



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Housing Civil Penalties Policy

2025

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1. Introduction

This Housing Civil Penalties Policy sets out how Cherwell District Council (“the Council”) will determine and issue “civil” or “financial” penalties for relevant housing offences under the following legislation:

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

This policy sets out how the Council sets the level of a civil penalty in each case where it has been determined that the imposition of a civil penalty is the most appropriate course of action. The decision to proceed with a civil penalty, often as an alternative to prosecution proceedings, is undertaken in accordance with the Council's Housing Standards Enforcement Policy, which itself has regard to the Council's overarching Enforcement Policy. Therefore, although this is a standalone policy it should be read in conjunction with those other policies, as well as any relevant statutory guidance.

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

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

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

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

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

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

2. Civil penalties under the Housing and Planning Act 2016 and Housing Act 2004

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

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

In addition, Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 provides local authorities with the power to impose a civil penalty in respect of breaches of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. These regulations are enacted under section 122 of the Housing and Planning Act 2016.

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

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

2.1 Statutory guidance

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

Paragraph 3.5 of the statutory guidance states that ‘The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord’s previous record of offending’. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

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

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

2.2 Civil penalties matrix

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

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

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide an indicative 'starting level' under the various offence categories, with the final level of the civil penalty adjusted in each case, taking into account aggravating and mitigating factors the Council deems significant including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants.

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

Step 1 – Officers will consider the seriousness of the relevant housing offence to identify a starting level of the penalty.

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

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

Step 4 – Consider if any of the Discounts, as set out below, apply, and hence decrease the penalty accordingly.

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

To reflect the seriousness of the offence(s) in question, the presence of one or more mitigating factors will rarely result in the penalty being decreased in excess of a total of £5000. In exceptional circumstances, officers may determine that the presence of one or more mitigating factors justify a decrease in the penalty in excess of £5000. The presence of numerous mitigating factors will not automatically be considered as exceptional circumstances.

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

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

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

| Seriousness of offence | Starting level [£] |
|-------------------------------|---------------------------|
| Mild | 2500 |
| Moderate | 7500 |
| Serious | 12500 |
| Very Serious | 17500 |
| Severe | 22500 |
| Very Severe | 27500 |
| Extreme | 30000 |

2.3 Process for imposing a civil penalty

Before imposing a financial penalty on a person, the Council will give the person a Notice of Intent. This notice will include the reason(s) for imposing the penalty and provide details of how to make written representations.

2.3.1 Notice of Intent and right to make written representations

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

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

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

- a) Decide whether to impose a financial penalty on the person, and
- b) If it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any written representations received in the appropriate time period, and will also consider the totality principle.

The Council is conscious that the level of any financial penalty must be fair and proportionate alongside the general principles of deterring a repeat of the breach and the removal of any gain because of the breach. The Council will use its powers to, as far as possible, make an assessment of an offender's assets and any income they receive (not just rental income) when determining an appropriate penalty. Representations against estimated incomes will only be accepted where the offender provides sufficient evidence to support the claims. The Council can make a full financial assessment of a recipients' assets and any income they receive, not just from rental income, when calculating an appropriate financial penalty. The Council will consider carrying out a full financial investigation where it considers that it is reasonable and proportionate to do so in the circumstances. Full financial investigations will normally only be considered for the more serious cases.

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

2.3.2 Final Notice and right of appeal

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

The Final Notice will set out and summarise:

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,

- d) The period for payment of the penalty,
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

If the offender does not agree with the service of the final notice they can appeal to the First Tier Tribunal, the details of which will be contained within the notice. This appeal must be made within the timescales as set out in the notice.

2.3.3 Payment of the civil penalty

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

2.3.4 Discounts

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

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

Illustrative example

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

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

3. Offences where a civil penalty of up to £30,000 may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

In the following sections, the general and specific factors relevant to each offence are summarised, along with the effects on the penalty of such considerations.

3.1 Failure to comply with an Improvement Notice – Severe matter

- Offence under section 30 of the Housing Act 2004
- Maximum Court fine following prosecution that can be levied for failure to comply with an Improvement Notice - Unlimited

An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

In some cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

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

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

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

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

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

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

Generic aggravating features/factors

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

- A previous history of non-compliance would justify an increased civil penalty. Non-exhaustive examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], receipt of financial penalties, rent repayment orders, works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- A failure to cooperate with a Council investigation. Non-exhaustive examples of failure to cooperate would include failing to comply with a s.16 Local Government (Miscellaneous Provisions) Act 1976 notice, failing to comply with a s.235 Housing Act 2004 notice, failing to provide a substantive response to a letter of alleged offence.
- Deliberate intent when committing the offence. Non-exhaustive examples of deliberate intent would include knowledge that the offence was occurring, committing the offence after relevant correspondence was sent by the Council.
- The number of residents placed at risk
- Offending over an extended period of time i.e. 6 months or longer
- Whether any vulnerable residents were in occupation at the time of the offence. Non-exhaustive examples of vulnerable residents include young adults and children, persons vulnerable by virtue of age, persons vulnerable by virtue of disability or sensory impairment, persons with a drug or alcohol addiction, victims of domestic abuse, children in care or otherwise vulnerable by virtue of age, people with complex health conditions, people who do not speak English as their first language, victims of trafficking or sexual exploitation, refugees, asylum seekers

3.2 Failure to license a Mandatory HMO – Very Serious matter

- Offence under section 72(1) of the Housing Act 2004
- Maximum Court fine following prosecution that can be levied for failure to license an HMO under Part 2 of the Act – Unlimited

Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority. HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

The Council would view the offence of failing to license an HMO as a significant failing. Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

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

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

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

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

Aggravating features/factors specific to failure to license offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty

- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

Generic aggravating features/factors

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

3.3 Failure to comply with an Overcrowding Notice – Very Serious matter

- Offence under section 139 of the Housing Act 2004
- Maximum Court fine following prosecution that can be levied for failure to comply with an Overcrowding Notice – Unlimited

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. The notice specifies, on a room-by-room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

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

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

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

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

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

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

- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty

Generic aggravating features/factors

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

3.4 Failure to comply with a Banning Order – Extreme matter

- Offence under section 21 of the Housing and Planning Act 2016
- Maximum Court fine that can be levied for failure to comply with a Banning Order following prosecution – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.

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

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

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the extreme severity of the offence.

3.5 Failure to comply with HMO management regulations (various seriousness)

- Offence under section 234(3) of the Housing Act 2004
- Maximum Court fine following prosecution that can be levied for failure to comply with each individual regulation – Unlimited

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing HMOs as defined by Section 254 of the Housing Act 2004, in respect of:

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]

- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 of the Housing Act 2004, in respect of:

- Providing information to occupiers [regulation 4]
- Taking safety measures, including fire safety measures [regulation 5]
- Maintaining the water supply and drainage [regulation 6]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [regulation 7]
- Maintaining common parts [regulation 8]
- Maintaining living accommodation [regulation 9]
- Providing sufficient waste disposal facilities [regulation 10]

It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.

3.5.1 Mild matter – Duty of manager to provide information to occupier

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to provide information to occupier as a **Mild** matter, attracting a financial penalty with a starting level of £2500.

Under the Council's policy the civil penalty for a landlord controlling/owning /managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £2000, attracting a civil penalty of £500.

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

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

Aggravating features/factors specific to Management Regulation breach offences

- The number and/or nature and/or extent of the management regulation breach(es) and/or the deficiencies within each regulation

Generic aggravating features/factors

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

3.5.2 Very serious matter – Duty of manager to take safety measures

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to take safety measures as a **Very Serious** matter, attracting a financial penalty with a starting level of £17500.

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

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

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

Aggravating features/factors specific to Management Regulation breach offences

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

Generic aggravating features/factors

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

3.5.3 Serious matter – Duty of manager to maintain water supply and drainage

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the water supply and drainage as a **Serious** matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/ managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

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

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

Aggravating features/factors specific to Management Regulation breach offences

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

Generic aggravating features/factors

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

3.5.4 Serious matter – Duty of manager to supply and maintain gas and electricity

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the gas and electricity supply as a **Serious** matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/ managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

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

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

Aggravating features/factors specific to Management Regulation breach offences

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

Generic aggravating features/factors

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

3.5.5 Moderate matter – Duty of manager to maintain common parts, fixtures, fittings and appliances

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the common parts, fixture, fittings and appliances as a **Moderate** matter, attracting a financial penalty with a starting level of £7500.

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

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

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

Aggravating features/factors specific to Management Regulation breach offences

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

Generic aggravating features/factors

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

3.5.6 Moderate matter – Duty of manager to maintain living accommodation

The Council would view the seriousness of the offence of failing to comply with the duty of the manager to maintain the living accommodation as a **Moderate** matter, attracting a financial penalty with a starting level of £7500.

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

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

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

Aggravating features/factors specific to Management Regulation breach offences

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

Generic aggravating features/factors

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

3.5.7 Moderate matter – Duty to provide waste disposal facilities

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

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

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

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

Aggravating features/factors specific to Management Regulation breach offences

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

Generic aggravating features/factors

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

3.6 Breach of HMO licence conditions (various seriousness)

- Offence under section 72(3) of the Housing Act 2004
- Maximum Court fine following prosecution that can be levied for failure to comply with a licence condition - unlimited

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

It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

3.6.1 Mild matter – failure to comply with licence conditions related to:

- Signage or the provision of information for tenants
- Provision of written terms of occupancy for tenants
- Procedures regarding complaints
- Procedures regarding vetting of incoming tenants
- Compliance with deposit protection legislation
- The recording and provision of information regarding rent payments
- Procedures relating to rent collection
- The provision of information regarding occupancy of the property
- The provision of information regarding change of managers or licence holder details
- The provision of information related to changes in the property
- Requirements relating to the sale of the property
- Attending training courses
- Requirements to hold insurance
- The provision of insurance documentation
- The provision of or obtaining of suitable references
- The provision of keys and alarm codes
- Security provisions for access to the property
- The provision of suitable means for occupiers to regulate temperature

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

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

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

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

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

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

3.6.2 Moderate matter – failure to comply with licence conditions related to:

- Procedures and actions regarding Inspections
- Procedures regarding Repair issues
- Maintenance and use of common parts and living accommodation (including gardens, outbuildings and property exterior)
- Safeguarding occupiers and minimising disruption during works
- The provision of information regarding alterations and construction works
- Procedures regarding emergency issues
- Waste and waste receptacles, pests, minor repairs, alterations or decoration.
- Giving written notice prior to entry
- Allowing access for inspections
- Minimising risk of water contamination
- The compliance of furnishings or furniture with fire safety regulations

- The provision and maintenance of amenities and facilities

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

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

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

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

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

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

3.6.3 Serious matter – failure to comply with licence conditions related to:

- The provision of documentation regarding energy performance certificates, fire detection and prevention, emergency lighting, carbon monoxide detection, fire risk assessments, gas installations, electric installations and appliances
- Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status
- Procedures and actions regarding ASB

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a **Serious** matter, attracting a financial penalty with a starting level of £12500.

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

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

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

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

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

3.6.4 Very serious matter – failure to comply with licence conditions related to:

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

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a **Very Serious** matter, attracting a financial penalty with a starting level of £17500.

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

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

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or

aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

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

3.6.5 Severe matters – failure to comply with licence conditions related to:

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

The Council would view the seriousness of the offence of failing to comply with licence conditions relating to the bullet points directly above as a **Severe** matter, attracting a financial penalty with a starting level of £22500.

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

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

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

Aggravating features/factors specific to Licence Condition breach offences

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

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

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

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

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

Non-statutory guidance¹ issued in relation to these Regulations states that Local Authorities may wish to consult guidance produced by the Ministry of Housing, Communities and Local Government (MHCLG) in relation to civil (financial) penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016). This policy fulfils the requirement for enforcement authorities to develop and document their own policy on determining the appropriate level of financial penalties to impose.

It is important that a private landlord complies with all aspects of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ("the Electrical Safety Regulations"), however, the Council recognises that a failure to comply with certain aspects of Regulation 3 is likely to have a much bigger impact on the safety and comfort of residents than others.

3.7.1 Mild matter – failure to comply with (3)(b), 3(d) or 3(e) of Regulation 3 of the Electrical Safety Regulations

The Council would view the seriousness of the offence of failing to comply with (3)(b), 3(d) or 3(e) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a **Mild** matter, attracting a financial penalty with a starting level of £2500.

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

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

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of

¹ Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government. Guide for local authorities: electrical safety standards in the private rented sector. Updated 2021 <https://www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector#financial-penalties>

property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £2000, attracting a civil penalty of £4500.

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work

Generic aggravating features/factors

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

3.7.2 Serious matter – failure to comply with (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b) or (5)(c) of Regulation 3 of the Electrical Safety Regulations

The Council would view the seriousness of the offence of failing to comply with (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b) or (5)(c) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a **Serious** matter, attracting a financial penalty with a starting level of £12500.

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

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

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

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work

Generic aggravating features/factors

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

3.7.3 Very Serious matter – failure to comply with (4), (5a) or (6) of Regulation 3 of the Electrical Safety Regulations

The Council would view the seriousness of the offence of failing to comply with (4), (5a) or (6) of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as a **Very Serious** matter, attracting a financial penalty with a starting level of £17500.

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

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

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

Aggravating features/factors specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work

Generic aggravating features/factors

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

4. Civil penalties under the Tenant Fees Act 2019

- Offences under sections 1 and 2 of the Tenant Fees Act 2019
- Maximum Court fine following prosecution that can be levied for repeated breaches – Unlimited

The Tenant Fees Act 2019 (“TFA 2019”) prohibits landlords and letting agents from charging any fees in respect of private rented sector tenancies which are not “permitted payments.” If a payment is not of a type specifically listed in Schedule 1 of the TFA 2019, it is prohibited by default.

Oxfordshire County Council (Trading Standards) have the primary duty to enforce the TFA 2019. As a District Council, Cherwell has the power to enforce sections 1 and 2 of the Act (prohibitions applying to landlords and letting agents) and schedule 2 to the Act (unlawfully retaining holding deposits). The following enforcement actions can be taken by the Council:

| Breach | Penalty for first breach | Penalty for further breach within 5 years |
|--------------------------------------|---------------------------|---|
| Charging prohibited payments | Civil penalty up to £5000 | Civil penalty up to £30000 (as an alternative to prosecution) |
| Unlawfully retaining holding deposit | Civil penalty up to £5000 | Civil penalty up to £5000 |

Statutory guidance² has been issued in relation to determining the level of penalty under this Act, and Local Authorities must have regard to this when exercising its functions in respect of financial penalties for TFA 2019 breaches. This policy fulfils the requirement for enforcement authorities to develop and publish their own policy on determining the appropriate level of financial penalties to impose. Penalties up to £30,000 will be calculated in accordance with section 2 of this policy, and penalties up to £5,000 will be calculated in accordance with section 5 of this policy.

4.1.1 Serious matter – Charging prohibited payments (first breach)

The Council would view the seriousness of a first offence of charging prohibited payments as a **Serious** matter under section 5 of this policy, attracting a financial penalty with a starting level of £3000.

Under the Council’s policy the civil penalty for a landlord controlling/owning/ managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £1000, attracting a civil penalty of £2000.

² Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government. Tenant Fees Act 2019 Statutory Guidance for Enforcement Authorities. Updated 2020. <https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £3000.

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £1000, attracting a civil penalty of £4000.

4.1.2 Mild matter – Unlawfully retaining holding deposit (first breach)

The Council would view the seriousness of a first offence of unlawfully retaining holding deposit as a **Mild** matter under section 5 of this policy, attracting a financial penalty with a starting level of £1000.

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

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £1000.

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £1000, attracting a civil penalty of £2000.

4.1.3 Moderate matter – Charging prohibited payments (further breach within 5 years)

The Council would view the seriousness of a further offence of charging prohibited payments within 5 years as a **Moderate** matter under section 2.2 of this policy, attracting a financial penalty with a starting level of £7500.

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

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

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

4.1.4 Very Serious matter – Unlawfully retaining holding deposit (further breach within 5 years)

The Council would view the seriousness of a further offence of unlawfully retaining holding deposit within 5 years as a **Very Serious** matter under section 5 of this policy, attracting a financial penalty with a starting level of £4000.

Under the Council's policy the civil penalty for a landlord controlling/owning/ managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £1000, attracting a civil penalty of £3000.

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £4000.

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £1000, attracting a civil penalty of £5000.

Relevant and aggravating features/factors specific to Tenant Fees Act breach offences

- Failure to pay tenant back or the amount paid of the excess fees charged
- Other relevant factors/features as set out in the statutory guidance³

Generic aggravating features/factors

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

³ Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government. Tenant Fees Act 2019 Statutory Guidance for Enforcement Authorities. Updated 2020. <https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

5. Determining the amount of financial penalty for offences where the maximum penalty is £5,000

In cases where there is no specific statutory stipulations or guidance issued in relation to determining the level of a penalty, the Council will use the principles set out in sections 2 and 3 of this Policy and the starting points as set out in the table below to determine the appropriate level of financial penalty.

Starting point and adjustments for penalties up to £5000

For offences where the maximum civil penalty level is capped at £5000, the starting point for penalties will be as set out in the table below:

| Seriousness of offence | Starting level [£] |
|------------------------|--------------------|
| Mild | 1000 |
| Moderate | 2000 |
| Serious | 3000 |
| Very Serious | 4000 |
| Severe | 5000 |

To ensure that any penalty imposed is proportionate to the offending behaviour the presence of one or more aggravating factors will rarely result in the penalty being increased in excess of a total of £1000. In exceptional circumstances, officers may determine that the presence of one or more aggravating factors justify an increase in the penalty in excess of £1000. The presence of numerous aggravating factors will not automatically be considered as exceptional circumstances.

The Council may, exceptionally, including for the reason given above, increase the penalty by greater than £1000 on account of aggravating factors or, again exceptionally, decrease it by greater than £1000 on account of mitigating factors. In order to meet the objectives of this policy, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty by greater than £1000 on account of aggravating or mitigating factors in exceptional circumstances only (excluding any Discounts as set out in section 2). The Council will consider on a case-by-case basis whether any such circumstances exist.

Unless otherwise stated, where penalties are issued in respect of repeated breaches by the same landlord, the presumptive starting point for penalties will be the maximum £5,000.

6. Offences where a civil penalty of up to £5,000 may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

In the following sections, the general and specific factors relevant to each offence are summarised, along with the effects on the penalty of such considerations.

6.1 Financial penalties under the Smoke and Carbon Monoxide Alarm Regulations

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022, enable Local Authorities to impose a financial penalty of up to £5,000 for the breach of:

- Regulation 6(1) duty of a relevant landlord to comply with a remedial notice.

This policy fulfils the requirement under Regulation 13 for the authority to develop and publish a statement of principles for determining the appropriate level of financial penalties issued under these regulations.

The Council would view the seriousness of a first breach as **Very Serious** and attracting a financial penalty with a starting level of £4000.

Under the Council's policy the civil penalty for a landlord controlling/owning/ managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £1000, attracting a civil penalty of £3000.

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £4000.

Under the Council's policy, the civil penalty for a landlord controlling/owning/ managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £1000, attracting a civil penalty of £5000.

The Council views subsequent breaches of these regulations by the same landlord to be **Severe** and a civil penalty of £5000 will be applied in all cases.

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

- The number of alarms not working or missing

Generic aggravating features/factors

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

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

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 enable Local Authorities to serve a financial penalty of up to £5,000 for failure to belong to a Redress Scheme. As by definition anyone engaging in lettings agency and property management work is a housing professional, and in accordance with the 2015 non-statutory guidance⁴, the Council would view the seriousness of a breach of this Order as **Severe** and a civil penalty of £5000 will be applied in all cases.

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

An energy performance certificate (EPC) gives the property an energy efficiency rating, where “A” rated properties are the most energy efficient and “G” rated are the least efficient. An EPC is valid for 10 years and must be provided by the owner of a property when it is rented or sold. An EPC contains information about the type of heating and insulation provision and typical energy costs, and recommendations about energy efficiency improvements.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“the MEES Regulations”) make it unlawful to rent out a domestic property if it has an EPC rating of F or G, unless a valid exemption has been registered on the PRS Exemptions Register.

The MEES Regulations enable the Council to investigate potential breaches of the minimum energy efficiency standards through issuing Compliance Notices to require information. If, following its investigations the Council is satisfied that at any time in the preceding 18 months a landlord has breached the MEES Regulations, the Council may impose a financial penalty not exceeding £5000, and/or may impose a publication penalty in respect of those breaches.

6.3.1 Moderate – Letting a sub-standard property for less than 3 months – Breach of Regulation 23 of the MEES Regulations

The Council would view the seriousness of the offence of letting a property with an F or G EPC rating for less than 3 months as a **Moderate** matter, attracting a financial penalty with a starting level of £2000.

⁴ Department for Communities and Local Government. Improving the Private Rented Sector and Tackling Bad Practice. 2015
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/412921/Improving_private_rented_sector.pdf

6.3.2 Moderate matter – Letting a sub-standard property for more than 3 months – Breach of Regulation 23 of the MEES Regulations

The Council would view the seriousness of the offence of letting a property with an F or G EPC rating for more than 3 months as a **Very Serious** matter, attracting a financial penalty with a starting level of £4000.

6.3.3 Mild matter – Registering false or misleading information on the PRS exemptions register – Regulation 36(2) of the MEES Regulations

The Council would view the seriousness of the offence of registering false or misleading information on the PRS exemptions register as a **Mild** matter, attracting a financial penalty with a starting level of £1000.

6.3.4 Moderate matter – Failure to comply with a Compliance Notice – Regulation 37(4)(a) of the MEES Regulations

The Council would view the seriousness of the offence of failing to provide information to the Council demanded by a compliance notice as a **Moderate** matter, attracting a financial penalty with a starting level of £2000.

Financial Penalty Totality

In cases where the Council issues a financial penalty for a breach of regulation 23 (irrespective of duration) and also either a penalty for registering false or misleading information, and/or failure to comply with a compliance notice, the total penalty for those breaches may not exceed £5000.

6.3.5 Publication Penalties for breaches of the MEES Regulations

A “publication penalty” means publication, for a minimum period of 12 months, or such longer period as the Council may decide, on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the Council decides:

- Where the landlord is not an individual, the landlord’s name
- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

When the Council imposes a publication penalty, it will seek to include all the above permitted information in all cases.

The Council will impose publication penalties in addition to financial penalties in the following instances:

First breach of the MEES Regulations

Where a landlord is controlling/owning/managing one or two dwellings, including no more than one HMO, a publication penalty will not be imposed in addition to the

financial penalty for first offences, unless there are additional relevant or aggravating factors [see below].

Where a landlord is controlling/owning/managing a significant or large property portfolio, being three or more dwellings, and/or two or more HMOs, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), a publication penalty for a period of one year will be imposed in addition to the financial penalty, unless there are additional relevant or aggravating factors [see below].

Subsequent breaches of the MEES Regulations

Where a landlord is controlling/owning/managing one or two dwellings, including no more than one HMO, a publication penalty for a period of two years will be imposed in addition to the financial penalty, unless there are additional relevant or aggravating factors [see below].

Where a landlord is controlling/owning/managing a significant or large property portfolio, being three or more dwellings, and/or two or more HMOs, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), a publication penalty will be imposed in addition to the financial penalty. The duration will equal whichever is greater of 3 years or one-thousandth of the penalty total (e.g. a penalty of £5000 would equal a publication penalty of 5 years), unless there are additional relevant or aggravating factors [see below].

Aggravating features/factors specific to MEES Regulations breaches

- Letting without an EPC
- Using an unqualified person to carry out an EPC assessment
- Multiple breaches of the regulations

Generic aggravating features/factors

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