

## Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

### Penalty Charge

Where Stafford Borough Council is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme under:

- Article 3 (requirement to belong to a redress scheme: lettings agency work) or
- Article 5 (requirement to belong to a redress scheme: property management work),

the authority may by notice require the person to pay the authority a monetary penalty (a “monetary penalty”) of such amount as the authority may determine.

In determining the amount of a penalty charge the Council takes into account the following principles:

<b>General principles</b>
No penalty charge shall be issued above the statutory maximum of £5,000
No penalty charge shall be less than 20% of the starting value after all aggravating and mitigating factors are considered and after perpetrator income has been taken into account.
Mitigating factors will be considered based on evidence submitted by the landlord or their agent to the Housing Standards Team including any information provided following inspection and any representations that the landlord provides following service of a Notice of Intent to issue a Financial Penalty
In recovering the value of any financial penalty, The Council will consider the incomes, savings and assets of the perpetrator and where appropriate a payment plan considered.

Starting value of penalty charge <i>(note 1)</i>	£
1 <sup>st</sup> offence	1000
2nd subsequent offence by same person/company	2500
Subsequent offences by same person/company	4000
<b>Aggravating factors (use all that apply) <i>(note 2)</i></b>	
Acts or omissions demonstrating high culpability. <i>(note 4)</i>	500
Large housing portfolio <i>(note 5)</i>	500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 6)</i>	500
<b>Mitigating Factors (use all that apply) <i>(note 3)</i></b>	
Evidence of Low culpability <i>(note 7)</i>	-500
Rapid action taken to address failings <i>(note 8)</i>	-500

### Notes to accompany charging table

Notes 1-3 set out the overall process for determining the value of a given financial penalty. Notes 4-8 give detail on specific other issues.

### **Note 1 - Determining the starting value of a financial penalty**

The starting point for a financial penalty is based on the number of:

- Previous Final Notices of a Financial Penalty issued under these regulations issued to the same person or corporate entity for the same type of offence in the previous four years.

The Council will take into account any such financial penalties irrespective of the locality to which the offence relates.

### **Note 2 - Aggravating factors**

After the starting point as per note 1 has been determined any relevant aggravating factors are considered and where appropriate to do so, the given value is added to the starting point to provide the maximum level of financial penalty.

At this stage it is possible for the notional penalty to be above the statutory maximum, but once mitigation and income are considered, if the value is still above the statutory maximum it will be capped as per the “general principles”.

### **Note 3 - Mitigating factors**

After aggravating factors are considered and applied where appropriate, mitigating factors are considered and where there is sufficient and compelling evidence the relevant value will be discounted from the Financial Penalty.

In considering whether it is appropriate to include a mitigating factor, evidence shall be considered that has been gathered by the inspecting officer in the course of the investigation into the offence as well as any representations that have been provided following a Notice of Intent.

### **Note 4 - Acts or omissions demonstrating high culpability**

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

### **Note 5 - Large housing portfolio**

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

### **Note 6 Vulnerable persons**

This note applies where the occupant is considered vulnerable to harm or where significant harm has occurred as result of failure to comply with regulations.

- Vulnerable occupant and/or significant harm occurred as result of the failure to comply with the Regulations.

For the purposes of this factor a vulnerable person is defined as:

*A person who suffers, or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering due to age, disability or severe financial insecurity”*

This factor applies where an occupant is vulnerable and, due to the underlying failure to comply with the relevant legislation is placed at additional risk or harm compared with a non-vulnerable resident.

For purposes of this factor, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm as recorded in Housing Act 2004 Section 9 Operating Guidance for the Housing Health and Safety Rating System.

### **Note 7 - Low culpability**

This factor will apply where the perpetrator provides sufficient evidence that they only marginally fell short of their legal obligations, for instance:

- significant efforts were made to address the risk, breaches or offences, although they were inadequate to mitigate the underlying cause to issue the penalty;
- they have offered a reasonable defence for why they were unaware of the risk, breach or offence.
- Failings were minor and occurred as an isolated incident.

It will not be sufficient to claim not to have known of the legal requirement or deficiency that forms the underlying reason for the financial penalty in order to benefit from this factor.

It will also not apply where the underlying failure was due to the inaction of the perpetrator in properly managing rented properties, responding to complaints of poor standards, carrying out routine visits, instruct others to assist where necessary etc.

### **Note 8 - Rapid action take to remedy failings**

This factor will apply where, on notification of the offence, the perpetrator took rapid action to remedy the underlying failings.

In order to benefit from this factor, it is the responsibility of the perpetrator to provide sufficient evidence of compliance, for instance by providing details of membership to a statutory redress scheme.