

# **APPENDIX B – HOUSING ENFORCEMENT POLICY**

## **Telford and Wrekin Council**

### **Private Sector Housing**

### **Policy for enforcement of the Housing Act 2004 and associated regulations**

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*Please note that you must take your own legal advice if you wish to check any aspect of Housing Act 2004 and associated Regulations.. This document is only intended to be a guide as to how Telford and Wrekin Council will investigate any possible breach of the regulations.*

## **1.0 Introduction**

1.1 The Council has had regard to the Regulators' Code (BRDO, 2013) in the preparation of this policy.

1.2 This policy sets out the Council's principles for enforcing and executing its duties as a Housing Authority under the following Acts and Regulations made thereunder

- The Housing Act 1985
- The Housing Act 2004
- The Building Act 1984
- The Environmental Protection Act 1990
- The Public Health Act 1936
- The Local Government [Miscellaneous Provisions] Act 1976 and 1982
- The Equality Act 2010
- The Housing and Planning Act 2016
- Prevention of Damage by Pests Act 1949

1.3 Duties fall under four main headings as follows:

- Undertaking inspections/audits and providing guidance to ensure that residential accommodation meets minimum legal standards. Taking formal action as necessary to secure compliance with statutory requirements
- The administration and enforcement of the mandatory licensing of prescribed HMO accommodation.

1.4 This policy should be read in conjunction with the Public Protection Enforcement Policy which sets out the general parameters of enforcement. It also follows the principles laid down in the Code for Crown Prosecutors, Enforcement Concordat and the Regulators Code 2014.

## **2.0 Aim of Policy**

2.1 The council aims to protect public health, reduce antisocial behaviour and safeguard housing standards by ensuring compliance with the relevant legislation, whilst recognising the needs of local business

### **3.0 Policy**

- 3.1 The protection of public health will be paramount when enforcing the law and all assistance will be given to landlords and tenants to comply with legal requirements.
- 3.2 All enforcement action taken will be proportional to the risk any situation presents and will always be in accordance with statutory Codes of Practice, Council procedures and protocols, and official guidance from central and local government bodies.
- 3.3 Reasonable effort will be made to ensure compliance with the law by a process of advice and education. Formal action must be considered in the following circumstances:-
- Where there is a serious risk to public health
  - Where there is a blatant or deliberate contravention of the law
  - Where there is history of non-compliance, or cooperation for an informal approach is not forthcoming
  - Where landlords fail to take action in the timescales agreed within an informal process.

### **4.0 Authorisation of Officers**

- 4.1 All Housing and Licensing Officers are fully trained, competent and authorised to carry out their duties. All investigations will be carried out in accordance with the requirements of the:
- Human Rights Act 1998
  - Regulation of Investigatory Powers Act 2000
  - Police and Criminal Evidence Act 1984
  - Criminal Procedure and Investigations Act 1996

### **5.0 Overview of approach to enforcement**

#### **Enforcement Objectives**

- 5.1 The main objectives of this enforcement policy are to ensure that:
- Privately rented accommodation, including houses in multiple occupation (“HMO”), and accommodation provided by registered providers of social housing, are free from actionable hazards ( Category1) that affect the health and safety of the tenant, licensee or any visitor;
  - Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements;

- All licensable properties are licensed, with licence conditions being met;
- Owners or occupiers of privately owned accommodation or land do not cause statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood;

In conjunction with partners in other parts of the authority that:

- Lettings and property management businesses are registered with a government-approved redress scheme and comply with relevant legislation and codes of practice;
- Tenants are protected from harassment and illegal eviction; and
- Empty properties are tackled with the aim of addressing security, visual amenity and statutory nuisance issues and also returning them back into occupation.

### **Regulators Code**

5.2 The Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) requires the authority to have regard to the Regulators’ Code produced by the Better Regulation Delivery Office in April 2014 when developing its policies and procedures to guide regulatory activity.

5.3 This Enforcement Policy has regard to the Regulators’ Code in that it follows the principles of good regulation set out in the 2006 Act, in that

- Regulatory activities are carried out in a way that are transparent, accountable, consistent, proportionate to risk and targeted at cases where action is required;
- Supports businesses to comply and grow;
- Provides simple ways to communicate and share information amongst regulators to reduce duplication; and provides clear information and guidance.

### **Tenure Groups**

5.4 The Private Sector Housing Service has investigative and enforcement powers relating to all private housing regardless of tenure. However the approach may vary depending on the tenure of the household.

#### **5.4.1 Private Landlords and Tenants**

Tenants within rented accommodation do not have the same level of control of their homes, in the same way that owner occupiers benefit from. They are reliant on landlords or their agent to adequately maintain their homes in accordance with legal requirements. The Council will take enforcement action where required, against landlords or agents who are putting the health and safety of their tenants at risk, or in circumstances where conditions are causing serious issues to neighbouring property.

### **5.4.2 Owner Occupiers**

Owner occupiers are usually in a position to make informed decisions about maintenance or safety issues in their homes. Formal enforcement action therefore against this tenure group would be limited. Officers would always aim to provide owner occupiers with appropriate advice and recommendations as to how they can mitigate any hazards identified. In cases, however, where there is a severe risk to the health and safety of occupiers, or where there are conditions that have the potential to cause serious issues to neighbouring property, the Council may take formal action against owner occupiers. The vulnerability of the owner occupier will also be considered, and it is expected that colleagues from other parts of the council will discharge their duties to ensure safeguarding of vulnerable adults and children.

### **5.4.3 Registered Social Landlords (“RSL”)**

These are usually housing associations, being a private, non-profit making organisation that provides low cost “social housing”. Their performance is scrutinised by the Homes and Communities Agency and the Housing Ombudsman. RSL’s have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure. This service will not normally take action against an RSL, unless the problem in question has been properly reported to the RSL, who has then failed to take the appropriate action. The Council will consider enforcement action against an RSL where there are significant risks to the health and safety of tenants and/or the wider public.

## **Other Considerations**

- 5.5 In safeguarding housing conditions and wider environmental issues arising from rented homes in Telford and Wrekin, the Council wants to work with responsible landlords to help them to reduce antisocial behaviour and raise housing standards. However, where appropriate and necessary, the Council will instigate appropriate enforcement action against landlords who fail to comply with their legal requirements
- 5.6 The Council will expect landlords to have a good understanding of the housing standards and management issues that should be met in privately rented accommodation; it would expect landlords to refer to the Council’s guide to minimum property standards and to liaise with Council officers or other professionals to confirm the extent to which additional requirements apply to any addresses let out as HMOs

5.7 Generally, it is the Council's preference that landlords are first given the opportunity, wherever possible, to investigate any reported problems at their properties. The Council expects responsible owners to undertake necessary repairs and improvements without the need for the Council to instigate formal action.

5.8 Proactive Inspections may be undertaken where a property is owned or managed by landlords or agents who have a poor history of compliance with legal requirements for housing conditions and /or management practices. This may include identifying those with a previous history of enforcement action, lack of engagement with the authority or where there is intelligence about breaches in legal requirements from partner agencies. The aim of this proactive intervention is to target resources for improvements to housing conditions and tenancy management, as well as creating more sustainable tenancies, particularly for vulnerable tenants.

5.9 In making enforcement decisions the Council will have due regard to the need to eliminate discrimination and advance equality of opportunity. The Council will carefully consider any equalities impacts arising out of enforcement decisions and consider whether the approach proposed is a proportionate means of achieving a legitimate end. The Council will seek to mitigate any adverse equalities impacts where possible.

## **6.0 Informal Action**

6.1 In most cases, in receipt of a complaint regarding housing conditions at an address, the Council will first check that where appropriate the tenant has written to the landlord using the standards letters provided on the Telford and Wrekin website. If they have not then they will be encouraged to do so.

[http://www.telford.gov.uk/info/1010/housing/899/tenants\\_reporting\\_disrepair](http://www.telford.gov.uk/info/1010/housing/899/tenants_reporting_disrepair)

However a visit may be made at the outset in cases where the initial complaint indicates that an immediate investigation by a Council officer is warranted such as where there is an immediate risk to health and/or safety of the occupants.

6.2 If after writing to the landlord, this course of action has not worked, the council will update the call log, and on this occasion write to the landlord to highlight the alleged deficiencies and request that the complaint be investigated and remedial action taken as necessary, this provide the landlord a period of 1 week to contact the officer to discuss the matter. If no call is received, then a visit would then be scheduled within 14 days to inspect the property.

6.3 In cases where officers visit an address, whether this is a result of a landlord's failure to adequately resolve a highlighted issue or as part of an audit or other investigation, written or verbal advice may be deemed sufficient should the inspection highlight only minor deficiencies.

6.4 With regard to assessments made under the Housing Health and Safety Rating System [HHSRS] made under part 1 of the Housing Act 2004, the Council would not normally take formal action if the identified defects equated only to minor or moderate Category 2 hazards meaning they fall within bands F-J.

- 6.5 Where written advice is deemed necessary and is provided, suggested timescales will normally be included to undertake any specified works or actions. For defects that relate to moderate or minor Category 2 hazards, a Hazard Awareness Notice may be issued.
- 6.6 If there are more substantial issues to be addressed, the letter will detail the actions to be taken and timescales. A clear distinction will be made in the letter between what is required by law and anything included that is recommended good practice.
- 6.7 In the case of owner occupiers informal action will almost always be considered unless there is an impact on other neighboring properties, or the risk to health and safety is severe that it would be unethical to permit them to continue to live in such conditions.

## **7.0 Formal Action**

7.1 If formal action is considered appropriate in accordance with paragraph 3.3, the following options are available:-

### **7.2 Statutory Notices**

7.2.1 These are notices used when a landlord is failing to comply with housing or other health and environmental legislation. They normally require that necessary remedial action be taken at a specified property by the owner within a specified time period, which will vary depending on the nature and scale of the works.

7.2.2 For defects that give rise to Category 1 HHSRS hazards under part 1 Housing Act 2004, the Council has a duty to take appropriate enforcement action to deal with that hazard. The Council will also normally seek to deal with any significant category 2 hazards identified at an address, whether or not Category 1 hazards are also present.

7.2.3 In the event that a landlord fails to deal informally with any opportunity to remedy a Category 1 and/or significant Category 2 hazard, the Council will instigate appropriate enforcement action. Such action will vary depending upon the circumstances of the case. It is most likely to involve the service of an enforcement notice such as an Improvement Notice requiring remedial works, but could also involve a Prohibition Order prohibiting the use of all or part of the property, or a Demolition Order which order the property to be demolished.

7.2.4 Expedited or suspended enforcement actions are also available, which are dealt with under 'Emergency or suspended enforcement actions' below.

7.2.5 In cases where an address contains one or more Category 1 hazards, it is unlikely that the service of a Hazard Awareness Notice would be the preferred enforcement action, unless the circumstances were such that other options were not practical [e.g. major improvement works required in a home occupied by a frail resident]. In cases where a formal notice other than a Hazard Awareness Notice was served, a charge would normally be made for this.

7.2.6 The Council has access to a range of other statutory interventions relating to public health and statutory nuisance which can be served where conditions at property (or on land permit) and the landlord / owner fails to remedy the matter on an informal basis.

7.2.7 Other formal notices served by the Council will not relate to the landlord undertaking remedial works but will cover a range of other matters including exercising a right of entry under s.239 of the Housing Act 2004 and a request to provide information or the need to abate or avoid overcrowding.

7.2.8 Legal Notices served by the Council will detail any rights of appeal and an extension of time to comply with any notices requiring works can be requested if there are legitimate reasons. However, failure to comply with the requirements of any issued Notice is an offence and would normally result in consideration of prosecution or, where appropriate, the issuing of a civil penalty.

### **7.3 Work in default**

- 7.3.1 In situations where a landlord fails to comply with a formal notice requiring remedial works, the Council may undertake these works in default of the owner and take steps to recover any costs incurred. This power may be exercised in addition to any prosecution proceedings taken for non-compliance with a statutory notice.
- 7.3.2 In certain situations where there is a need to take immediate action and the landlord is unable to actions the works, or is uncontactable the Council can carry out Emergency Remedial Action to protect the health and/or safety of the occupants of a given property.

### **7.4 Emergency or suspended enforcement actions**

- 7.4.1 Where there is a Category 1 HHSRS hazard present that is considered to represent an imminent risk of serious harm to the health and safety of the occupiers of a dwelling, the Council may serve an Emergency Prohibition Order or take Emergency remedial action. Such Emergency actions would involve either the removal of certain defects giving rise to the immediate risk or the closure of all or part of a dwelling.
- 7.4.2 The Council also has the power to suspend action taken under part 1 Housing Act 2004 in situations where it has the power or duty to take enforcement action through the service of an Improvement Notice or a Prohibition Order. Such action would not normally be the preferred enforcement action unless the circumstances of the current occupiers were such that other options were not practical

## 7.5 Licensing

- 7.5.1 All privately rented mandatory licensable properties in the Borough are required to have an appropriate property licence, these are those that are three habitable floors or above, with 5 or more people.
- 7.5.2 In determining an application for any property licence, the Council must decide whether to grant or refuse a licence. Where the Council is minded to grant a licence, the licence period should not exceed 5 years. The document 'Licensing – Fit and proper person test and associated issues' sets out in some detail Council policy in relation to the determination of licence applications. A summary of these provisions and the adopted approach is detailed in paragraphs 7.5.2 to 7.5.6 below and with the full policy contained within the **Procedure and Policy for determination of a HMO licence application, including the fit and proper person criteria.**
- 7.5.3 In order to secure a property licence, the licence holder [and manager if different] will be assessed against 'Fit and Proper Person' criteria. In granting a licence, the Council must be satisfied that the licence holder and any separate manager of the address are fit and proper persons.
- 7.5.4 In applying the fit and proper person test, the Council will consider a range of relevant factors. The Council's general approach, illustrated with examples that are not intended to be exhaustive, will be:
- To consider the nature of any convictions – Convictions relating to fraud, running an unlicensed HMO or violence are likely to be relevant in determining 'fit and proper'. A landlord that has criminal convictions for harassment and/or illegal eviction is unlikely to be deemed fit and proper. A conviction based upon the existence of a significant hazard may give some clue as to the applicant's approach to health and safety. An administrative or technical breach of a provision is unlikely to carry any significant weight in determining 'fit and proper' status
  - More than one contravention or conviction will normally carry more weight than isolated or one-off incidents, unless the single breaches are particularly serious
- 7.5.5 Each case will be considered on its own merits and any mitigating factors considered. The Council will adopt a common sense approach, exercising its discretion reasonably and proportionately, taking into account relevant considerations and ignoring irrelevant ones.
- 7.5.6 Where there is a failure of a licence holder or manager to meet the fit and proper test, a licence application will be refused [unless an appropriate alternative licence holder or manager is identified] and any existing licence revoked [unless the failure relates to the property manager and an appropriate alternative manager is identified]
- 7.5.7 In the event that there are no contra-indications [that relate to person or property], the Council will normally grant a licence that has a 'full-term' duration of up to 5 years. However, where the Council identifies concerns relating to either the property to be licensed [for example a breach of planning regulations] or to the licence holder/manager [but not such that the fit and proper person test is failed outright] then a shorter licence

term may be granted dependent upon the circumstances and nature of concerns as to why a 'full-term' should not be granted.

7.5.8 The operation of the licensing regime places a number of obligations on landlords, including the need to:

- Ensure that relevant properties are licensed
- Carry out necessary safety checks and provide relevant documentation when necessary
- Comply with a set of licence conditions, including the need to deal with any anti-social behaviour at their rented property and to keep the property in a reasonable state or repair

7.5.6 A failure to meet one or more of the licensing requirements, or the requirement to license, will be individually assessed but may result in one, or a combination of 2 or more, enforcement outcomes including:

- A written warning or simple caution
- Prosecution
- The imposition of a civil penalty
- The service of formal notices
- Refusal or revocation of a licence and/or the granting of a shorter licence period through a consequent failure to meet fit and proper person criteria

## 7.6 **Simple Caution**

7.6.1 The purpose of a Simple Caution is to deal quickly and simply with less serious offenders by diverting them away from the courts, and to reduce the chances of repeat offences. Simple Cautions will be kept on file for three years. A Caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the Caution. If the offender refuses to accept a Simple Caution, a prosecution will normally be pursued.

## 7.7 **Prosecution**

7.7.1 Where formal action is required under the circumstances specified in paragraph 3.3, a prosecution may be necessary if the alleged offence is serious enough. Any decision to prosecute will be taken in accordance with the Regulators Compliance Code, the Council's Enforcement Protocol and the Code for Crown Prosecutors. The following factors will be taken into account:

- The seriousness of the offence
- The previous history of the party concerned
- The willingness of the party to prevent a recurrence of the problem
- Whether the issuing of a simple caution would be more appropriate or effective

- Whether the offence was committed deliberately, any evidence of obstruction of the officers in their lawful duty or of the investigation
- Financial considerations - the benefit obtained from the alleged offending

## 7.8 **Civil penalties**

7.8.1 Where formal action is required under the circumstances specified in paragraph 3.3, a prosecution may be necessary if the alleged offence is serious enough, and the council has decided to prosecute, it may also decide to issue a civil penalty as an alternative to court action.

The Council may serve notices imposing Civil Penalties, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Breaching a Banning Order

The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above.

Examples of situations where rather than issue a civil penalty, the council would be willing to proceed to full prosecution would include;

- For what are judged to be particularly serious offences
- Where the offender has committed similar offences in the past
- Breach of a banning order

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty would be calculated having regard to the matrix set out in the attached Appendix – as civil penalties under the Housing and Planning Act 2016

## **7.9 Fines, Recovery of Costs and Proceeds of Crime**

7.9.1 In prosecution cases where the defendant is found guilty by either the Magistrates or Crown Courts, unlimited fines can now be imposed. In addition, the Council will seek to recover the costs incurred in taking a prosecution case, which include administrative costs incurred for preparing the prosecution file; attendance at court and Legal Services costs for preparing and presenting the case.

7.9.2 In cases where a property has been let illegally, or where there has been a breach of legal requirements, the Council will consider applying to the First Tier Tribunal Service to recover rent from a landlord through a Rent Repayment Order. It will also give advice to tenants on how they may recover rents through applying to the Tribunal Service in these circumstances.

7.9.3 Where there is substantial financial gain for a landlord or owner through noncompliance with legislative requirements in the private rented sector, the Council will consider taking action to confiscate or recover monies gained through illegal activities under the Proceeds of Crime Act 2002.

7.9.4 CO2 regs etc.

## **7.10 Intelligence Sharing**

7.10.1 Where appropriate the Council will share information and intelligence with other Council department and agencies where it believes that there is evidence of criminality or in the interests of apprehending offenders. This will be done in line with the Data Protection Act Principles, and in the public interest.

## Appendix 1 – Civil penalties under the Housing and Planning Act 2016

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provides local authorities with the power [through the creation 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 regulation in respect of an HMO [section 234]

In addition, section 23 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 £30,000, with a level of civil penalty imposed in each case in line with its 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.

### Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016<sup>1</sup>. Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties.

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:

- Severity of the offence.** The more serious the offence, the higher the penalty should be.*
- 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.*
- 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.

## Civil Penalties Matrix

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

Band number	Severity of offence	Band width [£]
1	Moderate	0-4999
2		5000-9999
3	Serious	10000-14999
4		15000-19999
5	Severe	20000-24999
6		25000-30000

## 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

*Maximum Court fine 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 most 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 civil penalty for a landlord controlling five or less dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** matter, representing a band 3 offence, attracting a civil penalty of at least £10000.

Where a landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated experience in the letting/management of property the failure to comply with the requirements of an Improvement Notice would be viewed as being a **severe** matter attracting a civil penalty of £20000 or above.

### *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 tenant[s] in the property would justify an increase in the level of the civil penalty

### *Generic aggravating features/factors*

The Council will have regard to the following general factors in determining the final level of the civil penalty:

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

## **Failure to Licence Offences**

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

### ***Failure to licence a ‘mandatory HMO’***

Under part 2 Housing Act 2004, higher risk HMOs of 3 or more stories, occupied by 5 or more persons forming 2 or more households are required to hold a ‘mandatory’ property licence issued by the local authority. Mandatory HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, 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 licence a mandatory HMO as a significant failing; mandatory licensing was introduced by the Government in order to regulate conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding

Under the Council’s policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** matter, representing a band 3 offence, attracting a civil penalty of at least £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, the failure licence a mandatory HMO would be viewed as being a **severe** matter attracting a civil penalty of £20000 or above [a band 5 offence]

### ***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 mandatory HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty
- Any demonstrated evidence that the landlord/agent was familiar with their need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

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

As set out under ‘Improvement Notice’ above

## **Breach of Licence Conditions**

*Maximum Court fine that can be levied for failure to comply with a licence condition - £5000*

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

- Undertaking Gas Safe and electrical checks
- Installing and maintaining smoke alarms

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

It is important that the manager of a licensed property complies with all imposed conditions but 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.

In determining the level of a civil penalty, the Council will therefore initially consider;

- a) The number and nature of the licence condition breaches; and
- b) The nature and extent of deficiencies within each specified licence condition

Clearly, the circumstances of breach of licence condition offences have the potential to vary widely from case to case but, as a guide:

- The civil penalty for a landlord controlling five or less dwellings [or 1 or 2 mandatory HMOs], with no other relevant factors or aggravating features [see below], for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair would each be regarded as a **moderate** band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, these same offences would be regarded as a **moderate** band 2 offence, attracting a civil penalty of £5000 for a 'professional' landlord or agent
- The civil penalty for a landlord controlling five or less dwellings [or 1 or 2 mandatory HMOs], with no other relevant factors or aggravating features [see below], for a failure to provide or maintain smoke alarms in working order, to fail to address serious ASB issues such as the use of a licensed premises for illegal purposes or the failure to carry out works/improvements imposed as a condition of a granted HMO licence would each be regarded as a **serious** band 3 offence, attracting a civil penalty of £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, these same offences would be regarded as a **severe** band 5 offence, attracting a civil penalty of £20000 for a 'professional' landlord or agent

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

- None – the nature of the licence condition breaches and their impact upon the occupiers would be an integral part of the initial assessment process

#### *Generic aggravating features/factors*

As set out under 'Improvement Notice' above

### **Failure to comply with an overcrowding Notice**

#### *Maximum Court fine 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 falls outside of the scope of mandatory HMO licensing. The notice specifies, on a room by room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

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.

Under the Council's policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** band 3 offence, attracting a civil penalty of £10000. This 'basic' civil penalty would increase to a **severe** band 5 offence, attracting a civil penalty of £20000, for a 'professional' landlord or agent controlling/owning a significant property portfolio and/or having demonstrated experience in the letting/management of property.

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

The Council will have regard to the following general factors in determining the final level of the civil penalty:

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

## **Failure to Comply with The Management of Houses in Multiple Occupation [England] Regulations**

*Maximum Court fine that can be levied for failure to comply with each individual regulation - £5000*

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

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

It is important that the manager of an HMO complies with all regulations but 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. Furthermore, and using Regulation 8 as an example, a breach of this regulation could relate to defects to an individual window in one HMO but multiple defects to the structure, fixtures & fittings in number of rooms in a second HMO.

In determining the level of a civil penalty, the Council will therefore initially consider;

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

Clearly, the circumstances of HMO Management Regulation offences have the potential to vary widely from case to case but, as a guide:

- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a **moderate** band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property these same offences would be regarded as a **moderate** band 2 offence, attracting a civil penalty of £5000 for a 'professional' landlord or agent
- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a **serious** band 3 offence, attracting a civil penalty of £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property these same offences would be regarded as a **severe** band 5 offence, attracting a civil penalty of £20000 for a 'professional' landlord or agent

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

- None – the nature of the Management Regulation breaches and their impact upon the occupiers would be an integral part of the initial assessment process

#### *Generic aggravating features/factors*

As set out under 'Improvement Notice' above

## **Failure to Comply with a Banning**

### **Order**

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

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

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

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that 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 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 notice of the authority's proposal to do so [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

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 representations received.

***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 i.e. compliance at that stage would be relevant to the amount of any imposed financial penalty [See 'Discounts' below]***

If the Council decides to impose a financial penalty on the person, it will give the person a notice (a "final notice") imposing that penalty.

The final notice will set out—

- 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

### ***Discounts***

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

- ***In the event that the offender complied with the identified breach [for example by making an application to licence a previously unlicensed address, or addressing all matters within the improvement notice] within the representation period at the ‘Notice of Intent’ stage, the Council would reduce the level of any imposed civil penalty by 20%;***
- ***A discount of 20% of the original calculated financial penalty should the penalty be paid within a specified time period [normally 28 days]. This discount would be in addition to any reduction applied as a result of compliance at the Notice of Intent stage***

#### Illustrative Example

*The landlord of an HMO property fails to obtain a licence. They only operate one HMO and there are no other relevant factors or aggravating features. The offence is regarded as a serious matter, representing a band 3 offence, attracting a civil penalty of £10000. Upon receipt of the ‘Notice of Intent’ to impose a £10000 financial penalty, the landlord makes a complete application for the HMO licence within the period allowed for representations. No other representations [or representations that are up-held] are made to the Council.*

*The Council issues a ‘Final Notice’ imposing a financial penalty of £8000 [£10000 with a 20% discount having been deducted due to compliance during the representation period]. In the event the landlord pays within 28 days of the date of the Final Notice a further 20% discount is given so that the landlord makes a discounted payment of £6000.*