact of the action or inaction;
- Relevant guidance and protocols that are in place; and
- The degree to which the property is being effectively managed.

Works in Default

Works in Default will be considered where the legislation allows remedial action to be taken by the Council. It will typically be appropriate for:

- Emergency Remedial action under the Housing Act 2004; and
- Where works of repair or improvement have been required by a statutory Notice and have not been completed within the identified or agreed timescale, or, reasonable progress is not being made towards their completion.

Housing Services may organise and carry out the work themselves and recover the cost of works plus all additional costs and administration fees. These costs will be charged to the property owner but can also be placed as a land charge on the property for payment when the property is sold or if money is raised against it.

The Council may also consider prosecution or a financial penalty in addition to carrying out works in default.

Following the carrying out of works in default the Council may pursue enforced sale of a property where the legislation allows.

Interim and Final Management Orders

These powers will only be used as a last resort where other attempts to ensure the health, safety or welfare of occupiers has failed. Interim management orders (IMOs) can be made where there is no realistic prospect of a licence being granted. In making an IMO the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses, any remainder will be returned to the owner. Following an IMO the Council can apply to the First-Tier Tribunal for a Final Management Order (FMO) to be approved that can last for up to five years. Once a Management Order is made the Council may allocate a private company to manage the property.

In exceptional circumstances and where the health, safety and welfare of occupiers needs to be protected, the council may apply to the Residential Property Tribunal for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme.

Banning Orders and Database of rogue landlords and agents

The Council may apply to the First-Tier Tribunal for a banning order lasting a minimum of 12 months or place a residential landlord or property agent on the Database of rogue landlords and agents.

A banning order is an order by the First-tier Tribunal that bans a landlord from letting housing; letting agency work; property management work; or doing two or more of those things in England. Breach of a banning order is a criminal offence. A banning order offence is an offence

of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. They are listed at Annex A of the [Banning Orders Guidance](#).

www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016?utm_source=7660f35d-fe52-4bd6-9531-ce569149c1fa&utm_medium=email&utm_campaign=govuk-notifications&utm_content=weekly

An entry on the Database may be made following conviction for a banning order offence and/or following two or more financial penalties in respect of a banning order offence within a period of 12 months. The Council must make an entry on the database for a person or organisation who has received a banning order

Rent Repayment Orders (RRO)

The offences for which an application for an RRO can be made are:

- Using violence to secure entry contrary to section 6(1) of the Criminal Law Act 1977
- Unlawful eviction or harassment of occupiers contrary to sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977
- Failure to comply with an Improvement Notice issued under the Housing Act 2004
- Failure to comply with a Prohibition Order issued under the Housing Act 2004
- Operating a licensable House in Multiple Occupation (HMO) under the Housing Act 2004 without a licence
- Breaching a Banning Order issued under the Housing and Planning Act 2016

To determine whether to apply to the First-Tier Tribunal for an RRO the following factors will be taken into account:

- The conduct of the landlord;
- The financial circumstances of the landlord;
- Whether the landlord has previously been convicted of one of the offences stated above
- Whether the tenant is in receipt of Local Housing Allowance.

The Council will consider assisting tenants in applying for an RRO having regard to this policy.

Cost Recovery

Proceeds of Crime Act 2002

Where appropriate to the case, the Council, will also consider taking proceedings under the Proceeds of Crime Act 2002 following a successful prosecution.

Unpaid invoices

Where a charge remains unpaid for 3 months following the issue of an invoice or financial penalty notice, Housing Services may seek to recover the money owed in the relevant Court, including the County Court.

Powers of Entry to a Property

Entry to a property is usually required to enable Housing Services to carry out its statutory functions. We will normally make an appointment to visit in the first instance and will give 24 hours' notice to the occupants and owners of our intention to enter properties to inspect them.

Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The Council's Housing Services team will exercise its statutory powers to gain entry without giving prior notice to investigate non-compliance with Housing related law or to carry out a statutory duty where it is necessary to do so. Reasons for the use of these powers include:

- Protection of the health and safety of any person or to protect the environment without avoidable delay;
- prevent the obstruction of officers where this is anticipated;
- To determine if a property is an unlicensed HMO.

Housing Services will apply to the Magistrates Court for a Warrant to Enter Premises if entry has been consistently refused or refusal is reasonably anticipated.

Powers to Require Documents

Authorised officers have the power to require:

- Documents to be provided to enable them to carry out their powers and duties under the Housing Act 2004;
- Electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation;
- Any person with an interest in a property to provide details about its ownership or occupation.

It is an offence not to produce the required information. Where information is not provided formal action will be considered such as a simple caution or prosecution if appropriate.

Housing Act 2004

Housing Health and Safety Rating System (HHSRS)

The Housing Act 2004 Part 1 is concerned with assessing housing conditions and reducing housing health and safety hazards.

Bath and North East Somerset Council is under a general duty to take appropriate enforcement action in relation to the most dangerous health and safety hazards referred to as Category 1 Hazards (bands A, B or C Hazard rating).

The Council has the power to deal with less dangerous Category 2 Hazards (bands D to J) and will normally also take action in relation to Category 2 band D Hazards.

The Council may also take enforcement action in relation to Category 2 bands E to J where it makes the judgement that it would be appropriate in the particular circumstances of the case.

Following the identification of a significant Housing Health and Safety Rating Hazard, Bath and North East Somerset Council may, as far as practically possible and reasonable according to the circumstances of the case, seek the views of occupiers, landlords, owners and persons in control, including views on the hazards present and how to deal with them. These views will be taken into account when deciding the most appropriate course of enforcement action. Where the Council is confident that action will be taken to deal with the issue of concern, within a reasonable time scale and subject to the circumstances of the case, an informal enforcement approach may be taken in the first instance.

The interested parties will be informed of the appropriate course of enforcement action when this decision has been made. In determining the most appropriate action, regard will also be given to the Listed Building status and the impact any course of action would have on the local environment.

Urgent action without consultation can be taken where health and safety hazards pose an imminent risk to the occupants of premises or other members of the public.

Where an HHSRS hazard for crowding and space is assessed as a Category 1 hazard the appropriate option for enforcement action will usually be a Hazard Awareness Notice in cases where the hazard is created by the actions of the occupier. The full range of options for enforcement action will be considered in cases where the hazard is the result of action by a landlord or where any of the current occupants are considered to be at increased risk of harm.

The options for formal action to remedy a hazard under the Housing Act 2004 Part 1 are:

- Improvement Notice (including Suspended Notice);
- Prohibition Order (including Suspended Order);

- Emergency Remedial Action;
- Emergency Prohibition Order; and
- Hazard Awareness Notice.

There is a right of appeal to the Residential Property Tribunal against formal Notices or Orders. Details of how to appeal will always be included with formal Notices or Orders served.

Licensing Residential Properties

Licensing of Houses in Multiple Occupation (HMOs)

Part 2 of the Housing Act 2004 requires certain Houses in Multiple Occupation to have a licence to operate. The Council also has the power to designate additional licensing areas and require certain HMOs in a specified area to apply for a licence in order to operate legally.

Selective Licensing of other residential accommodation

The Council also has the power to designate selective licensing areas under Part 3 of the Housing Act 2004 and require certain rented residential properties in a specified area to apply for a licence in order to operate legally.

Where the Council has used its power to designate an additional or selective licensing scheme, a designation can last for a maximum of 5 years.

Housing Services will charge a fee for all licence applications as detailed in our Charging Policy and Licensing Fees document.

When issuing a licence, opportunity will be given for interested parties to make representation to Housing Services against the conditions stated on the licence. If agreement cannot be reached there is a right of appeal to the First Tier Tribunal. Details of how to appeal will always be sent with a final licence.

Under the Housing Act 2004, licences may be issued for up to a maximum of 5 years and this will usually be the case. However, licences may be issued for shorter periods appropriate to the circumstances of the case including cases where Housing Services has serious concerns about the management of the property.

All licence holders, managers and other persons involved in the management of the property must be deemed a fit and proper person. The Council may also require a criminal records disclosure check in addition to its fit and proper person checks as considered appropriate. There is a right of appeal to the Residential Property Tribunal against a fit and proper person decision.

A person's fit and proper person status may be reviewed if they are prosecuted for an offence, if they consistently breach licensing conditions, if there is evidence of poor management or for any other factors deemed relevant by the Council.

Failure to comply with this licensing legislation is an offence. Where the Council become aware of a property that requires licensing under Parts 2 and 3 of the Housing Act 2004 but is not so

licensed, or where there is non-compliance with licensing conditions, enforcement action will be considered in each case in accordance with this policy.

HMO Management Regulations

Enforcement action for non-compliance with HMO Management Regulations under the Housing Act 2004 will be considered in each case in accordance with this policy.

Other legislation enforced by Housing Services

Other housing related legislation is enforced by Housing Services including:

- Public Health Act 1936
- Public Health Act 1961
- Prevention of Damage by Pests Act 1949
- Accommodation Agencies Act 1953
- Landlord & Tenant Act 1985
- Housing Act 1985
- Housing Act 1996
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Building Act 1984
- Local Government and Housing Act 1989
- Environmental Protection Act 1990
- Anti-Social Behaviour, Crime & Policing Act 2014

Owner Occupiers

Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupants or other affected persons. However, action will not be taken where a more appropriate contractual remedy exists.

Where a Housing Health and Safety Rating inspection identifies a significant hazard, all Housing Act 2004 Part 1 enforcement options apply to owner occupied properties. The Council will consider the most appropriate option dependent on the circumstances of the case.

Where a significant hazard is identified which requires attention, and the person responsible for the property is unable to carry out the recommended works because of financial hardship, they will be made aware of any appropriate financial assistance options available to them from the Council.

Where the conditions at one property causes a health and safety hazard or statutory nuisance to the occupants of another property, or the general public, enforcement action will be considered regardless of property tenure.

Protection from Eviction and Harassment

The Protection from Eviction Act 1977 and the Protection from Harassment Act 1977 state the specific legal remedies for illegal eviction and harassment for most types of tenancies.

Illegal eviction and harassment are criminal acts and carry potential penalties of imprisonment and fines. The Housing Act 1988 sets out the liability of landlords who have evicted illegally to pay damages to tenants for the loss of the right to occupy.

Empty Properties

The Empty Property Policy sets out how Housing Services will work to bring empty properties back into use, including the use of enforcement action. In addition it may also be necessary to take enforcement action under this Enforcement Policy where a property is in such a condition it is creating a health and safety hazard, such as water penetration, to neighbouring properties.

Other enforcement action may be taken in relation to Empty Properties if appropriate to assist in bringing the property back into use or where there is a detrimental impact on the local neighbourhood. Enforcement action in relation to empty properties may include Empty Dwelling Management Orders, Compulsory Purchase Orders, Community Protection Notices, Community Protection Orders or enforced sale.

How to make a suggestion or complaint

Bath and North East Somerset Council is committed to providing a quality service. To help us we welcome comments, suggestions, feedback, complaints and compliments from anyone to whom we provide a service.

You can make a complaint, or submit a comment or compliment either in person, by telephone, email, letter, or online. You can find more details about our Corporate Complaints procedure through our website; www.bathnes.gov.uk or alternatively please contact Housing Services on 01225 396444.

Appendix 1: Financial Penalty Policy

Financial Penalty Policy

Introduction

The Housing and Planning Act 2016 introduced a range of measures to discourage the small minority of rogue landlords and property agents who knowingly flout their legal obligations, rent out accommodation which is substandard, and harass their tenants.

This includes financial penalties of up to £30,000 as an alternative to prosecution for certain specified offences as listed in the Enforcement Policy; and the extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences.

On 6 April 2018, the following new measures came into force:

- Banning orders for the most serious offenders;
- A database of rogue landlords and property agents against whom a banning order has been made, which may also include persons convicted of a banning order offence or who have received two or more financial penalties.

On 1 June 2020 the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force. These regulations allowing the Council to issue financial penalties up to a maximum of £30,000 in respect of a breach of those regulations.

This policy describes how the Council proposes to use its powers to impose a financial penalty as an alternative to prosecution for certain housing offences.

The Housing and Planning Act 2016 s126 and schedule 9 provides the legal power for the Council to impose a financial penalty of up to £30,000 as an alternative to the prosecution of rogue landlords. The same criminal standard of proof is required for a financial penalty as for prosecution. This means that before taking formal action, the Council must be satisfied that if the case were to be prosecuted in the Magistrates' or Crown Court, there would be a realistic prospect of conviction.

The aim of this policy is that the level of financial penalty reflects the severity of the offence with a greater severity resulting in a higher penalty.

Guidance

Statutory guidance to which this policy has regard is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

This policy has been developed in accordance with the guidance published in April 2018. The guidance states that local housing authorities should consider the following factors to help ensure that the financial penalty is set at an appropriate level:

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 financial penalty.

d) Punishment of the offender

A financial 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 demonstrates 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 financial 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 financial penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying financial penalties where the need to do so exists and (b) that the level of financial 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.

Assessment

In each case the Council will determine the amount of financial penalty depending on a Case Assessment which will take into account multiple factors described by the guidance.

The principles of the '[Sentencing Council: Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences - Definitive Guidelines](#)' have been used to help develop the Assessment and level of financial penalty. Specific reference was made to the 'Breach of food safety and food hygiene regulations' for micro businesses as this provided the most comparative guidelines.

The following assessment tools will be used to assess the financial penalty levied in every case and are attached below:

- Case Assessment
- Financial Penalty Calculator

Case assessment

		Definition
Culpability		
Culpability	Very high	Deliberate breach of or flagrant disregard for the law
	High	<p>Offender fell far short of the appropriate standard; for example, by:</p> <ul style="list-style-type: none"> • failing to put in place measures that are recognised standards; • ignoring concerns raised by officers, tenants, employees or others • allowing breaches to subsist over a long period of time <p>Serious and/or systemic failure to address the risks</p>
	Medium	<p>Offender fell short of the appropriate standard in a manner that falls between descriptions in 'high' and 'low' culpability categories</p> <p>Systems were in place but these were not sufficiently adhered to or implemented</p>
	Low	<p>Offender did not fall far short of the appropriate standard; for example, because:</p> <ul style="list-style-type: none"> • significant efforts were made to meet housing legislation although they were inadequate on this occasion • there was no warning/circumstance indicating a risk to safety and breach of legislation <p>Failings were minor and occurred as an isolated incident</p>
Harm	High	<ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s), other relevant parties and/or community • High risk of an adverse effect on individual(s) including vulnerable groups/ community
	Medium	<ul style="list-style-type: none"> • Adverse effect on individual(s)/community • Risk of an adverse effect on individual(s)/community • Tenants misled regarding compliance

Aggravating factors	Low	<ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s)/ community • Some actual but small adverse effect on individual(s)/community
	Include but not limited to:	<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Evidence of wider/community impact • Breach of any court order • Obstruction of justice • Poor track record of compliance with legal obligations • Refusal of free advice or training • Poor condition of the property
Mitigating factors	Include but not limited to:	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Steps taken voluntarily to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good history of compliance / no history of non-compliance • Self-reporting, co-operation and acceptance of responsibility
Asset check		Use of existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive to determining an appropriate penalty.
Multiple offences	Totality Principle	<p>When issuing a financial penalty for more than one offence, consideration will be taken whether the total penalties are just and proportionate to the offending behaviour.</p> <p>The Council should add up the penalties and consider if they are just and proportionate. If the total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. This will be carried out in accordance with the <u>Offences Taken into Consideration and Totality Definitive Guideline</u>.</p>

Financial Penalty Calculator

Harm and culpability assessment	Starting point	Range		Mitigating/aggravating factors Plus/minus
		Low (min)	High (max)	
Very high culpability				
High harm	£15,000	£6,000	£30,000	£1,000
Medium harm	£6,500	£2,700	£13,500	£1,000
Low harm	£3,000	£1,200	£6,000	£1,000
High culpability				
High harm	£6,500	£2,700	£13,500	£500
Medium harm	£3,000	£1,200	£6,000	£500
Low harm	£1,200	£500	£2,500	£500
Medium culpability				
High harm	£3,000	£1,200	£6,000	£250
Medium harm	£1,200	£500	£2,500	£250
Low harm	£600	£250	£1,200	£250
Low culpability				
High harm	£600	£250	£1,200	£50
Medium harm	£200	£100	£500	£50
Low harm	£100	£50	£250	£50

Appendix 2: Statement of Principles for Determining a Penalty Charge

Introduction

Bath and North East Somerset Council (the Council) is required under the [Smoke & Carbon Monoxide Alarm \(England\) Regulations 2015](#) to prepare and publish a statement of principles which it proposes to follow when deciding on the penalty charge amount for failing to comply with a remedial notice served under these regulations.

The Council may revise its statement of principles at any time and where it does the revision will be published. The statement of principles will be published on the Council website and made available on request.

Housing Services also have regard to this statement of principles when applying financial penalties under The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

This statement sets out the principles that the Council will apply in exercising powers to impose a financial penalty for failing to meet certain legislative requirements.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in a remedial notice within the required timescale.

Legal requirement

This statement is required under Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) and relates to matters that the Council must have regard to in determining the amount of any penalty charge issued under Regulation 8.

Under Regulation 4, 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.

More details on the requirements, definitions and exemptions can be found in the Regulations and Government guidance (links at the end of this document).

Where the Council has reasonable grounds to believe that there are no or an insufficient number of smoke or carbon monoxide alarms in the property or; the smoke or carbon monoxide alarms were not working at the start of a tenancy or licence, then the Authority shall serve a Remedial Notice under Regulation 5 requiring the landlord to take action to comply with the Regulations within 28 days.

If the Landlord has not complied with the Remedial Notice, the Authority must take remedial action and may require the landlord to pay a penalty charge by serving a penalty charge notice under Regulation 8.

Statement of principles

The purpose of imposing a financial penalty

The Council's primary purpose is to protect the public, although in exercising its regulatory powers they may have a punitive effect.

The primary aims of financial penalties will be to:

- change the behaviour of the landlord;
- 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;
- aim to deter future non-compliance;
- reimburse the costs incurred by the Council in undertaking remedial work and carrying out its functions.

Criteria for issuing a financial penalty

- Failure to comply with the requirements of a remedial notice gives the Authority the power to require the landlord to pay a penalty charge. In considering the imposition of a penalty charge, the authority will have regard to the available evidence of a breach of the remedial notice.
- In deciding whether it would be appropriate to impose a penalty charge, the authority will take full account of the particular facts and circumstances of the breach under consideration.

- The authority must be satisfied that on the balance of probabilities, the landlord on whom it has served a remedial notice under regulation 5 has failed to take the remedial action specified in that notice within the period specified.
- A financial penalty allows the council, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate in circumstances where the landlord has failed to comply with the requirements of a remedial notice.

Criteria for determining the amount of a financial penalty charge

Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts: a punitive element for failure to comply with the absolute requirement to comply with a remedial notice (subject to any representation made by a landlord to the council) and a cost element relating to the works carried out by the Council.

The period within which the penalty charge is payable is 28 days beginning with the day on which the penalty charge notice is served. The Council has a discretion to specify that if a landlord pays the penalty charge within 14 days beginning with the day on which the penalty charge notice was served (early payment), a reduction in the penalty charge may be applied.

Proposed fine levels

- £2,500 for a first offence of failing to comply with a remedial notice; early payment reduction of 50% making it £1,250 if paid within 14 calendar days of the date of issue of the monetary penalty.
- £5,000 for subsequent offences of failing to comply with a remedial notice to deter continued non-compliance; early payment reduction of 50% making it £2,500 if paid within 14 calendar days of the date of issue of the monetary penalty.

Having been served with a penalty charge notice, the landlord may give written notice to the Council requesting a review. When reviewing the penalty charge notice, the Council will have regard to this Statement of Principles, including:

- The level of cooperation provided by the landlord,
- any history of previous contraventions of Housing or Housing related legislation,
- the level of risk created by the non-compliance,
- the cost incurred by the Council in enforcing the relevant provision,
- any other circumstances specific to the case.

Rationale for fine levels

The cost of a battery-operated smoke detector is in the region of £10 while a Carbon monoxide detector typically costs less than £20. The cost of complying with the legislation in an average 2 storey property is likely to be less than £50. Therefore, compliance with a Remedial Notice within the required 28 days is not financially burdensome and there is seldom an excuse for a landlord not installing the alarms to comply with a notice.

Smoke and carbon monoxide detectors are a cheap and effective way of saving lives. The fine is therefore set to deter landlords from failing to install potentially lifesaving detection and to be punitive for rogue landlords who refuse to comply with the law.

Procedural matters

The regulations impose a number of procedural steps which must be taken before the council can impose a financial penalty. Before imposing a requirement on a landlord to pay a penalty charge the council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- the reasons for imposing the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) installed at the premises;
- the amount of the penalty charge;
- the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- how payment of the charge must be made; and
- the name and address of the person to whom a notice requesting a review may be sent.

A landlord may request in writing, a review of the penalty charge imposed. In conducting the review, the council will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord.

Having requested a review, the landlord can further appeal to the First-tier Tribunal against the Council's decision.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply.

Redress scheme for letting and managing agents

Under [The Redress Schemes for Letting Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc.\) \(England\) Order 2014](#), it is a legal requirement for all letting agents and property managers to join a Government-approved redress scheme. This gives tenants and landlords with property agents and managers in the private rented sector the facility to complain to an independent person about the service they have received.

Where the council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by article 3 or 5 of the above Order, it may by notice require that person to pay a 'monetary penalty'.

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

The standard monetary penalty for breach of duty under article 3 or 5 will be set initially at £5,000. The monetary penalty will be reduced to £2,500 if paid within 14 calendar days of the date of issue of the monetary penalty.

While this monetary penalty is set as a standard the order makes provision for a Letting 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 a Senior Officer in The Housing Standards and Improvement Team.

Associated documents

- [The Smoke & Carbon Monoxide Alarm \(England\) Regulations 2015](#)
 - [Explanatory Booklet for Local Authorities](#)
 - [Q&A booklet for the private rented sector – landlords and tenants](#)
- [The Redress Schemes for Letting Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc.\) \(England\) Order 2014](#)
[Lettings agents and property managers: redress schemes Guidance](#)