Housing Standards Financial Assistance and Enforcement Policy

2021-2026

## Index

## Preface 3

## Introduction 3

## Statutory Duty 3

## Housing Stock Modelling 2020 4

## Housing Condition Improvements since 2015 5

## Financial Assistance Policy for Private Sector Housing 2021-26 5

## Financial Assistance and Conditions Summary 11

## Housing Standards Enforcement Policy 12

## Human Rights and Equality Issues 12

## Delegation and Decision Making 12

## Enforcement Approach and Principles 13

## Powers of Entry 14

## Enforcement Options 14

## Proceeds of Crime 18

## Cost of Enforcement 20

## Appeals 21

## Complaints 21

## Review of the Policy 21

## Data Protection Statement 21

## Appendix 1a – Financial Assistance Conditions and Operational Matters 23

## Appendix 1b – Civil Penalties Guidance and Matrix 31

## Appendix 1c – Smoke and Carbon Monoxide Alarm (England) Regulations 2015 38

## Statement of Principles

## Appendix 1d – Enforcement procedure in respect of The Redress Schemes for 41

## Letting Agency Work and Property Management Work (Requirement to Belong

## to a Scheme) (England) Order 2014

## Appendix 1e - The Electrical Safety Standards in the Private Rented Sector 44

## (England) Regulations 2020

Appendix 1f – The Energy Efficiency (private rented property) (England

and Wales) Regulations 2015 - Policy for issuing civil penalties48

##  Glossary 51

Preface

As a planet we face a huge challenge, climate change and its effects touch all our lives, and as a Council and a district we have our part to play. It is only by working together and making our contributions that an impact can be made.

Early in 2020 Chichester District Council approved the Climate Emergency Detailed Action Plan with the aim of engaging and enabling residents to play their part. From a housing perspective, the way we heat our homes, the energy we use all contributes to the district’s carbon footprint. This policy will look to educate, encourage and support residents to make informed decisions to reduce carbon emissions through the installation of green measures. The financial assistance available has been increased to allow for the offer of these installations, which will help to contribute to the year on year carbon reduction commitment made by the Council.

## Introduction

Chichester District Council’s Housing Strategy 2020-2025 focusses on eight key objectives for action, including maintaining and improving the condition of housing in the Chichester District. This is vitally important as poor housing has a direct impact on health and mental wellbeing, and all households should have access to housing that is fit for purpose.

Another issue being faced by residents are the district’s high property prices which have seen first time buyers priced out of the market, resulting in a higher reliance on private rented accommodation. This demand is expected to continue as a result of increased unemployment and reduced incomes following the Coronavirus pandemic. Homeowners will also be affected as home repairs and property improvements may no longer be affordable.

The ability to use enforcement action combined with the provision of financial assistance will provide inspecting officers with the tools they require to ensure those living in unsatisfactory conditions, along with the number of empty properties, are kept to a minimum. For those with disabilities and on low income requiring a suitable home where they can live safely and independently, adaptations will be available thereby reducing the need for social care.

This document outlines the Council’s policy with regard to the financial assistance it can offer owner occupiers and private sector landlords to encourage and assist them with property improvement. The policy also details the enforcement tools available to our inspecting officers to help improve housing standards.

## Statutory Duty

The Council has a duty under section 3 in Chapter 1 of Part 1 of the Housing Act 2004 to review housing conditions in its district. Where housing conditions are found to require improvement financial assistance can be provided under the terms of Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

## Housing Stock Modelling 2020

Following a successful joint bid to the Ministry of Housing, Communities and Local Government at the end of 2019, the Council was awarded just over £32,000 to undertake a stock modelling exercise to evaluate the overall condition of the district’s housing stock. This work would then enable the appropriate targeting of resources.

The Building Research Establishment (BRE) was commissioned to undertake the stock review involving a desktop housing stock modelling exercise which was completed in March 2020.

The headline findings are summarised below:

1. *There are 57,685 dwellings in Chichester, 67% are owner occupied, 19% private rented and 14% social rented.*
2. *6,768 dwellings in the private sector have category 1 Housing Health and Safety Rating System (HHSRS) hazards. This equates to 14% of properties. 1,281 dwellings in the private rented sector have category 1 HHSRS hazards. This equates to 12% of properties in the private rented sector.*
3. *The highest concentrations of all Housing Health and Safety Rating System (HHSRS) hazards in the private rented sector are found in the wards of Boxgrove, Funtington and Stedham.*
4. *The highest concentrations of fuel poverty (Low Income High Costs definition) in the private rented sector are found in the wards of Wisborough Green, Stedham and Bury and for excess cold the highest concentrations are in Boxgrove, Funtington and Stedham.*
5. *The average Simple SAP rating for all private sector dwellings in Chichester is 56, which is worse than both England (60) and the South East (61). For owner occupied stock the figure is 55 and for private rented stock it is 60.*
6. *The total cost of mitigating category 1 hazards in Chichester’s private sector stock is estimated to be £23.2 million – with £18.8 million in the owner occupied sector and £4.4 million in the private rented sector.*
7. *There are an estimated 1,108 Houses in multiple occupation (HMO)s in Chichester, of which approximately 272 come under the mandatory licensing scheme.*
8. *13.2% (6,535) of private sector dwellings and 9.9% (1,063) of private rented dwellings in Chichester are estimated to have an Energy Performance Certificate (EPC) rating below band E.*
9. *In the private sector stock, there are an estimated 12,107 dwellings with uninsulated cavity walls and 7,232 dwellings with less than 100 mm of loft insulation.*
10. *Analysis of the energy efficiency variables indicates that the owner occupied stock has the highest average figures for the majority of variables (Simple CO2, energy and heat demand, energy and heat cost).*

## Housing Condition Improvements since 2015

The results of the 2020 survey illustrate some stark parallels with the outcomes of the previous survey in 2015. The main challenges remain around the level of Category 1 hazards and the proportion of cold homes resulting in increased levels of fuel poverty, particularly in owner occupied properties.

However there is some good news particularly for the private rented sector where Category 1 hazards have fallen from 22% of the stock in 2015 (1844) to 12% of the stock (1281) in 2020. Furthermore the number of properties with an EPC rating of F or G (lowest rating) has fallen from 2192 (26.4%) to 1063 (9.9%).

There have also been improvements seen with regard to Simple SAP specifically in the private rented sector. Simple SAP is a simplified version of the standard assessment procedure for assessing the energy efficiency of a dwelling. It provides a numerical score for energy efficiency with 0 being the worst and 100 the best.

In 2015 the average Simple SAP rating for the private rented sector was 49, which was worse than England (55). However in 2020 the average Simple SAP rating for the private rented stock is 60, which equals that of England, but marginally worse than the South East (61). Unfortunately for the owner occupied stock the Simple SAP rating is still below the average for England. This result is likely to be down to the age and location of Chichester’s stock with many properties having solid walls and located in areas off the gas network making them more expensive to run and challenging to insulate.

In 2015 the total cost of mitigating the category 1 hazards in Chichester’s private sector stock was estimated to be £27.1 million, whilst in 2020 despite inflation the estimated cost has fallen to £23.2 million with £18.8 million in the owner occupied sector, and £4.4 million in the private rented sector.

## Financial Assistance Policy for Private Sector Housing

## 2020-25

The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 empowers local housing authorities to provide a wide range of assistance for housing renewal, providing they adopt a policy to outline how they will focus their resources.

This Policy sets out how the Council will assist owner occupiers and landlords to improve living conditions, with the main focus being on reducing cold homes and fuel poverty through energy efficiency measures, and also assisting those owners who require essential home improvements but are unable to afford to do so.

The conditions relating to all financial assistances offered by Chichester District Council (CDC) can be found in Appendix 1.

In summary this policy seeks to address the following 4 areas which are further detailed below:

## Reduce Fuel Poverty and Excess Cold

1. Continue to improve the standards in the private rented sector

## Reduce the level of Category 1 hazards in the owner occupied stock

## Deliver Disabled Facilities Grants

## Reduce Fuel Poverty and Excess Cold

Fuel poverty occurs when households cannot afford to keep adequately warm because the costs of heating their home are higher than average and paying for those costs leave them below the poverty line. This affects around 12% of private sector households in Chichester, compared to 9% in the South East region, and 11% in the rest of England.

The Council’s aim is to ensure the condition of properties are improved and residents are provided with affordable warmth and healthy homes, with a long-term vision of tackling fuel-poverty with low carbon, sustainable solutions where possible, acknowledging the targets of Chichester District’s Climate Emergency Initial Action Plan 2020 – 2025.

This policy aims to tackle Excess Cold and Fuel Poverty in five key ways:

* Improve the condition and energy efficiency of homes
* Reduce energy bills wherever possible
* Maximise household income for those who are eligible for benefits
* Support the “able to pay market” by providing advice and information and top-up funding as necessary
* Reduce carbon emissions

To co-ordinate this work a Fuel Poverty and Sustainability Project Group will deliver targeted action to tackle those parishes with the highest levels of Excess Cold and Fuel Poverty, reducing EPC F and G rated homes occupied by fuel poor households wherever possible. This work will be delivered ensuring a whole-house and resident-centered approach.

## Policy Tools

As a Council we provide financial assistance to those in fuel poverty, as well as supporting services to advise all residents of the help available to them, including government funding.

## The Home Energy Advising Service

The service, funded by West Sussex Public Health and delivered by the Council’s Wellbeing Team offers a tailor-made home energy support for vulnerable residents in Chichester. The service supports residents to save money, improve energy efficiency and stay warm and well at home. Advice is provided in relation to heating grants, tariff comparisons, crisis support, income maximisation guidance and support.

## Chichester Warm Homes Initiative

This initiative has been running since 2016 and is a unique offer across West Sussex. The scheme was introduced with a soft launch to ensure it did not become oversubscribed, and relied on self-referrals by residents. Unfortunately this approach has not provided enough interest and applications have remained low.

Working in conjunction with the Energy Visiting Advisor and the Climate Change Officer the scheme will be relaunched with a fresh ambitious new strategy targeting parishes that are primarily off-gas where it is known there are properties with high levels of Excess Cold hazards and Fuel Poverty. Gas alternatives including air source heat pumps, batteries and solar photovoltaic panels will be explored and prioritised wherever possible along with full insulation measures to reduce carbon dioxide emissions and energy costs wherever possible.

Financial assistance will be available to homeowners who have low income and only a modest amount of savings, and also landlords with a tenant who meets the eligibility criteria. In the case of tenants, landlords must consider the work as a ‘tenant improvement’ and must not implement a rent increase as a result of this work. The assistance provided is to fund or top-up the cost of necessary works to eradicate a Category 1 Excess Cold hazard, to increase the EPC rating above F or G, or to lift the occupants out of Fuel Poverty.

The amount of funding available will be dependent on whether the property is on the gas network. See the Financial Assistance and Conditions summary table on page 10 for more details.

### Discretionary Disabled Facilities Grant (DFG) - Safe, Suitable and Warm Homes Grant

### This offering is part of the West Sussex DFG Policy and is a means tested grant available to disabled residents requiring repairs or a replacement heating system in order to remain safe and independent at home. Eligible applicants are supported through the process, and are provided with assistance to obtain quotations. The West Sussex County Council Deep Clean and Minor Adaptations service also provides applicants with financial and practical assistance, if a property requires cleaning or clearing before works can commence.

## Partnership working

Chichester is part of the West Sussex Affordable Warmth Partnership. The partnership includes all West Sussex District and Borough Councils and sets the aims and objectives for tackling fuel poverty across the County under the West Sussex Affordable Warmth Framework for Action 2020 – 2025.

The role of the partnership also involves jointly bidding for funding, outlining local plans of action, intervention and governance structures that contribute to positive partnership working across West Sussex.

* Increasing Public Awareness of all Energy Efficiency Grants:

The Council will ensure residents are fully informed and kept up to date with regards to all the central government and Energy Company funding available, which is a regularly changing landscape. In order to deliver this, a new streamlined user-friendly, county-wide webpage will be developed containing all the funding options available, as well as signposting residents to other useful services with a clear link from CDC’s website and appropriate social media coverage.

## Continue to improve the standards in the private rented sector

Throughout the past 5 years significant improvements have been seen in the private rented sector in Chichester with the number of properties with Category 1 hazards and poor energy performance notably reducing from 22% in 2015 to 12% in 2020. Nevertheless it is important the focus on this sector remains to ensure standards continue to rise and properties are maintained appropriately.

The improvements that have been seen have been achieved through a variety of means including:

* Changes in legislation requiring a larger cohort of multiply occupied properties to require a licence
* Landlords have been required to ensure their properties achieve a certain energy performance.
* Properties that have been accredited as part of the Chichester and Arun Landlord Accreditation Scheme.
* Housing Standards Team intervention through complaint work.

The Council has always had a proud ethos of engaging with landlords and working with them to ensure they improve their properties without the need for formal enforcement action. This strategy has proved highly successful in the case of the Chichester and Arun Landlord Accreditation Scheme. The scheme requires landlords to improve their properties to a standard above the minimum required by legislation, and financial assistance has been made available to assist landlords for this work. Developing robust relationships with our landlords is more important than ever given the need for private rented sector properties to be made available for homeless clients currently being accommodated in temporary accommodation.

Policy Tools

## Landlord Accreditation Assistance

In order to continue to incentivise landlords to join this successful scheme we will continue to offer a financial award. The financial assistance given supports landlords to improve and maintain their properties to meet the Council’s Landlord Accreditation Assistance Scheme standards, which exceeds the legal minimum standards. This includes the requirement for properties to have a higher energy performance rating than is currently required in legislation.

The assistance will be 50% of the cost of the works up to a maximum of £4,000 throughout a five-year period. Should the landlord for any reason be refused membership of the accreditation scheme or have their membership revoked within five years, for example if they fail to accredit their remaining properties, then the total amount of assistance must be repaid.

* **Empty Property Assistance**

To engage landlords of empty properties, a more attractive financial package will be available. In this instance landlords will receive 100% of the cost of works to bring the property up to the Accreditation Standard and bring it back into use. Funding provided is up to a maximum of £10,000 throughout a ten-year period.

## Reduce the level of Category 1 hazards in the owner occupied stock

In the current climate and with budgets under increasing pressure it is necessary for the Council to evaluate the financial help it offers homeowners, who are essentially responsible for the maintenance of their own homes but are unable to afford to undertake works. The financial help given must be targeted at those in most need and where a Category 1 health and safety hazard exists.

The maximum amount of funding offered will be £30,000 and will be available to remedy category 1 hazards only. Homeowners requiring extensive home repairs will therefore be encouraged to reconsider whether they can feasibly remain in their property, or whether it would be sensible to move to a more suitable, manageable home. Those who choose to move will be offered financial assistance to pay for the upfront removal costs. In addition the Council will facilitate specialist support for the most vulnerable and those in financial hardship. The financial assistance will be recovered on sale of the property.

Policy Tool

## Home Repair Assistance/Relocation Assistance

Financial assistance is available to owner-occupiers including those of park homes and long leaseholders who are in financial hardship to either remedy Category 1 hazards in their property or to assist with the upfront costs of moving to a more suitable property.

Home Repair/Relocation Assistance consists of a 0% interest free loan placed as a local land charge on the property, which is repayable on sale. The assistance is up to a maximum of £30,000 for owner-occupiers (excluding park homes).

In the case of park homes help will be available but will be limited to a maximum of £5,000, which will be awarded as a grant.

The decision to offer financial assistance in relation to a park home will be made on a case by case basis and be reliant on whether a Housing Standards Officer confirms whether it is viable to repair the unit to a good standard given the funding limit. Works eligible for help would include roof and boiler repairs/replacement grant.

## 4. Deliver Disabled Facilities Grants (DFGs)

Mandatory Disabled Facilities Grants will be administered in accordance with existing legislation and will be available to the current legally specified grant maximum subject to the statutory terms and conditions. Discretionary grants will be administered in accordance with the West Sussex Disabled Facilities Grant Policy 2020-2024: (www.chichester.gov.uk/warmhomes#disabled)

TheExtensions Adaptations Fund is available to meet the needs of overcrowded households in social housing requiring an adaptation to meet their medical needs and an extension to their property where all other housing options have been exhausted.

## Financial Assistance and Conditions Summary

|  |  |  |  |
| --- | --- | --- | --- |
| **Assistance Type** | **Value** | **Condition Period fromCertifiedCompletion Date** | **Interest Applied** |
| Chichester Warm Homes Initiative  | Owners | Maximum of £10,000 or £25,000 if off-gas | Repaid on sale of property | No |
| Landlords | 50% of the cost of the works up to a maximum of £8,000 or £12,500 if off-gas | 5 years for landlords |
| Home Repairs/Relocation Assistance | £30,000 | Repaid on sale | No |
| £5000 for Park Homes | No repayment | N/A |
| Landlord Accreditation Assistance  | Maximum of £4,000 (must be match-funded by landlord) | 5 years | No |
| Empty PropertiesMaximum of £10,000 | 10 years |
| Mandatory DFG | Amount of Grant over £5,000 up to a max of £30,000 | 10 years  | No |
| Discretionary Top- up DFG  | Maximum of £30,000  | 10 years  | No |
| Extensions Adaptations Fund (social housing only) | Maximum of £35,000 | Grant | No |

## 6. Commencement and Transitional Arrangements

* This Financial Assistance Policy 2021-2026 shall take effect from 1st April 2021.
* Financial assistance approved before this Policy comes into force is covered by the terms of the Private Sector Housing Renewal Strategy 2016-2021.

Housing Standards Enforcement Policy

Private housing plays a significant part in the housing provision within Chichester and whilst it is recognised that the majority of landlords and letting agents operate well-managed accommodation of a good standard, the Council has a vital role to play in tackling criminal, rogue and irresponsible landlords, preventing them from profiting from non-compliance with the law.

The Housing Standards Team is committed to ensuring all privately rented accommodation is well managed, properly maintained, safe and habitable. This directly supports the Council’s Housing Strategy objective to maintain and improve the condition of housing.

This Policy outlines the Council’s enforcement approach and the available powers inspecting officers have to regulate and manage non-compliance in relation to Housing Standards. The policy is designed to be fair but robust.

This policy is intended to be read in conjunction with the overarching Housing and Environment Services Enforcement Policy (renewed every 5 years) which provides a summary of the Council’s enforcement powers, the principles of their application and what residents, businesses or visitors can expect from enforcement officers.

## Human Rights and Equality Issues

Investigations and any enforcement action will be conducted in a manner which does not conflict with or undermine the fundamental principles of the Human Rights Act 1998.

Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender.

For a copy of Chichester District Council’s full equalities policy please visit:
[www.chichester.gov.uk/article/24769/Equality-strategy](http://www.chichester.gov.uk/article/24769/Equality-strategy)

## Delegation and Decision Making

In accordance with the Council’s Scheme of Delegation in the Constitution the Director of Housing and Communities (or the person with the equivalent designation at the relevant time) has the delegated authority to authorise officers to take certain action under a range of legislation. The Director of Housing and Communities appropriately delegates these powers to officers who are duly authorised to undertake enforcement duties.

Officers will only be authorised where they have the appropriate level of qualification, training, experience and competence. This applies equally to those who are directly employed, to temporary staff and to those employed as contractors.

Decisions about the most appropriate enforcement action to be taken will be made in line with this policy and based on professional judgment, legal guidelines and advice, statutory codes of practice and priorities set by the Council and/or central government. Each case will be assessed on its own merits.

A recommendation to instigate a prosecution will be made by the Housing Standards Manager (or the person with the equivalent designation at the relevant time), as delegated by the Director of Housing and Communities. The decision to prosecute lies constitutionally with the Divisional Manager for Legal and Democratic Services (or the person with the equivalent designation at the material time.-

The Council will monitor and review the quality and nature of the enforcement activities undertaken in the Housing Standards Team and recommend changes and improvements as necessary taking into account the resources available. All staff will be fully conversant with this Policy.

## Enforcement Approach and Principles

The Council expects full compliance with the law. We will help landlords and homeowners meet their legal obligations by providing clear and concise information about what they need to do to comply. However, we will not hesitate to use our enforcement powers where necessary where property owners fail to comply. Enforcement action will be undertaken in a firm but fair manner, requiring individuals to meet their legal obligations without unnecessary expense.

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement as set out in the following:

* Regulators Compliance Code
* Criminal Procedure and Investigations Act 1996 (CPIA) and associated Code
* Police and Criminal Evidence Act 1984 (PACE) and associated Codes
* The Enforcement Concordat
* Housing Act 2004
* Regulation of Investigatory Powers Act 2000
* Housing and Planning Act 2016
* Chichester Housing and Environment Services Enforcement Policy
* Legislation and statutory guidance relating to the service area

In accordance with section 21 of the Legislative and Regulatory Reform Act 2006 the principles of the Council’s enforcement policy are:

**Transparent -** Enforcement action will be undertaken in accordance with our Policy and procedures. All communications will be easy to understand with clear reasons being given for any enforcement action taken.

**Accountable -** We recognise that we are accountable to those being regulated and the public for our actions. Enforcement action will be undertaken in a responsible manner
that has clear purpose. The Council’s Corporate Complaints Policy with further details on complaints and appeals can be found here: [www.chichester.gov.uk/complaints](http://www.chichester.gov.uk/complaints)

 **Proportionate** – Enforcement action will be proportionate and reflect the nature,
scale, seriousness including the history of any breaches or non-compliance.

**Consistent -** Enforcement action will be undertaken and monitored within the
Housing Standards Team to ensure consistency in the interpretation and
enforcement of legislation. The Housing Standards Team will also work with other regulatory agencies to share and develop good practice.

**Targeted** - Regulatory effort is directed primarily towards those who place residents at risk of serious harm. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

In addition, all enforcement action will be carried out having regard to the seven principles specified in the Statutory Code of Practice for Regulators made under section 23 of the Legislative and Regulatory Reform Act 2006.

## Powers of entry

The Housing Standards Team will require entry to a property in order to carry out its statutory functions. Inspecting officers will carry official identification and will normally make an appointment and give 24 hours’ notice to the occupants, and owners of their intention to enter a property to inspect.

Powers of entry allows 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 Housing Standards 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

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

## Enforcement Options

The principal legislation used by the Housing Standards Team is the Housing Act 2004 and
the Housing and Planning Act 2016. Enforcement officers will assess the need to take formal action through programmed inspections of multiply occupied dwellings, or in other cases in response to a complaint or request for assistance.

There may be circumstances where other pieces of legislation may be more appropriate in dealing with an identified problem. Officers are expected to use professional judgment in order to determine the most appropriate course of action.

Action considered will include, but is not limited to the following:

* **Informal Action** (including oral or written warnings or referral to another agency for further action)

Informal action will be considered where there is no legislative requirement to serve a formal notice or an order andthe circumstances are not serious enough to warrant formal action i.e. past history suggests informal action will achieve compliance; there is confidence in the management or the individual; the consequences of non-compliance will not pose a significant risk to occupiers or others.

* **Service of a Statutory Notice or Order**

The Council may serve a statutory notice requiring works to be carried out within a specify timeframe to remedy a hazard(s) which has been assessed using the Housing Health Safety Rating System contained within Part 1 of the Housing Act 2004. Hazards are categorised as either a Category 1 or Category 2 hazard. The Council has a legal duty to take the most appropriate enforcement action available in relation to Category 1 hazards. This is where the risk to health and/or safety is high. In relation to Category 2 hazards where the risk to health and/or safety is not so significant, the Council may take action.

The Housing Standards Team may serve a statutory notice in the following circumstances:

* Where there are Category 1 hazard(s) present at the residential unit of accommodation
* Where the Category 2 hazard is progressive and will likely become a Category 1 hazard unless preventative action is taken
* Where there are a number of Category 2 hazards which would present a hazard to occupiers as they moved room to room
* In other exceptional circumstances and at the discretion of the Housing Standards Manager (or the person with the equivalent designation at the relevant time)

A statutory notice will clearly set out actions which must be taken to rectify and/or prevent a breach and prevent it recurring. Notices will also include reasonable timescales for compliance, having regard to the seriousness of the defects and/or contraventions. If a statutory notice is to be served all interested parties will be notified e.g. tenants, mortgagees, leaseholders and freeholders.

The types of notice or order that can be served under the Housing Act 2004 include:

* **Hazard Awareness Notice**

A notice advising the person on whom it is served of Category 1 and/or Category 2 hazard(s) at a property. This is used where a hazard has been identified but the circumstances are not necessarily serious enough to require an improvement notice or prohibition order. The notice is a way of drawing attention to the need for remedial action. This notice is not registered as a local land charge and has no appeal procedure.

* **Improvement Notice**

A notice requiring the person on whom it is served to take remedial action as specified in the notice relating to Category 1 and/or Category 2 hazards. The notice is used where reasonable remedial works can be carried out sufficiently to reduce the hazard. This notice is registered as a local land charge.

* **Prohibition Order**

An order imposing restrictions on the use of the whole or part of a property that is so deficient or hazardous that access must be prohibited for habitation purposes. Orders may be suspended for a certain period of time to allow compliance or until a certain event in the future. This notice is registered as a local land charge.

* **Suspended Improvement Notices or Prohibition Orders**

These notices may be suspended where enforcement action can be safely postponed until a specified event or time. This notice is registered as a local land charge.

* **Emergency Prohibition Order**

This order will take effect immediately and is served when there is an imminent risk of serious harm from a Category 1 rated hazard, and it is not practicable to carry out remedial works.

* **Demolition Order**

An order requiring the demolition of a property can be used in response to Category 1 hazards only. This order is not applicable to listed buildings.

* **Declaration of a Clearance Area**

A Clearance area may be declared where all the residential buildings in the proposed area have at least one Category 1 hazard. The area is then cleared of all buildings.

* **Emergency Remedial Action**

This will be considered where there is an imminent risk of serious harm and the hazard is rated as Category 1. The Housing Standards Team will facilitate the necessary action to reduce the imminent risk and formal action will be taken by the Housing Standards Team to recover the full costs incurred.

* **Suspend, Revoke or Refuse to Renew or Grant a Licence or Authorisation**

This relates to Parts 2 and 3 of the Housing Act 2004 and The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018. Where the relevant person does not comply with the prescribed conditions and or is not deemed to be a fit a proper person to hold a licence, this course of action may be considered. Prospective applicants for a licence will be vetted to determine whether they are a ‘Fit and Proper’ person to hold a licence. Where a person is found not to be a ‘Fit and Proper’ person to hold a licence, this information will be stored within the Council’s records. The data will be kept and processed in line with the Council’s data protection and data retention policy. For further information please see [www.chichester.gov.uk/dataprotectionandfreedomofinformation](http://www.chichester.gov.uk/dataprotectionandfreedomofinformation)

Where there is either evidence of non-compliance with a statutory notice or order served under Part 1 of the Housing Act 2004, a failure to appropriately licence a property under Parts 2 and 3 of the Act, or non-compliance with any other legislation enforced by the Housing Standards Team, the following enforcement options will be considered:

* **Formal (Simple) Caution**

Used to deal quickly and simply with less serious offences. There must be sufficient evidence of guilt to give a realistic prospect of conviction and the offender must formally admit to the offence. Simple cautions will be administered by in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders (April 2015).

* **Penalty Charge Notice**

A number of Acts and Regulations provide for the issuing of a penalty charge notice for non-compliance. These include:

* The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
* The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
* The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
* The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Where the Council decides to issue a Penalty Charge Notice it will follow the same principles as the issuing of Civil Penalties (see below and Appendix 2).

The amount of penalty will be capped at the maximum provided for the offence. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require that the Council has a statement of principles for its application of penalty charge notices in relation to offences under those regulations (please see Appendix 4). The Civil Penalty process is described in Appendix 2.

* **Civil Penalty**

In accordance withsection 249A of the Housing Act 2004 as introduced by the Housing and Planning Act 2016, the Council may decide to impose a financial penalty as an alternative to prosecution for certain housing offences. The Council must be satisfied beyond reasonable doubt that the person’s conduct amounts to a relevant housing offence.

 The offences under the Housing Act 2004 for which the Council can impose a financial penalty as an alternative to prosecution are:

* Failure to comply with an improvement notice (section 30)
* Offences in relation to licensing of Houses in Multiple Occupation (section 72)
* Offences in relation to licensing of houses under Part 3 of the Act (section 95)
* Offences of contravention of an overcrowding notice (section 139)
* Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

Under the Housing and Planning Act 2016 the offence of breach of a banning order can also be dealt with by a financial penalty (section 21 (1)). The amount of financial penalty is determined by the Council but must not exceed £30,000.

The Housing Standards Team in consultation with Legal Services will determine on a case by case basis whether to issue a civil penalty or instigate a prosecution in respect of the offences listed above.

Examples of situations where a decision to prosecute may be made are:

* Offences of a particularly serious nature
* Where the offender has committed similar offences in the past

In circumstances where it has been deemed appropriate to issue a civil
penalty as an alternative to prosecution, the level of penalty will be calculated
having regard to the matrix set out in Appendix 2.

* **Prosecution**

The Council may decide to prosecute in respect of serious or recurrent breaches or where other enforcement action such as a statutory notice has failed to ensure compliance. When deciding whether to prosecute we will have regard to the provisions in The Code for Crown Prosecutors - [www.cps.gov.uk/publications/code\_for\_crown\_prosecutors](http://www.cps.gov.uk/publications/code_for_crown_prosecutors) as issued by the Director of Public Prosecutions. Prosecution will only be considered where we are satisfied that we have sufficient evidence to provide a realistic prospect of conviction. This will include consulting any criminal landlord database available to us. In certain cases we will consider the use of civil penalties as an alternative to prosecution where it is felt appropriate to do so. Similarly consideration will be given to the use of rent repayment orders in addition to prosecution and/or civil penalties for Housing Act offences where justified or a duty. We have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution.

## Proceeds of Crime

The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. The Housing Standards Team will use this legislation where appropriate and in consultation with Legal Services.

* **Making of Orders**

The Council will consider the following options independently or collectively with other enforcement action as particular circumstances permit:

* **Rent Repayment Orders (RRO) (Housing Act 2004/Housing and Planning Act 2016)**

The Council is required to consider an application to the First-tier Tribunal for a rent repayment order in cases where a landlord has been convicted of a qualifying offence. An RRO is a means by which the Council can seek up to 12 months of rent, housing benefit or Universal Credit to be repaid, in addition to other fines where the Council can prove that the landlord is guilty of one of the qualifying offences in relation to licensing, Houses in Multiple Occupation management and Housing and Planning Act 2016 notices. In applying for an RRO the Council will follow the Ministry of Housing, Communities and Local Government’s statutory guidance:

(<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>)

* **Works in Default**

The Council may consider works in default as an alternative to or in addition to prosecution or issuing a civil penalty under section 249A of the Housing Act 2004. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the courts. This will include where applicable administration costs and officer time. There will be full adherence to the financial rules and financial operating procedures of the Council. Where appropriate the costs will be placed against the property as a charge. The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

* **Rogue Landlord Database**

The database holds details of landlords and managing agents who have been given a banning order or convicted of certain offences. Application to have landlord/agents details entered on the database is a statutory duty where a banning order has been given and is at the discretion of the local housing authority in other circumstances. We will apply to have the landlord’s details entered on the database where there is a duty to do so and in other cases where the law allows discretion will be applied on a case by case basis. When deciding whether to make an entry onto the rogue landlord database the Council considers the severity of the offence, any mitigating factors, culpability and serial offending and when it is in the public interest to do so.

* **Banning Orders under the Housing and Planning Act 2016**

A banning order may be considered in addition to prosecution or issue of a civil penalty and will prohibit the undertaking of landlord or managing agent activities for a specified period of time. These orders may be made against landlords and managing agents where they have been convicted of banning order offences under the Housing and Planning Act 2016. These include, for example, failure to comply with an improvement notice. The Council will apply for banning orders to be made where the evidence justifies this course of action and it is considered to be in the public interest to protect against rogue landlords.

When deciding to apply to the First-tier Tribunal for a banning order, the Council will consider the following:

The seriousness of the offence, previous convictions/rogue landlord database entries, the harm caused to the tenant, punishment of the offender and the deterrent needed to prevent others from committing similar offences.

Once granted a banning order remains in place for at least 12 months. Once in place, the local housing authority can take management of all property owned by the landlord receiving the order.

* **Interim and Final Management Orders under the Housing Act 2004**

To ensure adequate management arrangements are in place in a licensable house in multiple occupation (HMO), we have the power to make an interim management order (IMO) in respect of a licensable HMO where a landlord (or their managing agent) fails to obtain a licence or where it is necessary due to the hazardous condition of the property. Upon the expiry of an IMO we can make an application to the First-tier Tribunal (Property Chamber – Residential Property) to make a final management order and take over the management of the property for a period of up to five years. This disables the landlord’s ability to manage the property.

## Costs of Enforcement

## Section 49 of the Housing Act 2004 gives the Council the power to charge for enforcement action and recover these costs.

## Charging will apply for enforcement action in the following circumstances:

## Serving an improvement notice under sections 11 or 12

## Carrying out a review under section 17 (review of suspended improvementnotices)

## Making a prohibition order under sections 20 or 21

## Review of suspended prohibition orders) orserving copies of the Council’s decision on such a review under section 26

## Serving a hazard awareness notice under section 28 or 29

## Taking emergency remedial action under section 40

## Making an emergency prohibition order under section 43 or

## In addition charges may be recoverable with regard to making a demolition order under section 265 of the Housing Act 1985.

## What can be charged for will depend on the type of action taken. However in mostinstances it will include:

## The expenses incurred in determining whether to serve a notice/order

## Identifying any action to be specified within the notice/order

## Serving the notice/order

## Expenses will be recovered in accordance with section 50 of the Housing Act 2004 via a demand for payment of the charge. As from the time the demand becomes operative until recovered, the sum recoverable will be registered as a local land charge on the premises concerned.

## Expenses in respect of which a demand is served carry interest, at such reasonable rate as the Council may determine, from the date of service until payment of all sums due under the demand: para 10 of Part 3 of Schedule 3 to the Housing Act 2004.

## The charge for enforcement is separate to the charge associated with a penalty charge or civil penalty issued as an enforcement mechanism to address non-compliance.

## Appeals

## Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of works. Appeals can also be made on the grounds that the notice/order was not served on the correct person or that a different course of action would be more appropriate.

## Appeals regarding enforcement action under the Housing Act 2004 are made to the First-tier Tribunal (Property Chamber). Further details on this process are contained in the relevant notice/order.

## All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served. The Council will rigorously defend any appeals where the notice/order has been correctly served.

## Complaints

## The Council provides an effective and timely complaints procedure. The procedure is accessible on the Council’s website at:

## [www.chichester.gov.uk](http://www.chichester.gov.uk)

## The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal.

Review of the Policy

The Council reserves the right to amend the policy and vary the eligibility criteria specified based on changes to funding, benefits criteria, legislation and national guidance. Minor changes which do not affect the broad scope of the policy may from time to time be made by the Director for Housing and Communities. However for more significant changes Cabinet approval would be sought.

A full review of the Policy will take place in five years.

## Data Protection Statement

Chichester District Council (CDC) manages personal data in accordance with the data protection legislation, in particular the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018, and related codes of practice. It is a public authority for the purposes of the GDPR.

CDC’s Housing Standards Team (HST) is responsible for processing applications and awarding financial assistance in relation to housing improvement and disabled adaptations. Furthermore the HST is responsible for enforcing legislation in relation to housing standards and houses in multiple occupation.

Personal data will be processed for the purpose of determining an application for financial assistance~~,~~ and also for determining the most appropriate course of action in the instance of a breach of housing legislation. This data will also be used for cross-system and cross-authority working for the prevention and detection of fraud and legal non-compliance.

The HST will where appropriate share information including personal data with other departments in CDC to support the aforementioned purposes. Information may also be shared with partner local authorities and when requests are received by legitimate law enforcement bodies carrying out their own public roles.

For more information, please see the data protection policy section on CDC’s website via the following link:

<https://www.chichester.gov.uk/dataprotectionandfreedomofinformation>

or contact the HST on 01243 785166.

|  |  |
| --- | --- |
|  | Financial Assistance Conditions and Operational Matters  |
| **General** | 1. Conditions come into force from the date the assistance is approved so that the Council may recover any interim payments or costs incurred where necessary.
2. Where a condition period is specified, this takes effect from the certified date of completion of the eligible works.
3. Premises (excluding park homes) must qualify as a dwelling for the purpose of payment of Council Tax. Any financial assistance and related conditions will be secured as a local land charge against the property, where breach of conditions would require repayment of the assistance. A charge on a property is binding on any person who is an owner of the property concerned. Charges will only be removed when either the condition period expires or the assistance is repaid. The Council may at its discretion determine not to demand payment or to demand a lesser amount if the recipient of the grant would suffer undue financial hardship (or be unable to make a move necessary for welfare reasons) were s/he required to repay all or any of the grant, taking into account his/her care and medical needs and those of any family member who is disabled or a person at risk.
4. Where a condition is in force, the Council may require the person responsible to provide information to evidence the conditions are being complied with. Failure to comply with this requirement may constitute a breach of conditions and repayment of the assistance may be required.
5. No retrospective application or request for financial assistance will be considered where the relevant work has already started or completed.
6. Unless otherwise specified, all relevant work must be completed, to the satisfaction of the Council, within 12 months of the approval date of the assistance. The Council may permit an extension to this period, but this will only be in exceptional circumstances.
7. Assistance works must be carried out by the contractor who provided the estimate for which the financial assistance was approved.
8. Funding will only be paid once the Council receives an invoice in relation to the work, together with any accompanying documentation e.g. certificates, and once a grants officer has undertaken a final inspection to assess the quality of the works carried out. The applicant must ensure access is provided for this purpose.
9. The approval of financial assistance does not include approval of any other consents that may be required, such as planning permission or Building Regulation consent.
 |
|  | **Landlord Accreditation Assistance/Empty Homes Assistance** | **Home Repair/Relocation Assistance (check charges against the property on land registry documentation before confirming assistance)** | **Chichester Warm Homes Initiative**  | **Extensions Adaptations Fund (social housing only)** |
| **Applicant qualification** | * Applicants must be at least 18 years old;
* Applicants must be freeholders (owner in fee simple absolute) or leaseholders with at least 10 years to expiry of lease, and with responsibility for carrying out eligible work; and
* Applicants must be landlords who have applied to join the Chichester Landlord Accreditation Scheme (this does not apply to applicants seeking Empty Homes Assistance).
 | * Applicants must be at least 18 years old;
* Applicants must be freeholders (owner in fee simple absolute) or leaseholders with at least 5 years to expiry of lease, and with responsibility for carrying out eligible work;
* Applicants must have owned and occupied the property for at least one year as their only or main residence; and
* Applicants must EITHER be in receipt of a means tested benefit, Disabled Living Allowance or Personal Independence Payment

OR* The household income is less than £20,000 pa and the applicant has less than £16,000 in savings.
 | * Applicants must be at least 18 years old;
* Available to tenants and homeowners or leaseholders with at least 5 years to expiry of lease, and with responsibility for carrying out eligible work;
* Available to private sector tenants except excluded tenants (those with a resident landlord)
* Owners/tenants must EITHER be in receipt of a means tested benefit, Disabled Living Allowance or Personal Independence Payment

OR* The household income is less than £25,000 pa and the applicant has less than £16,000 in savings.
 | * The tenant(s) must have either a secure tenancy or an assured tenancy or a fixed term tenancy with at least 5 years to run.
* The tenant(s) must not have rent arrears or be under notice as defined by the allocations policy.
* The tenant(s) must be in priority need (as defined in the Allocations Scheme) and be eligible for either Band A or B on the basis of overcrowding, or the tenant has been identified as occupying a property with a Category 1 hazard for crowding and space, and the option to move to a larger property is not possible due to the household size and the lack of larger stock.
* There is not a suitable property in the development pipeline which could meet the household’s needs.
* The council must be satisfied that this is the most financially effective means of resolving the household’s housing needs.
* The extension will meet the household’s needs for a minimum of 5 years following completion.
* Priority will be given to tenants who have the highest needs and have been waiting the longest for their housing needs to be resolved.
 |
| **Property qualification** | * The works must not be those which could be subject to an insurance claim;
* The dwelling must not be owned by a Registered Social Landlord, a local authority, or any other public body; and
* In the case of empty properties, the dwelling must have been empty for a minimum of 12 months.
 | * The works must not be those which could be subject to an insurance claim; and
* Category 1 hazards must have been identified at the property.
 | * The works must not be those which could be subject to an insurance claim;
* The dwelling must not be owned by a Registered Social Landlord, a local authority, or any other public body;
 | * The dwelling and plot must be capable of extension or conversion.
* The dwelling must meet Decent Homes Standards on completion of works
 |
| **Eligible works** | * The eligible works are those required to ensure the property meets the minimum accommodation standards for the Chichester Landlord Accreditation Scheme.
 | * The eligible works are those required to remedy all category 1 hazards in a dwelling.
 | * Funding is available for the cost of:
* A whole-house, efficient heating system
* Thermal insulation
* Boiler repair
* Hot water tank repair/replacement
* Window repair or replacement
* Provision of an Energy Performance Certificate (EPC) (for homeowners only)
 | * The eligible works are all those required to convert or extend the property to provide the additional living space required to meet the households needs for a period of at least 5 years following completion.
* Consultation to be undertaken with tenants and details of work to be formally agreed in advance including a schedule of any additional non-essential works to be paid for by the tenant. Hyde to underwrite risk of non-payment by tenant.
* Either at least two estimates must be obtained for the eligible works for each dwelling or if the works are to be carried out by Hyde Property Services a schedule of works is to be drawn up and approved by the Building Services Team at CDC, to ensure value for money.
 |
| **Amount of assistance** | * **Landlord Accreditation** –

The maximum amount of assistance will be 50% of the cost of the works up to a maximum of £ 4,000 throughout a 5 year period or,* **Empty Property Assistance** - The maximum amount of assistance will be 100% of the cost of the works up to a maximum of £10,000 throughout a 10 year period.
 | * The maximum amount of financial assistance available is £30,000 or £5000 for park homes.
* The Council must be satisfied that where the assistance provided does not cover the full cost of the eligible works the owner has financial arrangements in place to meet the full cost of the works.
 | * Assistance would only be available for those who do not qualify for any other forms of funding. Furthermore applications for funding to top-up other grant funding will be considered. This will be determined by the Energy Visiting Advisors.
* Owners would be eligible for the full cost of the required works, up to a maximum of £10K or £25K in areas that are off-gas.
* Landlords must pay 50% of the cost of the works. The maximum funding available is £5,000 for gas/oil boilers and £12,500 for off-gas properties
 | * The maximum amount of grant is £35,000 per property of eligible works and associated on-costs (maximum of £500 per property).
* The remaining costs will be covered by Hyde and recouped through the increased rent payable by the tenant.
* A grant application form is to be completed for each dwelling to be extended or converted, to be submitted with estimates or priced schedule of works and details of all associated on-costs (maximum £500 per property).
* The Council will formally notify Hyde in writing as to whether the application for each individual dwelling is refused or approved.
* If the application is approved, the notification will specify the maximum grant available towards the works.
* If the application is refused, the notification will include the reasons for refusal.
 |
| **Pre-completion conditions** | * All eligible works must be satisfactorily completed within one year of approval unless specific permission has been granted by the Council for a time extension.
* All eligible works must be carried out by one of the contractors whose estimates were submitted as part of the application or by an alternative contractor as agreed in advance by the Council.
* The applicant must retain a qualifying interest in the property during the course of the works.
* Landlords must ensure all works required to meet the Council’s minimum standards are carried out.
* Only one application shall be made per property to be accredited.
* All approval conditions will be a local land charge.
 | * All eligible works must be satisfactorily completed within one year of approval unless specific permission has been granted by the Council for a time extension.
* All eligible works must be carried out by one of the contractors whose estimates were submitted as part of the application or by an alternative contractor as agreed in advance by the Council.
* The applicant must retain a qualifying interest in the property during the course of the works.
* All approval conditions will be a local land charge.
 | * All eligible works must be satisfactorily completed within one year of approval unless specific permission has been granted by the Council for a time extension.
* All eligible works must be carried out by one of the contractors whose estimates were submitted as part of the application or by an alternative contractor as agreed in advance by the Council.
* The applicant must retain a qualifying interest in the property during the course of the works.
* Only one application shall be made per property.
* All approval conditions will be a local land charge.
 | * All eligible works must be satisfactorily completed within one year of approval unless specific permission has been granted by the Council for a time extension.
* All eligible works must be carried out by one of the contractors whose estimates were submitted as part of the application or by an alternative contractor as agreed in advance by the Council.
* The housing association must retain a qualifying interest in the property throughout the course of the works.
* Only one application shall be made per property.
 |
| **Post-completion conditions** | * **Landlord Accreditation Scheme**
* The landlord will remain a member of the Landlord Accreditation Scheme for 5 years. Should the landlord’s application to join the Landlord Accreditation Scheme be refused / revoked the full amount of assistance shall be repaid.
* The landlord must throughout the 5 year accreditation period conduct regular property checks to ensure the standards are maintained.
* **Empty Homes Assistance**
* The applicant must retain a qualifying interest in the property for 10 years.
* All assistance will be repayable on sale of the dwelling if the sale occurs within 10 years of the certified completion date of the eligible works.
 | * Properties must remain as the applicant’s only residence until sold.
* Householders shall ensure the property is covered by suitable buildings insurance.
* All assistance will be repayable on the sale of the dwelling or if it is no longer used as the applicant’s only residence.
 | * Owner occupiers are required to repay the financial assistance on sale of the property.
* On completion landlords must not introduce a rent increase as a result of the work.
* In order to encourage landlords to work with the Council the conditions attached to their assistance would only require repayment if the property was sold within 5 years of the certified completion date of the eligible works. Throughout the 5 year condition period, the property must remain tenanted.
 | * All approval conditions will be a local land charge. If the property is sold within 10 years of completion then the grant will either be repayable to the council or funds must be reinvested in affordable housing in Chichester District in agreement with CDC.
* Throughout the 10 year condition period, the property must remain tenanted.
* The funding will be paid on receipt of satisfactory invoices and completion inspection of the works, including the appropriate sign-offs by the Planning Department and Building Control.
 |

## Council’s Obligations

The Council will ensure all successful applicants receive a copy of the financial assistance conditions will the approval documentation. Please see Appendix A for details of the conditions.

## Payments

* Interim payments will be available at the discretion of the Council and on receipt of an acceptable invoice.
* Final payments will only be paid upon submission of the final invoice along with any certificates. Certificates to be provided for all gas and electrical installations and guarantees should be passed to the applicant for all damp proofing, dry rot and roofing works.
* Payment will be made directly to the contractor unless in the case of a Disabled Facilities Grant (DFG) when the applicant requests otherwise.

## Review of a Decision

* An applicant may request a review of any decision made under the Policy. Review requests should be addressed to the Housing Standards Team and received within 21 days of the date of a decision letter.
* Review requests will be concluded within 10 working days of being received. The applicant will be informed of the decision in writing. Where a review upholds the original decision the applicant will be informed of their rights under the Council’s complaints procedure and the Local Authority Ombudsman procedure.

Civil Penalties Guidance and Matrix

## Introduction

Section 126 of and Schedule 9 to the Housing and Planning Act 2016 provide local authorities with the power by the insertion of section 249A into the Housing Act 2004 to impose a civil penalty (in the form of a financial penalty) as an alternative to prosecution in respect of certain offences. The standard of proof required to issue a civil penalty is that the local housing authority is satisfied beyond reasonable doubt that a person’s conduct amounts to a relevant housing offence (as set out below) in respect of premises in England.

Income received from a civil penalty notice can be retained by the Council provided that it is used to further the local authority’s statutory functions in relation to its enforcement activities covering the private rented sector as specified in regulations.

A civil penalty cannot be issued where there has been a conviction for the conduct in question or where a prosecution is currently pending in respect of that conduct.

A civil penalty can be imposed in relation to the following relevant housing offences under the Housing Act 2004:

1. **Failure to comply with an improvement notice (section 30);**
2. **Offences in relation to licensing of houses in multiple occupation (section 72);**
3. **Offences in relation to licensing of houses under Part 3 of the Act (section 95);**
4. **Offences of contravention of an overcrowding notice (section 139)**
5. **Failure to comply with management regulations in respect of houses in
multiple occupation (section 234)**

The government has issued statutory guidance under Schedule 9 to the Housing and Planning Act 2016. Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties. A full copy of the guidance can be found at:
https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/606653/Civil\_Penalties\_guidance.pdf.

The Council has the power to impose a civil penalty of up to £30,000, with a level of civil penalty imposed decided on a case by case basis in line with this policy. The guidance in this Appendix 2 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 appropriate enforcement option.

Process for imposing a civil penalty

If the decision is to impose a civil penalty, a notice of intent must be served stating the amount of the proposed penalty, the reasons for its imposition and information about the right to make representations. After the expiry of the period for representations the matter must be reviewed and a decision taken whether to impose a civil penalty and if so the amount of the penalty. Statutory guidance issued by the Ministry of Housing Communities and Local Government in April 2017 sets out the following factors which must be taken into account when deciding on the appropriate level of penalty:

There are several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

1. **Severity of the offence.** The more serious the offence, the higher the penalty should be.
2. **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.
3. **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.
4. **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared with 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.
5. **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.
6. **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.
7. **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.

Determining the Level of Civil Penalty

The Council will determine the level of civil penalty from a review of the case and
having regard to the statutory guidance will apply the following five-step approach:

Step 1 – Determining the offence category
To determine the financial starting point, consider the culpability and harm factors in the lists below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability - In determining culpability the local housing authority will have regard to four levels of culpability

Where the offender

* Has the intention to cause harm, the highest culpability where an offence is planned
* Is reckless as to whether harm is caused i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people
* Has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results
* Is guilty of negligence

Culpability Levels

|  |  |
| --- | --- |
| **Very High** | Deliberate failure to comply with legal obligations. |
| **High** | Knew or ought to have known that they were in breach of their legal responsibilities, wilful blindness to the risk of offending. Non-compliance over a long period or ignoring concerns raised by regulators, tenants or others |
| **Medium** | Offence committed through an act .or omission which a person exercising reasonable care would not commit. |
| **Low** | Offence committed with little fault, for example, because: significant efforts were made to address the risk although they were inadequate on this occasion; failings were minor and occurred as an isolated incident. |

Harm

In determining the level of harm the local housing authority will have regard to:

* The effect on the tenant i.e. physical injury, damage to health, psychological distress
* To the community i.e. economic loss, harm to public health
* Other types of harm i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim e.g. tenant. Where no actual harm has resulted from the offence the local housing authority will consider the relative danger to which persons have been exposed as a result of the offender’s conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

* Multiple victims
* Especially serious or psychological effect on the victim
* Victim is particularly vulnerable

|  |  |
| --- | --- |
| **High** | The property conditions pose a high risk of serious adverse effects to the occupants and/or visitors. Vulnerable individuals were put at risk. |
| **Medium** | The property conditions pose medium risk of serious adverse effects to the occupants and/or visitors. |
| **Low** | The property conditions pose a low risk of serious adverse effects to the occupants and/or visitors. |

 Step 2 – Offence matrix

Having determined the culpability and harm levels, the appropriate offence matrix
should be referred to in order to calculate the starting point for the civil penalty.

|  |  |
| --- | --- |
| **Harm** | **Culpability** |
|  | **Very high** | **High** | **Medium** | **Low** |
| **High**  | Band 6 | Band 5 | Band 4 | Band 3 |
| **Medium** | Band 5 | Band 4 | Band 3 | Band 2 |
| **Low** | Band 4 | Band 3 | Band 2 | Band 1 |

Banding Levels

The table below provides an indication of the level of financial penalty that is likely to be appropriate taking into account both culpability and harm. The maximum level of fine permitted under the legislation is £30,000. The starting point in each band will be the mid-point e.g. in Band 3 the midpoint will be £12,500.

|  |  |
| --- | --- |
| Band 1 | £0 - £4,999 |
| Band 2 | £5,000 - £9,999 |
| Band 3 | £10,000 - £14,999 |
| Band 4 | £15,000 - £19,999 |
| Band 5 | £20,000 - £24,999 |
| Band 6 | £25,000 - £30,000 |

Step 3 – Consider aggravating or mitigating factors

The Council should then consider further adjustment from the starting point to take
into account aggravating and mitigating factors. Set out below is a non-exhaustive
list of elements providing the context of the offence and factors relating to the
offender. Identify whether any combination of these or other relevant factors should
result in an upward or downward adjustment from the starting point.

* The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.
* The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of the top of the band level determined below.

|  |  |
| --- | --- |
| **Aggravating factors** | **Mitigating Factors** |
| History of failing to comply with obligations | Steps taken to remedy the problem |
| Motivated by financial gain | High level of co-operation with the investigation, beyond that which will alwaysbe expected |
| Deliberate concealment of illegal nature of activity | A history of good communication and compliance regarding work as alandlord |
| Established evidence of wider/community impact | Co-operation and acceptance of responsibility |
| Obstruction of justice | Mental disorder or learning disability, where linked to the commission of the offence |
| Landlord or agent of multiple properties which may include licensed HMOs | Serious medical conditions requiring urgent, intensive or long-term treatmentAge and/or lack of maturity where it affects the responsibility of the offender |

The penalty may be increased or decreased from the centre starting point within the band to the maximum or minimum level in the band. Issues affecting this decision are detailed in the table below

Step 4 – Case and penalty review

The level of the penalty should reflect the extent to which the offender fell below the
required standard. The penalty should be fair and proportionate and meet the
objective of being a punishment, deterrent as well as removing any gain derived through the commission of the offence.

Step 5 - Review offender’s ability to pay – prior to any final notice

The level of civil penalty must be proportionate to the seriousness of the offence and
the financial circumstances of the offender.

Statutory guidance states that the local housing authority should use its existing powers to, as far as reasonably possible, make an assessment of a landlord’s assets and any income (not just rental income) received when determining an appropriate penalty.

The powers available to the Council include:

* Section 235 of the Housing Act 2004: power to require documents to be produced
* Section 237 of the Housing Act 2004: housing benefit and council tax information
* Section 16 of the Local Government (Miscellaneous Provisions) Act 1976: service of a requisition for information - power to obtain particulars of person’s interested in land

An offender will be assumed to be able to pay a penalty up to the maximum amount unless there is evidence to suggest otherwise or they can demonstrate they are unable to do so. When a person receives a notice of intent to impose a financial penalty they have the right to make written representations about the proposal. We will specifically ask for those representations to include any evidence of the person’s inability to pay the stated penalty. If no representation is received then the assumption will be that the person is able to pay.

Evidence put forward in a representation will be assessed for accuracy against Council-held and public information. Where appropriate further information may be required through service of notice using the powers listed above.

Any evidence relating to the ability to pay will be considered before a final decision is made about the level of the penalty.

Representations and Appeals

A person who receives a notice of the Council’s intention to impose a financial penalty may make written representations to the Council. These should be addressed to the Housing Standards Manager (or the person with the equivalent designation at the relevant time) or emailed to:

housingstandards@chichester.gov.uk

A person who receives a final notice requiring a penalty to be paid may appeal the decision to impose a penalty or the level of penalty to the appropriate Chamber of the First-tier Tribunal. The appeal procedure will be included with any final notice.

Recovery

Subject to the inception of any appeal process a penalty must be paid within 28 days beginning with the day after that on which the notice was given. Where a penalty is not paid within 28 days, the Council will seek to recover it through a county court order.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 were introduced on 1st October 2015 and require all landlords to ensure the following are complied with where a tenancy exists on or after this date:

1. Each storey of the premises on which there is a room used wholly or partly as living accommodation must be equipped with a smoke alarm.
2. Any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance must be equipped with a carbon monoxide detector.
3. 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.

Enforcement

If the Local Housing Authority has evidence that a landlord has failed to comply with the requirements of the regulations, they shall serve a Remedial Notice on the landlord detailing the works required in order to ensure compliance. The notice must be complied with within 28 days. Failure to comply with the notice will result in a penalty charge notice being served for the **full sum allowable within the regulations**. The maximum penalty charge is £5,000.

The landlord may request in writing, no later than 28 days from service, that the remedial notice or penalty charge notice be reviewed by the Head of Housing and Environment, who must then consider the representation. A landlord may also subsequently appeal the notice to confirm or vary the penalty charge notice to the first tier tribunal.

Any penalty charge notice served will include the following information:

* the reasons for imposing the penalty charge;
* the premises to which the penalty charge relates;
* the amount of the penalty charge;
* a requirement for the person committing the breach, within a period specified in the notice –
	1. to pay the penalty charge, or
	2. to give written notice to the local housing authority that the landlord wishes the authority to review the penalty charge notice;
* how payment of the penalty charge must be made;
* any reduction for early payment of the penalty charge;
* where applicable the statutory appeals process;
* the contact details for the person to whom a review of the notice be made
* any other information as required by statute.

Mitigating Factors

Fire and Carbon Monoxide represent a clear and significant danger to tenants and alarms provide a cost effective method of managing those dangers. Normally this Council will require a penalty charge of the maximum allowed in the Regulations, £5000 (or £2500 for early payment: see below).

When a Penalty Charge Notice is served, the Council has discretion to apply the following mitigating factors and potentially award a percentage reduction. The percentage scores can be added together and applied to the maximum penalty applicable for the offence.

* No previous history of non-compliance with other Housing legislation – if this is a first breach of any housing related legislation - 20% reduction.
* Any relevant personal circumstances - 20% reduction.
* Financial impact causing hardship – if the fine would cause the offender undue financial hardship such that they may not be able to continue to operate their business - 10% reduction.
* In every case it will be the responsibility of the recipient of the notice to provide sufficient evidence to support their representations.
* When any review determines a final amount of penalty and this is not paid, the Council will pursue non-payment of the penalty through a court order process.
* If payment is made within 28 days then the fine is reduced to £2500 (less any relevant deductions granted by the Council, again at the Council’s absolute discretion).
* All enforcement action will be undertaken in accordance with both the current Private Sector Housing Enforcement Policy and The Housing and Environment Enforcement Policy.

Enforcement Procedure in respect of

The Redress Schemes for Lettings Agency Work and Property Management Work

(Requirement to Belong to a Scheme etc.) (England) Order 2014

Introduction

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme.

Chichester District Council (the Council) is the enforcing authority for the Order within their area. The authority to enforce the Order shall be delegated to the Head of Housing & Environment Services.

The Council can impose a fine of up to £5,000 where it is satisfied, *on the balance of probability* that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined.

Government guidance on the enforcement of the Order states that the expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.

The procedure for issuing a fine is as follows;

Step 1: Notice of Intent

The Council will give written notice of their intention to impose a penalty. This will set out:

1. the reasons for the penalty;
2. the amount of the penalty; and
3. the 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice will be served within 6 months of the date on which the Council has gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate.

The Council may at any time withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 2: Representations and Objections

The person whom the notice of intent is served has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the Council will decide whether to impose a fine based on the principles of the Housing and Environment Enforcement Policy.

Following consideration of the fine the Council will give at least 28 days for payment to be made. When imposing a fine, the Council will issue a final notice in writing which explains:

1. why the fine is being imposed;
2. the amount to be paid;
3. how payment may be made;
4. the consequences of failing to pay;
5. the right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

1. the decision to impose a fine was based on a factual error or was wrong in law;
2. the amount of the fine is unreasonable; or
3. the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the Councils notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

Step 5: Recovery of the penalty

If the lettings agent or property manager does not pay the fine within the 28 day period the Council will recover the fine with the permission of the court under a court order. If proceedings are necessary for the recovery of the fine, a certificate signed by the Head of Finance and Governance Services stating the fine has not been received within the required timescale will be taken as conclusive evidence.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Introduction

In accordance with section 214(2) of the Housing and Planning Act 2016 and section 250(4) and (6) of the Housing Act 2004, The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1st June 2020 and apply to all new specified tenancies from 1st July 2020; and to all existing specified tenancies from 1st April 2021.

Landlord Responsibilities

1. A landlordwho grants or intends to grant a specified tenancy must ensure that the electrical safety standards are met during any period when the property is occupied under a specified tenancy. The landlord must also make sure every electrical installation in the property is inspected and tested at regular intervals (no more than every 5 years) by a qualified person.
2. The Landlord must arrange for the first inspection and testing to be carried out before the tenancy commences in relation to a new specified tenancy; or by 1st April 2021 in relation to an existing specified tenancy. See Appendix A for details of specified tenancies and exempt tenancies.
3. The Landlord must obtain a report from the electrician detailing the inspection and testing. They must supply a copy to the existing tenant within 28 days of the inspection. Any new tenant must be given a copy before they occupy the property and within 28 days of them requesting it.
4. The Council can request in writing a copy of the inspection and testing report and the landlord must supply it within 7 days. The Landlord must keep a copy of the report and give it to the next electrician who is carrying out the next inspection. If the report highlights remedial or investigative work, the Landlord must ensure that is undertaken by a qualified person within 28 days of the date of the report (or less if specified in the report). The Landlord must then obtain further written confirmation that further investigative or remedial works have been completed, and supply copies to the tenant within 28 days of completion. The Council can also request a copy of the further inspection and testing report and the landlord must supply it within 28 days.
5. If a Landlord fails to comply with the provisions of the regulations, they could be subject to a financial penalty of up to £30,000.

Duty to serve a Remedial Notice

Where there are reasonable grounds to believe that electrical safety standards are being breached (but are not of an urgent nature), the Council must serve a Remedial Notice on the Landlord within 21 days.

The Council must consider any written representations made by the Landlord within 7 days. If the landlord makes a written representation, the remedial notice will be suspended until the Landlord has been informed in writing of the outcome.

The Notice can be withdrawn at any time.

Duty of Landlord to Comply

Where a remedial notice is served the landlord must take the remedial action specified in the notice within the timescales stated. The landlord is not to be taken to be in breach of the duty if they can show they have taken all reasonable steps to comply with that duty.

If a landlord is prevented from entering the property by the tenant, the landlord will not be considered to have failed to have taken all reasonable steps to comply with the duty solely due to a failure to bring legal proceedings with a view to securing entry to the premises.

Works in Default of Remedial Notice

If the Council is satisfied, (on the balance of probabilities), that the landlord on whom a Notice has been served is in breach of the duty under regulation 5(1), the Council may, with the consent of the tenant(s), arrange for an authorised person to enter those premises to undertake the works specified in the remedial notice. Prior to any remedial action being undertaken a notice must be served on the landlord. The works must be undertaken within 28 days of the date of the Notice (where there is no appeal).

An officer must—

(a) give not less than 48 hours’ notice of the remedial action to the tenants; and

(b) if required to do so, produce evidence of identity and authority.

Appeals

A landlord on whom a notice of works in default has been served may appeal to the First-tier Tribunal against the decision of the Council to take that action. An appeal may be brought on the grounds that all reasonable steps had been taken to comply with the remedial notice, or reasonable progress had been made towards compliance, when the Council gave notice of carrying out works in default. An appeal against works in default must be made within 28 days, beginning with the day on which the notice is served. If a landlord appeals the remedial notice is suspended until the appeal is finally determined or withdrawn.

The tribunal may confirm, quash or vary the decision of the authority. If there is no appeal, costs become payable after 21 days.

Recovery of Costs

The Council may recover costs reasonably incurred by them in taking action. A demand for recovery of costs must be served on the landlord seeking recovery. The Landlord can also appeal the costs, but must do so within 21 days of the date of eth recovery notice.

Urgent Remedial Action

Where the inspection and testing report indicates that urgent remedial action is required, and the Council is satisfied that on the balance of probabilities the landlord is in breach of the duty to undertake the required remedial or investigative work in relation to those residential premises within the period specified in the report, the Council may, (with the consent of the tenant(s)), arrange for an authorised person to take the urgent remedial action. The Council must give tenants at least 48 hours’ notice of the intended works.

The power to arrange remedial action may be exercised at any time following the service of a notice on the landlord and all of the occupiers within 7 days, beginning with the day on which the urgent remedial work commence.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

**Definitions**

“**specified tenancy**” means a tenancyof residential premises which -

1. grants one or more persons the right to occupy all or part of the premises as their only or main residence;
2. provides for payment of rent (whether or not a market rent); and
3. is not a tenancy of a description specified in Schedule 1 to the Regulations.

“**qualified person**” means a person competent to undertake the inspection and testing required under regulation 3(1) and any further investigative or remedial work in accordance with the electrical safety standards.

“**urgent remedial action**” means such action identified in a report under regulation 3(3) as is immediately necessary in order to remove the danger present and risk of injury.

“**electrical safety standards**” means the standards for electrical installations in the eighteenth edition of the Wiring Regulations, published by the Institution of Engineering and Technology and the British Standards Institution as BS 7671: 2018.

“**electrical installation**” has the meaning given in regulation 2(1) of the Building Regulations 2010.

**Excluded Tenancies:**

1. A tenancy where the landlord is a private registered provider of social housing.
2. A tenancy under the terms of which the occupier shares any accommodation with the landlord or a member of the landlord’s family.
3. A tenancy that (a) is a long lease; or (b) grants a right of occupation for a term of 7 years or more.
4. Student halls of residence.
5. A tenancy that grants a right of occupation in a hostel or refuge.
6. A tenancy that grants a right of occupation in a care home.
7. A tenancy that grants a right of occupation in a hospital or hospice.
8. A tenancy that grants a right of occupation of other accommodation relating to healthcare provision.

The Energy Efficiency (private rented property) (England and Wales) Regulations 2015 – Policy for issuing civil penalties

Introduction

Section 38 of The Energy Efficiency (Private Rented Property) (England and Wales)

Regulations 2015 enables the Council as the Enforcement Authority the power to

issue a financial penalty if they are satisfied that there is or has been in the 18

months preceding the date of service of the penalty notice a breach of one of more

of the following:

* Prohibition on letting sub-standard property (Regulation 23)
* Providing false or misleading information on the Private Rented Sector (PRS) Exemption Register (Regulation 36(2)
* Failure to comply with a compliance notice Regulation 37 (4)(a)

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 section 40 specifies the maximum financial penalty for each breach in relation to domestic private rented property.

|  |  |
| --- | --- |
| Renting out a non-compliant property for less than 3 months | £2,000 |
| Renting out a non-compliant property for 3 months or more | £4,000 |
| Providing false or misleading information on the PRS Exemption Register | £1,000 |
| Failure to comply with a compliance notice | £2,000 |

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 section 41 specifies the maximum financial penalty for each breach in relation to non-domestic private rented property.

|  |  |
| --- | --- |
| Renting out a non-compliant property forless than 3 months | Whichever is the greater of £5,000 and 10% of the rateable value of the Property The financial penalty must not exceed £50,000,  |
| Renting out a non compliant property for 3 months or more | Whichever is the greater of £10,000 and 20% of the rateable value of the Property The financial penalty must not exceed £150,000  |
| Providing false or misleading informationon the PRS ExemptionRegister | £5,000  |
| Failure to comply with a compliance notice | £2,000 |

The penalty amounts apply per property and per breach of the Regulations and the total of the financial penalties imposed must be no more than £5,000.

The Council is also entitled to impose a publication penalty on the offender in addition to the financial penalty imposed in all cases related to domestic properties.

The following matrix will be used as a guide to determine the appropriate penalty

|  |  |  |  |
| --- | --- | --- | --- |
|  | Low Culpability | High Culpability | Notes |
| Low Harm | 25% | 50% | % = Proportion of Maximum Penalty |
| High Harm | 50% | 100% |

Factors Affecting Culpability:

**High**: Landlord has a previous history of non-compliance with regulatory requirements and/or landlord has failed to comply with requests to comply with these regulations. Knowingly or recklessly providing incorrect information in relation to exemptions to these regulations.

**Low:** First Offence under these regulations, no previous history of noncompliance with housing related regulatory requirement. Complex issues partially out of control of the landlord have led to non-compliance.

Factors Affecting Harm

**High:** Very low EPC score. Vulnerable tenants occupying property for an extended period of time since non-compliance.

**Low:** No vulnerable tenants, higher EPC score close to minimum accepted EPC rating.

Aggravating and Mitigating Factors:

Facts may come to light as part of the investigation for the offences which may warrant adjustments to be made to the Financial Penalty and the imposition of the publication penalty, or not. Details of these factors will be included in the Penalty Notice. In addition, information may be provided in representations from a landlord as part of his request to review the Penalty Notice. Officers will have regard to these factors and adjust the penalty to increase (up to the Maximum of £5000) or to reduce the penalty as they feel appropriate. The landlord will be served a Notice after the review with an explanation of any adjustment made.

The Council does not have a prescribed list of what constitutes an aggravating or mitigating factor for these purposes, and it is not bound to deem any facts or circumstances as aggravating or mitigating, What constitutes aggravating or mitigating factors is different in every case and each case shall be given due consideration.

Penalty amounts will be proposed by authorised Officers and checked and confirmed by a line manager within Housing Standards.

Glossary

**Category 1 hazards -**

Hazards with a HHSRS score of > 1,000. A dwelling with a Category 1hazard is considered to fail the minimum statutory standard for housing. If a property has a category 1 hazard, the local authority has a **duty** to take action. A property without a whole-house controllable heating system, or a house in multiple occupation with no safe means of escape from fire would both be examples of Category 1 hazards.

**Category 2 hazard –**

A less serious hazard with a HHSRS score of < 1,000. The local authority has a **power** but not a duty to take action. An example of a Category 2 hazard would be a property with a kitchen in poor repair.

**DFG (Disabled Facilities Grant) -**

A DFG is a means-tested grant for people with a permanent disability of any sort – including physical and learning disabilities, sensory impairments and mental illness. A DFG will enable applicants to make changes to enable them to continue living at home and remain as independent as possible.

**EPC (Energy Performance Certificate) -**

An Energy Performance Certificates **p**resents the energy efficiency of domestic properties on a scale of A (most efficient) to G (least efficient)

**Fuel Poverty -**

The original definition of fuel poverty states that a household is in fuelpoverty if it needs to spend more than 10% of their income on fuel to maintain an adequate level of warmth (10% definition). The new definition now adopted by government is that a household is said to be in fuel poverty if they have fuel costs that are above average and were they tospend that amount they would be left with a residual income below theofficial poverty line (Low Income High Costs definition).

**HHSRS** (Housing Health and Safety Rating System) -

A risk assessment tool to help local authorities identify and protectagainst potential risks and hazards to occupants health and safety from deficiencies in a property, covering 29 categories of hazards.

HMO (Houses in Multiple Occupation) -

An entire house or flat which is let to 3 or more tenants who form 2 ormore households and who share a kitchen, bathroom or toilet**.**

OR

A house which has been converted entirely into bedsits or other non self-contained accommodation and which is let to 3 or more tenants who formtwo or more households and who share kitchen, bathroom or toilet facilities.

OR

A converted house which contains one or more flats which are not whollyself-contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by 3 or more tenants who form two ormore households.

OR

A building which is converted entirely into self-contained flats if theconversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

In order to qualify as an HMO the property must be used as the tenants’ only ormain residence and should be used solely or mainly to house tenants.

Properties let to students and migrant workers will be treated as their onlyor main residence and the same will apply to properties which are used as domestic refuges.

**Housing Stock Modelling -**

A desktop exercise providing local authorities with estimates of key housing and energy variables based on statistical models.

**Mandatory Licensed House in multiple occupation (HMO) -**

An HMO will require a licence if it is:

* a property occupied by five or more people forming two or more separate households, or
* a purpose-built flat in a block of up to two flats and occupied as an HMO by five or more people

**Private rented sector –**

Property owned by a landlord and leased to a tenant. The landlord, in this case, could be an individual, a property company or an institutional investor.

**Private sector housing –**

Housing not owned by the local authority or a housing association

SAP (Standard Assessment Procedure) –

Method system for measurement of energy rating of residential buildings.

**Simple SAP -**

An estimate of a residential dwelling’s likely SAP score, it is not based onthe full required range of data for a SAP calculation or a reduced data SAP calculation (RDSAP), it should only ever be considered an estimate of the SAP score, and used as a guide.