

CABINET MEMBER DECISION RECORD TEMPLATE

Decision Ref. No:
Responsible Officer: Kelly Ansell, Head of Housing and Community Enforcement
Subject: Private Sector Housing Enforcement Statement of Principles for Determining Financial Penalties
Decision taken: To adopt the Statement of Principles for Determining Financial Penalties set out at Appendix A to this Decision Record in respect of Private Sector Housing Enforcement activity, specifically relating to enforcement of: <ul style="list-style-type: none"> • The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 • The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014
Reasons for the decision: The Council is required to prepare and publish a Statement of Principles to be followed when determining financial penalties in respect of the above Regulations. Where a financial penalty is charged the Council must have regard to the Statement of Principles published and in place at the time when the breach in question occurred.
Call-in and Urgency: This decision is subject to the Council's call in procedures.
Background: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 give councils the power to impose a financial penalty for non compliance. The Council needs to adopt a Statement of Principles if it wishes to use these powers. The Council has an adopted Enforcement Policy in respect of Private Sector Housing Enforcement. This Statement of Principles will be appended to the Enforcement Policy. A summary of the proposed approach is set out below <u>The Smoke and Carbon Monoxide Alarm (England) Regulations 2015</u> These Regulations place a duty on landlords to ensure that; <ul style="list-style-type: none"> - a smoke alarm is installed on each storey of premises where there is living accommodation - a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015;

- checks are made by the landlord or someone acting on his behalf that the alarm (s) is/are in proper working order on the day the tenancy starts.

Where the Council has reasonable grounds to believe that the requirements set out in these Regulations have not been met by a landlord there is a duty to serve a 'Remedial Notice'. Failure to comply imposes a further duty upon the Council to arrange remedial action and a power to require payment of a penalty charge. The amount of the penalty charge must not exceed £5,000.

It is proposed that in these circumstances, the charges imposed are follows:

The standard penalty charge for breach of duty under regulation 6(1), - compliance with a Remedial Notice will be set initially at £1,500 for a first offence, but this will be reduced by 50% if paid within 14 days of service of the Penalty Charge Notice (PCN).

Should a landlord repeatedly not comply with Remedial Notices the penalty charge will initially be £3,000 for a second occurrence, and £5,000 (max) for any additional occurrences. There will be no discounts offered for early payment for repeat occurrences in these circumstances.

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

From October 2014 it has been a legal requirement for all those engaged in property management work to belong to an official government approved redress scheme. The redress scheme is designed to ensure that tenants and leaseholders have a straightforward route to holding their agents to account. The Order imposes a duty on the Council as the enforcement authority to enforce against non compliance.

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

It is proposed that in these circumstances, the charges imposed are follows:

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

Appeal Process

In both circumstances above the decision to issue a financial penalty will be subject to review and appeal. In the first instance representations must be made in writing within defined timescales. Reviews will be conducted by a senior officer not directly involved in the original decision. The reviewing officer may make a decision to reduce the charge applied in which case a revised notice will be served. Should the landlord or agent wish to further appeal they may do so on specified grounds to the First-tier Tribunal.

Options - and reasons for rejection:

It is a requirement of the legislation that a Statement of Principles is made in order to enable the Council as the Enforcing Authority to impose financial penalties in respect of

these Regulations. In order to fully and effectively meet the Council's duty, it is therefore a requirement that this Statement is adopted.

The Council is able to set its own financial penalties in respect of The Smoke and Carbon Monoxide Alarm Regulations. The recommended penalties in this report have been reached taking in to account the investigative costs, officer time, administration and any remedial works arranged and carried out by the Council's contractors. Benchmarking has also taken place to determine the penalty levels being imposed throughout Dorset to ensure consistency. In each case, the reviewing officer is able to revise the level of financial penalty according to the individual circumstances.

Consultations undertaken:

Consultation has taken place with the Housing Authorities across Dorset in order to benchmark penalty levels and ensure a consistency of approach.

Finance/Resource Implications:

The costs incurred as a result of this enforcement action and associated recovery work will be met through the financial penalty charged. The level of penalty applied has been set at an appropriate level taking account of these costs, therefore there are no adverse financial implications for the Council. *W*

Name: *A RICHENS*
Date: *6 April 2016*

Signature: (of Chief Finance Officer)

Legal implications:

Bournemouth Borough Council is under a duty to take enforcement action by way of issuing a monetary penalty in relation to a person who engages in letting agency work or property management work and is not a member of a Redress Scheme. This duty is set out in The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014. Bournemouth Borough Council has the power to issue a monetary penalty in relation to a landlord failing to ensure that there is a smoke alarm installed in each storey of premises where there is living accommodation and carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance. If the Council wishes to invoke this power then it is a legal requirement that the Council prepares and publishes a statement of principles which it proposes to following in determining the amount of a penalty. This is set out in the Smoke and Carbon Monoxide Alarm (England) Regulations 2015/1693. The proposed Statement of Principles set out at Appendix A ensures that the Council can meet its legal obligations, and use its powers in a lawful way.

Name: *Tanya Connor*
Date: *4/4/16*

Signature: (of Monitoring Officer)

Risk assessment:

Risks are associated with legal challenge and reputational damage which is mitigated by legal advice throughout the development of the Statement of Principles and associated procedures. Legal advice will be sought in the case of review request or legal challenge through appeal. The residual risk is therefore low.

Name: *Wendy Arden*
Date: *5/5/16*

Signature: (of Officer completing assessment)

Impact Assessments:

Environmental

Equality and Diversity

Information for/not for publication:
for publication

Background papers:

- Housing Act 2004
- The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- Risk Assessment 15.1.16
- Environmental Impact Assessment
- Equality Impact Needs Assessment

Any conflict of interest declared by a Cabinet Member who is consulted by the Member taking the decision	Name of Cabinet Member	Nature of interest	Details of any dispensation granted by the Monitoring Officer
/No* (*Delete as appropriate)			

Decision taken by:

Councillor Robert Lawton

Housing Cabinet Portfolio Holder

Signed:

Date of decision: 5-5-16

Date of publication of record of decision:

Date decision effective - that is 5 working days after the date of publication of the record of decision unless the decision is called-in for consideration by the relevant Overview and Scrutiny Panel:

20 May 2016

-insert
date-