

Solihull Metropolitan Borough Council
REGULATORY SERVICES ENFORCEMENT AND
PROSECUTION POLICY

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1. Overview

REGULATORY SERVICES ENFORCEMENT AND PROSECUTION POLICY

1. Introduction

- 1.1 The aim of Regulatory Services is to protect the people and the Borough of Solihull by seeking a living, working and trading environment that is healthy, safe and fair. Enforcement of regulatory control plays an essential role in the achievement of this aim.
- 1.2 The Regulatory Services Enforcement and Prosecution Policy is a statement of how the environmental health, licensing and trading standards functions, which make up Regulatory Services, aim to carry out their enforcement duties.
- 1.3 This over-arching policy is supported by the following documents which provide more detail in specific areas of work:
- (i) The Private Rented Sector (PRS) enforcement policy (Page 8)
 - (ii) The Product Safety Incident Management Plan (Appendix B) (Page 48)
- 1.4 This policy has been prepared having regard to:
- Legislative & Regulatory Reform Act 2006
 - Regulators' Code (2014)
 - Regulatory Enforcement and Sanctions Act 2008
 - The Crown Prosecution Service: Code for Crown Prosecutors
 - Code of Practice for Victims of Crime (October 2015)
 - Human Rights Act 1988
- 1.5 The effectiveness of legislation depends crucially on compliance by those it seeks to regulate. We recognise that most businesses want to comply with the law. We will, therefore, help businesses and others meet their legal obligations without causing unnecessary expense or hindrance. Those who deliberately, irresponsibly or recklessly fail to comply with the law will be met with firm action, including prosecution where appropriate.
- 1.6 In accordance with the Legislative & Regulatory Reform Act 2006 we are committed to carrying out enforcement work in a transparent, accountable, proportionate and consistent manner.
- 1.7 The policy applies to the enforcement of all food legislation i.e. food hygiene, food safety and feeding stuffs having due regard to current national inspection regimes and earned autonomy schemes.

2. Policy

- 2.1 Our policy includes the following principles of good enforcement:

2.1.1 Transparency

We will provide clearly stated information and advice on the rules that we apply and we will make this widely available. We will be open about how we set about our work, including any charges that we set in consultation with those who receive our services.

We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

2.1.2 Accountable

We believe that prevention is better than cure and that our role therefore involves actively working with our customers to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

2.1.3 Proportionality

We will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks. As far as the law allows, and as far as is practicable, we will take into account the circumstances of each case when considering action.

We will take particular care to work with individuals, small businesses, and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

2.1.4 Consistency

We will carry out our duties in a fair, equitable and consistent manner. Whilst our officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency. These include effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Office for Public Safety and Standards, the Chartered Institute of Environmental Health, the Institute of Licensing, and the Chartered Trading Standards Institute.

3. Procedures

3.1 Our enforcement procedures will include the following principles:

3.1.1 Where appropriate, and where required by or permitted by legislation, including the Protection of Freedoms Act, the Regulatory Services Team will give a minimum of 48 hours' notice prior to a routine inspection unless to do so would undermine the purpose of the visit. This means that where the giving of a notice might, for example, lead to additional work being done to hide non-compliance or criminality, temporary behaviour changes or evidence being removed, no notice will be given.

3.1.2 Advice from an officer will be put clearly and simply. It will be confirmed in writing, if requested, explaining why any remedial work is necessary and over what timescale. Advice will clearly distinguish legal requirements from best practice recommendations.

3.1.3 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health, safety, environmental protection or to prevent evidence being destroyed). Where prosecution is an option, the alleged offender is likely to be offered an interview carried out in accordance with the Police and Criminal Evidence Act 1984. This will give the alleged offender the opportunity to give their side of the story.

- 3.1.4 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.
- 3.1.5 Where there are rights of appeal against legal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

4. Human Rights

4.1 Our enforcement duties will recognise the spirit of the European Convention on Human Rights and we recognise the obligations placed on this authority by the Human Rights Act 1998. Of particular relevance to our activities are:

- Convention Rights and Freedoms
 - Article 6 – Right to a Fair Trial
 - Article 8 – Right to Respect for Private and Family Life
- First Protocol
 - Article 1 – Protection of Property

5. Conduct of Investigations and Sanctions

5.1 All investigations that we undertake will be carried out under the following legislation and in accordance with statutory powers and controls and any associated guidance or codes of practice, in so far as they relate to our authorisation:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998
- the Protection of Freedoms Act 2012 (Code of Practice for Powers of Entry and Description of Relevant Persons) Order 2015
- Data Protection Act 1998
- Regulatory Enforcement and Sanctions Act 2008
- Any other legislation which may be enforced

6. Liaison

6.1 The Teams within Regulatory Services will, where practicable, aim to coordinate their enforcement activity to maximise the effective enforcement and reduce the impact on individuals or businesses.

6.2 Where an enforcement issue involves one or more external authorities or agencies or extends beyond the geographical area administered by the Council, all other relevant bodies will be informed of the matter in an appropriate manner as soon as is practicable. Any enforcement activity undertaken by Regulatory Services in these circumstances will be coordinated with those bodies.

7. Interests of Service Customers

7.1 Our enforcement activity will, where practicable, be arranged to:

- take account of local circumstances.
- minimise any adverse effects, both on those individuals or businesses to which the activity is directed and those it may otherwise affect.

7.2 Levels of legal compliance and examples of good practice will be monitored where practicable and appropriate. This information may be used to direct enforcement activity and to scale the level of enforcement action.

8. Sharing of Information derived from enforcement activity

8.1 In some circumstances we have an obligation to share information obtained as a result of enforcement activity. We will ensure that any information we make available in these cases is accurate and appropriate to the purpose for which it is being sought. We will not share information where the purpose for doing so is unclear, is likely to be misused or used for commercial advantage.

9. Application of the Policy in relation to Offences

9.1 Our policy for enforcement action following the discovery of offences is based on the framework below.

10. Enforcement Options

10.1 The following general courses of action exist to deal with infringements. They can be regarded as an increasing level of response linked to the extent, seriousness and impact of non-compliance with the law in any particular case. However, it is at the officer's discretion which level action is commenced.

- No enforcement action/verbal advice.
- Indirect action – referral to other enforcement authority or agency for action as appropriate.
- Inspection report or letter identifying offence(s) - advisory in nature and may contain information to assist compliance.
- Written warning identifying offence(s) and advising of the consequences of continuation or repetition of non-compliance.
- Statutory compliance notice detailing offence(s) and consequences of failing to act.
- A review of a premises licence/club premises certificate under the Licensing Act 2003 or Gambling Act 2005.
- Community Protection Warning/Community Protection Notice.
- Public Space Protection Orders.
- Fixed Penalty Notice (FPN).
- Simple Caution. May be cited in a court of law.
- Prosecution in a Magistrates' or Crown Court.
- Financial (Civil) penalty.
- Injunctive proceedings in a Civil Court.
- Forfeiture proceedings.
- Restraint and confiscation proceedings.

10.2 Depending on specific provisions within legislation a number of additional legal actions may be available e.g. addition to the rogue landlords register.

11. Criteria for Courses of Enforcement Action

- 11.1 No enforcement action will be taken, or verbal advice only will be given when there is insufficient evidence to establish responsibility for an offence, or there are particular reasons why further action would be inappropriate.
- 11.2 Indirect action will normally be taken when it is appropriate to refer a matter to another local authority (in accordance with Home/Lead/Primary Authority Principles) or another agency with a shared enforcement role.
- 11.3 An inspection report or letter will be used in most circumstances. Their purpose will be to indicate and resolve minor or technical offences, which are capable of prompt rectification and are unlikely to be repeated.
- 11.4 Written warnings and statutory compliance notices normally apply where lower levels of action have been applied but have failed to resolve previous offences. They may also be used where more serious or repeated offences do not meet the criteria for instituting legal proceedings.
- 11.5 A simple caution may be offered as an alternative to prosecution only when all the criteria for prosecution are fulfilled and:
- there is sufficient evidence of an offender's guilt to give a realistic prospect of conviction;
 - the offender admits the offence;
 - the offender understands the significance of a caution and gives informed consent to being cautioned.
- 11.6 Where legislation provides a fixed penalty notice as an alternative to prosecution Solihull Council will consider this as a preferred means of disposal. Fixed penalty notices can be issued on a first offence, without a prior warning but only where it is considered by the issuing officer that a fixed penalty notice is likely to change the behaviour of the recipient. Failure to take the opportunity to pay a fixed penalty will result in the submission of a file for consideration for court action.
- 11.7 Prosecution or injunctive proceedings will be instituted in accordance with the policy which follows.

12. Prosecution Policy

- 12.1 The council recognises that fair and effective prosecution is essential to the maintenance of law and order. However, the decision to prosecute is a serious step and may have severe implications for those involved e.g. defendants; victims and witnesses.
- 12.2 Any decision regarding enforcement action will be impartial; objective; proportionate and fair. It will not be influenced by any view with regard to the race; gender; sexual orientation or religious beliefs of any offender; victim or witness. Improper or undue pressure from any source will be similarly disregarded.
- 12.3 To ensure consistency and fairness, in deciding whether to prosecute consideration will be given to guidance from Central Government, in particular the Code of Practice for Crown Prosecutors issued by the Director of Public Prosecutions. Other relevant sources will also be taken into account, such as case law and the recommendations of national co-ordinating bodies.

12.4 Where legislation provides a civil financial penalty as an alternative to prosecution Solihull Council will consider this as a preferred means of disposal. The amount of the civil penalty will be calculated using the frameworks appended to the "Private Rented Sector Enforcement Policy."

13. Deciding whether to Institute Proceedings

13.1 Some of the factors which are taken into account, both for and against prosecution, are given in paragraphs 12.2, 12.3 and 13.2 below.

13.2 Prosecution will normally only be considered when one or more of the following public interest criteria are present:

- Conviction is likely to result in a significant sentence.
- There is significant danger to health, safety or well-being of persons, animals or the environment.
- Fraudulent, reckless or negligent practice with the likelihood of causing significant economic disadvantage to persons or business.
- The offence involves or is directed at victims from vulnerable groups such as children, the elderly or infirm.
- Violence or threat of violence against any person is involved.
- The offence relates to wilful obstruction of an officer of the division acting in the course of their duties.
- History of the party, or parties, to an offence including relevant previous convictions, cautions, warnings or advice.
- There are grounds for believing that the offence is likely to be continued or repeated.
- Evidence that the offence was deliberate or premeditated.
- The offence, although not serious, is widespread in the area where it was committed.

13.3 A prosecution is less likely if:

- A court is likely to impose a nominal penalty.
- The offence was committed as a result of a genuine mistake or misunderstanding, balanced against the seriousness of the offence.
- Any loss or harm can be considered minor and resulted from a single incident, particularly if caused by misjudgement.
- There has been undue delay between the date of offence and trial, unless:
 - the offence is serious
 - the delay is caused in part by the defendant
 - the discovery of the offence is recent; or
 - investigation of the offence has, out of necessity, been lengthy and complex.

- A prosecution is likely to have a serious adverse effect on the physical or mental health of a victim, bearing in mind the seriousness of the offence.
- The defendant is, or was at the time of the offence, suffering from significant mental or physical ill health, bearing in mind the seriousness of the offence or a real possibility it may be repeated.
- The defendant has put right the loss or harm caused (but defendants must not avoid prosecution solely because they have paid compensation).

14. Consideration of Evidence

14.1 Where prosecution is under consideration, no decision to institute proceedings will be taken without an assessment of the evidence relating to each offence. In every case regard will be had to the following factors:

- Whether there is sufficient evidence to prove each offence.
- Whether the evidence available is reliable and acceptable.
- Whether a defendant can satisfy a statutory defence provision available to them.
- Suitability, availability, credibility, and willingness of witnesses.

15. Policy Review and Monitoring

15.1 Application of the policy will be monitored by reviewing enforcement activity.

15.2 The policy will be reviewed 2 years from approval by the Council's Executive. Intermediate reviews of the policy will take place as required to accommodate changes in legislation, legal procedures and guidance, local circumstances and the views of customers.

15.3 Variance from the policy and areas of improvement identified following review or audit will be reported annually.

16. Authorisations

Document/Process	Level of authorisation
Prosecution	Refer to scheme of delegations
Civil/Financial Penalties as an alternative to prosecution	Head of Service
Community Protection Notice	Head of Service
Notices for "approved premises" under food legislation	Head of Service
Works in default	Refer to scheme of delegations
Simple Caution	Head of Service to authorise but can be delivered by a Service Manager
Application for review of premises license under the Licensing Act	Service Manager
HMO Licence	Service Manager
Departmental caution	Service Manager
Licenses under the Licensing Act	Service Manager
Standard enforcement notices	Authorised Officer (See scheme of delegations)

[e.g. Housing Act; Food Safety Act & Local Government (Miscellaneous Provisions) Act]	
Fixed Penalty Notices	Authorised Officer (See scheme of delegations)
Community Protection Warning	Authorised Officer (See scheme of delegations)
Advice/warning letter	Authorised Officer (See scheme of delegations)

This must be read in conjunction with the Regulatory Services scheme of delegations.

2. Private Rented Sector Enforcement

17. Introduction

17.1 The following pieces of legislation provide Solihull Council with the ability to levy a civil financial penalty on an offender:

- Housing Act 2004
- Tenant's Fees Act 2015
- Energy Efficiency (Private Rented Property)(England & Wales) Regulations 2015
- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

17.2 The legislation provides a statutory maximum for the penalty it does not set. the level of a fine for each offence.

17.3 The frameworks in section 2A – 2D set out the means by which Solihull Regulatory Services will calculate the level of a financial penalty.

17.4 No penalty levied by Solihull Council will exceed the statutory maximum.

18. Application

18.1 This policy must be read in conjunction with the Regulatory Services Enforcement and Prosecution Policy.

18.1 This policy applies to situations where:

- (i) The relevant legislation permits Solihull Council to levy a civil financial penalty as an alternative to prosecution; and,
- (ii) The Regulatory Services Enforcement and Prosecution Policy has been applied and it indicates that action should be taken.

Section	Civil Penalty Framework	Page
2A	Housing Act 2004 as amended by the Housing and Planning Act 2016	11
2B	Tenant's Fees Act 2019	17
2C	The Energy Efficiency (Private Rented Property)(England & Wales) Regulations 2015	38
2D	Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	42

2A - Solihull MBC policy under the Housing Act 2004 as amended by the Housing and Planning Act 2016

Financial penalties as alternative to prosecution

19. Introduction

- 19.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences.
- 19.2 The list of offences that that may be dealt with by way of a financial penalty are as follows:
- Failure to comply with improvement notice (Housing Act 2004 Section 30)
 - Licensing of HMOs under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)
 - Licensing of houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)
 - Failure to comply with overcrowding notice, (Housing Act 2004 Section 139(7))
 - Management regulations in respect of HMOs. (Housing Act 2004 Section 234)

20. Financial Penalties

- 20.1 The law allows a maximum financial penalty of £30,000 to be imposed per offence.
- 20.2 In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil penalties under the Housing and Planning Act 2016 has been incorporated into the charging table adjustments set out in subsection 1.1.
- 20.3 In determining the financial value of an imposed penalty, this Council shall have regard to the charging table and guidance notes in subsection 1.1.

21. Process for imposing penalty charges

- 21.1 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.
- 21.2 A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:
- a. The amount of any proposed financial penalty;
 - b. The reasons for proposing the financial penalty;
 - c. Information about the right to make representation to the Council.
- 21.3 The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 21.4 Following the 28 day period the Council will decide:

- a. Whether to impose a financial penalty on the person, and
- b. The value of any such penalty imposed.

21.5 If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:

- 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 to the First tier Tribunal.
- f. the consequences of failure to comply with the notice.

22. Consequences of non-compliance and miscellaneous provisions

22.1 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

22.2 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.

22.3 The Council may, at any time:

- a. Withdraw a notice of intent or final notice;
- b. reduce the amount specified in a notice of intent or final notice.

Where the Council decides to take either action, it will write to the person to whom the notice was given.

22.4 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

Subsection 1.1

Charging table for determining value of Financial Penalties imposed under Housing Act 2004

Failure to comply with an Improvement Notice (Section 30)	£
1st offence <i>(note 1)</i>	5000
2nd subsequent offence by same person/company <i>(note 2)</i>	15000
Subsequent offences by same person/company <i>(note 7)</i>	25000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability <i>(note 8)</i>	+2500
Large housing portfolio (10+ units of accommodation) <i>(note 3)</i>	+2500
Multiple Category 1 or high Category 2 Hazards <i>(note 4)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)	£ <i>(note 1)</i>
Failure to obtain property Licence (section 72(1)) <i>(note 1)</i>	10000
2nd subsequent offence by same person/company <i>(note 2)</i>	30000
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach	5000
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)	£
Failure to Licence (section 95(1)) <i>(note 1)</i>	10000
2nd subsequent offence by same person/company <i>(note 2)</i>	30000
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach	5000
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%

Offences of contravention of an overcrowding notice (section 139)	£
1st relevant offences <i>(note 1)</i>	5000
2nd subsequent offence by same person/company <i>(note 2)</i>	15000

Premiums (use all that apply)	
Acts or omissions demonstrating high culpability <i>(note 8)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding <i>(note 3)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%
Failure to comply with management regulations in respect of HMOs (Section 234)	£
1 st relevant offences <i>(note 1)</i>	1000/offence
Second subsequent offences by same person/company for the same offence	3000/offence
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability <i>(note 8)</i>	+2500
Large housing portfolio (10+ units of accommodation) <i>(note 3)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%

NOTES

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed.

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000.

Note 2 - 2nd subsequent offence by same person/company

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

Note 3 - Large housing portfolio (10+ units of accommodation)

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 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

At the time of publication this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates Income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

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

Note 8 – 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.

2B Solihull MBC policy under Tenant's Fees Act 2019

23. Solihull MBC has issued the following policy for deciding on a financial penalty amount under the Tenant's Fees Act 2019 and determining when it is appropriate to prosecute as an alternative to making a financial penalty. In creating this policy the Council has paid regard to the policy used by the Lead Enforcement Authority ("the LEA") under the Tenant Fees Act 2019 ("the TFA 2019") Bristol City Council. It is expected that other Enforcement Authorities will have regard to that policy.
24. Enforcement Authorities are expected to develop and document their own policy on determining the level of penalty or when to prosecute and when to issue a civil penalty.

This policy should be read in conjunction with both the Statutory Guidance for the TFA 2019¹.

25. Legal Reference

- 25.1 The TFA 2019 prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted and amends other legislation as follows:
- a. in respect of the duty of letting agents to publicise fees etc under Section 87 of the Consumer Rights Act 2015;
 - b. in relation to the duty placed on enforcement authorities to have regard to any guidance issued by the Secretary of State ("the SoS") relating to the enforcement of an order under s83(1) of 84(1) as per Section 85 of the Enterprise & Regulatory Reform Act 2013;
 - c. in respect of the duty to enforce being subject to Section 26 of the TFA 2019 under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014;
 - d. in relation to the meaning of 'Lead Enforcement Authority'; under Section 135 of the (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016;
 - e. in respect of the LEA as an alternative to the SoS where the SoS is not the LEA under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014³

¹ [Tenant Fees Act 2019 Statutory guidance for Enforcement Authorities](#)

³ As per s25(5) TFA 2019 there will be situations when the LEA will not be acting as the SoS but will be acting in the capacity as the LEA under the TFA. In those situations the SoS can advise or direct the LEA

26. TFA Sanctions

26.1 The TFA 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

- a. In respect of Prohibited Payments under SS 1 and 2 of the TFA 2019 a financial penalty not exceeding £5,000 for a first breach.
- b. Under s12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000.00 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

27. The Council will determine what is the most appropriate and effective sanction, whether it is appropriate to impose a financial penalty or prosecute.

28. Other Types of Enforcement Action that may be taken.

29. In appropriate circumstances consideration will be given to informal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with the relevant Solihull MBC Enforcement Policy.

30. Consequential Amendments brought about by the TFA 2019

30.1 Additionally the TFA 2019 amends the legislation referred to in paragraph 1 above and which separately provide that penalties may be imposed as follows:

- i. In respect of a failure of Letting Agents to publicise their fees as required by s83(3) of the CRA 2015 a financial penalty not exceeding £5,000.00.
- ii. In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work) to a financial penalty not exceeding £5,000. Note that it is not sufficient to simply register for redress – the correct category of membership must be obtained depending on the work carried out.
- iii. In respect of a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £30,000.00.
- iv. In respect of a failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.00.

- v. In respect of a failure by a property agent to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.00.

31. Statutory Guidance

- 31.1 The Ministry of Housing, Communities & Local Government (“MHCLG”) has published the following document; **Tenant Fees Act 2019: Statutory Guidance for enforcement authorities.**

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819633/TFA_Statutory_Enforcement_Guidance_190722.pdf

- 31.2 This is statutory guidance to which enforcement authorities must have regard to in relation to enforcing the TFA 2019. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalties under the TFA 2019 and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case.

32. Determining the level of the financial penalty

- 32.1 In accordance with the provisions of the TFA 2019 the level of financial penalties is to be determined by the Council. Although the statutory guidance recommends factors which may be taken into account it does not go into any significant level of detail in this regard. Each of those factors will be considered as a part of the Council’s decision-making process and they are:

- a. The history of compliance/non-compliance
- b. The severity of the breach
- c. Deliberate concealment of the activity and/or evidence
- d. Knowingly or recklessly supplying false or misleading evidence
- e. The intent of the landlord/agent, individual and/or corporate body
- f. The attitude of the landlord/agent
- g. The deterrent effect of a prosecution on the landlord/agent and others
- h. The extent of financial gain as a result of the breach

- 32.2 Although the Council has therefore a wide discretion in determining the appropriate level of financial penalty in any particular case, regard has been given to the statutory guidance when making this policy.
- 32.3 Subsection 2.1 of this policy contains the processes that the Council will use in order to determine the level of financial penalty under the TFA 2019. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the impact off the exercise by the Landlord or Agent of the Appeal process.

Subsection 2.1 – The Council’s process for determining the level of penalty to set:

33. STEP ONE – Determining the offence category

33.1 The Council will determine the breach category using only the culpability and category of harm factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. The Council may also apply a discretionary factor in order to reflect consistency across England and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

34. Culpability

- **Very high:** Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile⁴ and knew their actions were unlawful.
- **High:** Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken
- **Medium:** Breach committed through act or omission which a person exercising reasonable care would not commit.
- **Low:** Breach committed with little fault, for example, because:
 - significant efforts were made to address the risk although they were inadequate on the relevant occasion.
 - there was no warning/circumstance indicating a risk.
 - failings were minor and occurred as an isolated incident.

35. Harm

35.1 The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

- **Category 1 – High Likelihood of Harm**
 - Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord’s or Agent’s business.
 - High risk of an adverse effect on individual(s) – including where persons are vulnerable⁵
- **Category 2 – Medium Likelihood of Harm**
 - Adverse effect on individual(s) (not amounting to Category 1).
 - Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
 - Tenants and/or legitimate landlords or agents substantially undermined by the conduct.

- The Council's work as a regulator is inhibited.
- Tenant or prospective tenant misled.

⁴ Which may include any significant role in a trade or business representative organisation.

⁵ A wide definition of vulnerability will be used. See Appendix 2 for a non-exhaustive list.

- **Category 3- Low Likelihood of Harm**

- Low risk of an adverse effect on actual or prospective tenants.
- Public misled but little or no risk of actual adverse effect on individual(s)

35.2 Will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories.

35.3 The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.

35.4 In some cases no actual harm may have resulted and enforcement authority will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

36. To the community

36.1 Some offences cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

- **STEP TWO - Starting point and category range**

Having determined the category that the breach falls into, the Council will refer to the following starting points to reach an appropriate level of civil penalty within the category range. The Council will then consider further adjustment within the category range for aggravating and mitigating features.

37. Obtaining financial information

37.1 The statutory guidance advises that local authorities should use their powers under Schedule 5 to the CRA 2015 to, as far as possible, make an assessment of a Landlord's or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The Council will use such lawful means as are at its disposal to identify where assets might be found.

37.2 In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council has obtained, or the Landlord or Agent has supplied, any financial information to the contrary. The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to the Council such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

38. Starting points and ranges

38.1 The tables in Appendices 4-10 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach.

- Subsection 2.4 First breach in respect of a Prohibited Payment
- Subsection 2.5 Second & subsequent breach in respect of a Prohibited Payment
- Subsection 2.6 Breach of Publication of Fees requirements
- Subsection 2.7 Breach in respect of membership of a Redress Scheme
- Subsection 2.8 Breach in respect of membership of a Client Money Protection Scheme
- Subsection 2.9 Breach in respect of certificates in respect of a Client Money Protection Scheme
- Subsection 2.10 Breach of transparency requirements in respect of a Client Money Protection Scheme

39. Context

39.1 Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions⁶ are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

40. Factors increasing seriousness

40.1 Aggravating factors:

- Previous breaches of the TFA 2019
- Previous convictions, having regard to:
 - the nature of the offence to which the conviction relates and its relevance to the current breach; and,
 - the time that has elapsed since the conviction.

40.2 Other aggravating factors may include:

- Motivated by financial gain;
- Deliberate concealment of illegal nature of activity;
- Established evidence of wider/community impact;
- Obstruction of the investigation;
- Record of poor compliance;
- Refusal of advice or training or to become a member of an Accreditation scheme.

⁶ See Appendix 3 for a list of relevant convictions

40.3 Factors reducing seriousness or reflecting personal mitigation

- No previous or no relevant/recent breaches.
- No previous convictions or no relevant/recent convictions.
- Steps voluntarily taken to remedy problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good record of relationship with tenants.
- Self-reporting, co-operation, and acceptance of responsibility.
- Good character and/or exemplary conduct.
- Mental disorder or learning disability, where linked to the commission of the breach.
- Serious medical conditions requiring urgent, intensive or long-term treatment and supported by medical evidence.

41. STEP THREE - General principles to consider in setting a penalty

41.1 The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

41.2 The level of financial penalty should reflect the extent to which the conduct fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

41.3 If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, The Council will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in STEP EIGHT below.

42. STEP FOUR- Issue Notice of Intent

42.1 The Council will issue a Notice of Intent within 6 months of the enforcement authority having sufficient evidence that the Landlord or Agent has breached the TFA 2019. If the breach is ongoing the 6-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

42.2 While there are slight variations in the statutory requirements according to which breach is being addressed a Notice of Intent will typically contain the date of the Notice, the amount of the proposed penalty, the reason for imposing the penalty and how the recipient can make representations concerning the penalty.

42.3 Examples of Notices of Intent may be requested from Solihull MBC Trading Standards and Environmental Compliance.

43. STEP FIVE – Consideration of representations and review of financial penalty where appropriate

- 43.1 The Council should review the penalty and, if necessary, adjust the initial amount reached at STEP FOUR, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below.
- 43.2 Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

44. STEP SIX – Reductions

- 44.1 The Council will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):
- The impact of the financial penalty on the Landlord or Agent’s ability to comply with the law or make restitution where appropriate.
 - The impact of the financial penalty on employment of staff, service users, customers and the local economy.
- 44.2 The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:
- The stage in the investigation or thereafter when the offender accepted liability.
 - The circumstances in which they admitted liability.
 - The degree of co-operation with the investigation.
- 44.3 The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.
- 44.4 Any reduction should not result in a penalty which is less than the amount of gain from the commission of the breach itself.

45. STEP SEVEN - Additional actions

- 45.1 In all cases the Council must consider whether to take additional action. These may include further enforcement action itself or reference to other organisations where appropriate.

46. STEP EIGHT – Totality of breaching conduct

46.1 Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality which appears to the Council to be an appropriate reference and guide.

46.2 As the total financial penalty is inevitably cumulative the Council should determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case including the financial circumstances of the Landlord or Agent so far as they are known, or appear, to the Council.

46.3 The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate total financial penalty. There are a number of ways in which this can be achieved. For example:

- Where a Landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches. Where a Landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. The Council should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced.

46.4 Separate financial penalties should then be imposed.

46.5 Where separate financial penalties are passed, the Council must take care to ensure that there is no double-counting.'

47. STEP NINE – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Subsection 2.2

48. Non exhaustive list of vulnerable people

- Young adults and children
- Persons vulnerable by virtue of age
- Persons vulnerable by virtue of disability or sensory impairment
- People on a low income
- 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 exploited where English is not their first language.
- Victims of Trafficking or sexual exploitation
- Refugees Asylum seekers
- People at risk of harassment or eviction People at risk of homelessness.

Subsection 2.3

49. Non exhaustive list of relevant offences /breaches

- Housing law or landlord and tenant related Offences under:
- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004

50. Offences involving fraud

50.1 Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a company director

51. Offences involving violence

51.1 A conviction for the offence of:

- Murder
- Manslaughter

- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

52. Offences involving drugs

52.1 Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agents business activities. The nature, quantity, purity and class of drugs should be taken into account. In addition where an offence of possession with **intent to supply** is involved regard should be had to the role and importance of, the subject in the supply chain.

53. Offences involving sexual offences

- An offence contained in schedule 3 of the Sexual Offences Act 2003.

54. Unlawful discrimination

- Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

55. Other offences

- Modern Slavery/ Human Trafficking

55.1 Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation is likely to attach a lower level of culpability.

Subsection 2.4

56. Financial Penalty in the case of a first breach in respect of Prohibited Payments.

56.1 The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
		Min (£)	Max (£)
Low culpability			
	Starting point (£)		
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Subsection 2.5

57. Financial Penalty in the case of a second or subsequent breach in respect of Prohibited Payments within 5 years of a previous breach.

57.1 The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Subsection 2.6

58. Financial Penalty in the case of a breach in respect of Publication of Fees.

58.1 The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Subsection 2.7

59. Financial Penalty in the case of a breach in respect of Membership of a Redress Scheme

59.1 The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
		Min (£)	Max (£)
Low culpability			
	Starting point (£)		
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Subsection 2.8

60. Financial Penalty in the case of a breach in respect of a failure to obtain membership of a Client Money Protection Scheme

60.1 The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Subsection 2.9

61. Financial Penalty in the case of a breach in respect of issues relating to certificates of evidence of Membership of a Client Money Protection Scheme.

61.1 The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Subsection 2.10

62. Financial Penalty in the case of a breach in respect of transparency issues relating to Membership of a Client Money Protection Scheme.

62.1 The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

	Starting point (£)	Range	
		Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

2C Minimum Energy Efficiency Standards (MEES)

Minimum energy efficiency standards (MEES) for domestic private rented properties.

- 63.** The Energy Efficiency (Private Rented Property) (England & Wales) Regulations 2015 (the Regulations) require landlords to ensure that they do not let out sub-standard privately rented properties unless they have a relevant statutory exemption.
- 64.** In relation to these Regulations, substandard privately rented properties refers to the definition in Regulation 22.
- 65.** The Regulations can be found at www.legislation.gov.uk
- 66.** Where Solihull Metropolitan Borough Council (the Authority) determines that a financial penalty should be imposed for one or more breaches of Regulation 40, it shall have regard to this policy.
- 67.** Financial penalties of this type are to be considered an alternative to prosecution, therefore, the burden of proof for issuing a financial penalty is the criminal standard – beyond all reasonable doubt.
- 68.** The following tables present the starting values, aggravating and mitigating factors that are to be considered in determining the value of a financial penalty issued for one or more of the offences under Regulation 40:
1. 40(2) - Letting a sub-standard property for less than 3 months.
The statutory maximum for this offence is £2000 plus a publication penalty.
 2. 40(3) - Letting a sub-standard property for 3 months or more.
The statutory maximum for this offence is £4000 plus a publication penalty.
 3. 40(4) - Registered a false or misleading information.
The statutory maximum for this offence is £1000 plus a publication penalty.
 4. 40(5) - Failure to comply with a compliance notice.
The statutory maximum for this offence is £2000 plus a publication penalty.

1. Regulation 40(2) – Letting a sub-standard property for less than 3 months	
Starting value of penalty notice (note 1)	£
1 st offence	1000
2 nd subsequent offence by same person/company	1500
Subsequent offences by same person/company	2000
Aggravating Factors (note 2)	
Acts or omissions demonstrating high culpability (note 2a)	+250
Large housing portfolio (note 2b)	+250
Vulnerable occupant and/or significant harm occurred as a result of housing conditions (note 2c)	+250

Mitigating Factors (note 3)	
Evidence of low culpability (note 3a)	-250
Rapid action taken to address failings (note 3b)	-250

2. Regulation 40(3) – Letting a sub-standard property for 3 months or more	
Starting value of penalty notice (note 1)	£
1 st offence	2000
2 nd subsequent offence by same person/company	3000
Subsequent offences by same person/company	4000
Aggravating Factors (note 2)	
Acts or omissions demonstrating high culpability (note 2a)	+500
Large housing portfolio (note 2b)	+500
Vulnerable occupant and/or significant harm occurred as a result of housing conditions (note 2c)	+500
Mitigating Factors (note 3)	
Evidence of low culpability (note 3a)	-500
Rapid action taken to address failings (note 3b)	-500

3. Regulation 40(4) – registering false or misleading information	
Starting value of penalty notice (note 1)	£
1 st offence	500
2 nd subsequent offence by same person/company	750
Subsequent offences by same person/company	1000
Aggravating Factors (note 2)	
Acts or omissions demonstrating high culpability (note 2a)	+100
Large housing portfolio (note 2b)	+100
Vulnerable occupant and/or significant harm occurred as a result of housing conditions (note 2c)	+100
Mitigating Factors (note 3)	
Evidence of low culpability (note 3a)	-100
Rapid action taken to address failings (note 3b)	-100

4. Regulation 40(5) – failure to comply with a compliance notice	
Starting value of penalty notice (note 1)	£
1 st offence	1000
2 nd subsequent offence by same person/company	1500
Subsequent offences by same person/company	2000
Aggravating Factors (note 2)	
Acts or omissions demonstrating high culpability (note 2a)	+250
Large housing portfolio (note 2b)	+250
Vulnerable occupant and/or significant harm occurred as a result of housing conditions (note 2c)	+250
Mitigating Factors (note 3)	
Evidence of low culpability (note 3a)	-250
Rapid action taken to address failings (note 3b)	-250

- 69.** Where more than one offence are included in a single financial penalty charge, the maximum financial penalty that can be imposed on a landlord per property when all penalties under these regulations are combined is £5000 as defined by Regulation 40(6).

Notes

70. Determining the starting value of a financial penalty

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

- Previous convictions, and
- Final Notices of a Financial Penalty as per the Housing Act 2004 (Sched. 13a) 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 conviction or financial penalties irrespective of the locality to which the offence relates.

71. Aggravating Factors

After the starting point 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 level of financial penalty.

a 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.

b Large housing portfolio

This premium will be applied where the perpetrator has control of or manages 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 the Housing Act 2004.

c Vulnerable persons

This premium will be applied if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

A vulnerable person is defined as:

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

For the 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 Section 9 of the Operating Guidance for the Housing Health and Safety Rating System.

72. Mitigating Factors

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

a 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; or,
- failing were minor and occurred as an isolated incident.

b Rapid action taken to remedy failings

This factor will apply where, on notification of the offence, the perpetrator took rapid action to remedy the underlying failings which could mean:

- Underlying remedial works as necessary to improve the energy efficiency and obtaining a replacement Energy Performance Certificate demonstrating that the property is no longer substandard.
- Registering a relevant exemption provided by the Schedule to Regulation 36(2).

In assessing whether “rapid action” was taken consideration will be given to the extent of the remedial works and the time taken to action.

73. Partial Compliance

This factor will apply when following, the expiry of a Compliance Notice, an inspection shows partial but incomplete compliance with the notice is observed. It will only apply when the majority of the works are complete and the remainder will be completed within a specified time.

2D Electrical Safety Standards in the Private Rented Sector

74. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1 June 2020 and apply in England to:
- a) All new specified tenancies from 1 July 2020; and
 - b) All existing specified tenancies from 1 April 2021.
75. Landlords of privately rented accommodation must:
- Ensure national standards for electrical safety are met. These are set out in the appropriate 'wiring regulations', which are published as British Standard 7671
 - Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every five years.
 - Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
 - Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
 - Supply a copy of this report to a new tenant before they occupy the premises.
 - Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
 - Supply the local housing authority with a copy of this report within seven days of receiving a written request for a copy.
 - Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
 - Where the report shows that further investigative or remedial work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
 - Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works.
76. Landlords must obtain a report giving the results of the test and setting a date for the next inspection. Landlords must comply within 7 days with a written request from Solihull Council for a copy of the report and must also supply the Council with confirmation of any remedial or further investigative works required by a report.
77. Solihull Council may wish to request reports following inspections of properties to ascertain the condition of the electrical installation and confirm the landlord is complying with the Regulations.
78. Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the relevant edition of the Wiring Regulations.
- **Code 1 (C1): Danger present. Risk of injury.**
 - **Code 2 (C2): Potentially dangerous.**

- **Further Investigation (FI): Further investigation required without delay.**
 - **Code 3 (C3): Improvement recommended.** Further remedial work is **not** required for the report to be deemed satisfactory.
79. If the report contains a code C1, C2 or FI, then the landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report.
 80. The C3 classification code does not indicate remedial work is required, only that improvement is recommended.
 81. A remedial notice must be served where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations. The notice must be served within 21 days of the decision that the landlord has not complied with their duties.
 82. If Solihull Council has reasonable grounds to believe a landlord is in breach of one or more of the duties in the Regulations and the report indicates urgent remedial action is required, the local housing authority may, with the consent of the tenant or tenants, arrange for a qualified person to take the urgent remedial action and recover their costs.
 83. Otherwise, they must serve a remedial notice requiring the landlord to take remedial action within 28 days. Should a landlord not comply with the notice Solihull Council may, with the tenant's consent, arrange for any remedial action to be taken themselves.
 84. Landlords have the right to make written representation and appeal against remedial action. The Council can recover the costs of taking the action from the landlord.
 85. Under regulation 11 of the Regulations where the Council is satisfied, beyond a reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.
 86. Regulation 3 states that;
 - (1) a private landlord who grants or intends to grant a specified tenancy must:
 - (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
 - (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
 - (c) ensure the first inspection and testing is carried out:
 - (i) before the tenancy commences in relation to a new specified tenancy; or
 - (ii) by 1 April 2021 in relation to an existing specified tenancy.
 - (2) For the purposes of sub-paragraph (1)(b) "at regular intervals" means:

- (a) at intervals of no more than five years; or
 - (b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than five years, at the intervals specified in that report.
- (3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must:
- (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;
 - (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;
 - (c) supply a copy of that report to the local housing authority within seven days of receiving a request in writing for it from that authority;
 - (d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and
 - (e) supply a copy of the most recent report to:
 - (i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and
 - (ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.
- (4) Where a report under subparagraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under subparagraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within:
- (a) 28 days; or
 - (b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.
- (5) Where paragraph (4) applies, a private landlord must:
- (a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that:
 - (i) the electrical safety standards are met; or
 - (ii) further investigative or remedial work is required.
 - (b) supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and

- (c) supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.
- (6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.
 - (7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person:
 - (a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises;
 - (b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or
 - (c) makes an offer, whether oral or written, to rent those premises.
87. A financial penalty may be of such amount as the authority imposing it determines but must not exceed £30,000.
 88. In determining the Civil Penalty amount, Solihull Council will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and also to the developed Civil Penalty Matrix.
 89. The approach to issuing a Civil Penalty is fundamentally made up of two stages, firstly determining the appropriate sanction and secondly (if appropriate) the level of Civil Penalty charged.
 90. When determining the appropriate sanction the Council should satisfy itself that if the case were to be prosecuted there would be a 'realistic prospect of a conviction'. This is currently determined by consulting the Crown Prosecution Service "Code for Crown Prosecutors" which provides two tests: (i) the evidential test and (ii) the public interest test.
 91. Solihull Council currently consults this code when determining whether to seek prosecution for offences committed and will continue to do so on a case by case basis in line with this procedure and its enforcement policy.
 92. The maximum penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the Local Housing Authority. Only one penalty can be imposed in respect of the same offence.
 93. Statutory guidance has been issued by the Secretary of State under Schedule 9 (12) of the Housing and Planning Act 2016 and Local Authorities must have regard to this when exercising their functions in respect of civil penalties.
 94. 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.

a) **The 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 (or potential 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 Council will consider the above factors when deciding where, within the relevant band of the Civil Penalties Matrix below, a particular offence and penalty fall. Further, the Council considers factors (d) to (g) above, inclusive, to be primary objectives of financial penalties and will attach particular weight to them when determining the appropriate level of penalty.

95. Factors in determining penalty level

95.1 Clearly, a single level penalty will not be appropriate in all cases and when assessing the level of penalty to be imposed it is expected that the maximum amount would be reserved for the worst offenders. The actual amount levied should reflect the severity of the case and the Council will have regard to the following:

- The culpability of the landlord – Factors to take into account when determining the culpability include where the offender:
 - Has the intention to cause harm, the highest culpability where an offence is planned,
 - Is reckless as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people,
 - Has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results; and
 - Is negligent in their actions.

96. Examples of Culpability

The Council will determine the level of culpability by considering the relevant breaches of Regulation 3, for example, in the case of a breach of where a report indicates that a private landlord must undertake further investigative or remedial work, the private landlord fails to do such investigation or remedial work then the culpability will be assessed as high because the landlord was fully aware of the issues having received the report.

97. For lesser culpable acts the Council will consider an alternative level based on the examples shown in the table below.

High (Deliberate Act)	Intentional breach by landlord or property agent or flagrant disregard for the law, i.e. failure to comply with a correctly served improvement notice.
High (Reckless Act)	Actual foresight of, or wilful blindness to, risk of offending but risks nevertheless taken by the landlord or property agent; for example, failure to comply with HMO Management Regulations.
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; for example, part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale.
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent; for example, obstruction by tenant to allow contractor access, damage caused by tenants.

98. Harm or potential for harm

In determining the level of harm the Council will have regard to:

- the person: i.e. physical injury, damage to health, psychological distress;
- the community; i.e. economic loss, harm to public health; and
- other types of harm; i.e. public concern/feeling over the impact of poor housing conditions on the local neighbourhood.

99. The nature of the harm will depend on the personal characteristics and circumstances of the victim, e.g. tenant.

100. Where no actual harm has resulted from the offence, the Council will consider the relative danger that persons have been exposed to as a result of the offender’s conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

101. Factors that indicate a higher degree of harm include:

- Presence of C1 classification issues;
- Multiple victims;
- Especially serious or psychological effect on the victim; and
- Victim is particularly vulnerable.

102. Examples of Harm Categories

High	Defect(s) giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, C1 classification codes or multiple C2 classification codes
Medium	Defect(s) giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, isolated or minimal numbers of C2 classification codes.
Low	Defect(s) giving rise to the offence pose a risk of harm to the occupants and/or visitors; for example, isolated C2, C3 or FI classification codes.

103. Punishment of the Offender

The Council will also have regard to the following:

- A Civil 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
- The penalty 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.

104. Deter the offender from repeating the offence

- The ultimate goal is to prevent further offending and help ensure the landlord fully complies with all their legal responsibilities in future.
- The level of penalty should be set at a high enough level to deter repeat offending.

105. Deter others from committing similar offences

- An important part of deterrence is the realisation that the Council is proactive in levying Civil Penalties where the need exists and that the level of Civil Penalty will be set high enough to punish the offender and deter repeat offending.
- Remove any financial benefit the offender may have obtained as a result of committing the offence.
- 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 managed.

106. Determining the amount of civil penalty

- 106.1 In determining the level of a civil penalty, officers will have regard to the matrix set out below, which has been developed taking into the factors set out in the statutory guidance provided by Government.
- 106.2 The matrix is intended to provide an indicative minimum 'tariff' under the various offence categories, with the final level of the civil penalty adjusted in each case, and generally within the relevant band, to take into account aggravating and mitigating factors.
- 106.3 The Council may, exceptionally, increase the penalty above the band maximum or, again exceptionally, decrease it below the minimum 'tariff'. In order to meet the objectives of this policy and of financial penalties in particular, however, 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 beyond band limits in exceptional circumstances only [excluding any Discounts as set out below]. The Council will consider on a case-by-case basis, in light of the information with which it is provided, whether any such circumstances exist.
- 106.4 The table below sets out the interrelation between harm and culpability as an initial determinant of the Civil Penalty banding.

Band	Severity	Band Value
1	Low Culpability/Low Harm	£0 to £4,999
2	Medium Culpability/Low Harm	£5,000 to £9,999
3	Low Culpability/ Medium Harm or High Culpability/ Low Harm	£10,000 to £14,999
4	Low Culpability/High Harm or Medium Culpability/ Medium Harm	£15,000 to £19,999
5	Medium Culpability/High Harm or High Culpability/Medium Harm	£20,000 to £24,999
6	High Culpability/High Harm	£25,000 to £30,000

107. Aggravating Factors

- 107.1 The starting point for the penalty may be increased by 3.33% for each aggravating factor up to a maximum of 15% of the initial penalty level.

107.2 In order to determine the final penalty, the Council will consider all aggravating factors relevant to the case.

107.3 Below is a list that will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Previous convictions having regard to the offence to which applies and time elapsed since the offence;
- Motivated by financial gain;
- Lack of co-operation/communication or obstruction of the investigation;
- Deliberate concealment of the activity/evidence;
- Offending over an extended period of time i.e. more than 6 months
- Negligence;
- Number of items of non-compliance – greater the number the greater the potential aggravating factor;
- Record of non-compliance;
- Record of letting substandard accommodation;
- Record of poor management/ inadequate management provision;
- Lack of a tenancy agreement/rent paid in cash; and
- **Already a member of an accreditation scheme or letting standard.**

108. Mitigating factors

108.1 The starting point for the penalty may be decreased by 3% for each mitigating factor to a maximum 15% of the initial penalty level.

108.2 In order to determine the final penalty, the Council will consider all mitigating factors relevant to the case.

108.3 Below is a list that will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Co-operation with the investigation;
- Voluntary steps taken to address issues e.g. submit a licence application;
- Willingness to undertake training;
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns;
- No previous convictions;
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence;
- Good character and/or exemplary conduct;
- Early admission of guilt i.e. within 1 month

108.4 When considering aggravating and mitigating factors the Civil Penalty imposed must remain proportionate to the offence.

108.5 Reference will be made to Magistrates Court Sentencing Council guidelines when considering relevant aggravating and mitigating factors.

108.6 An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

109. Process

109.1 The procedure for imposing a civil penalty is set out in Schedule 2 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and summarised below.

109.2 Solihull Council must give the person a notice of its proposal ('notice of intent') to impose a civil penalty. The notice of intent must set out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose the penalty; and
- information about the right of the landlord to make representations.

109.3 The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority is satisfied, in accordance with regulation 11, that the private landlord is in breach ("the relevant day"), subject to sub-paragraph (3).

(3) If the breach continues beyond the end of the relevant day, the notice of intent may be served:

(a) at any time when the breach is continuing; or

(b) within the period of 6 months beginning with the last day on which the breach occurs.

109.4 The private landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the local housing authority about the proposal to impose a financial penalty on the private landlord.

109.5 After the end of the period for representations, the local housing authority must decide whether to impose a penalty and, if so, the amount of the penalty. If the authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

109.6 The final notice must set out:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

109.7 The local housing authority may at any time:

- withdraw a notice of intent or final notice; or
- reduce the amount specified in a notice of intent or final notice.

109.8 On receipt of a final notice imposing a financial penalty a landlord can appeal to the First Tier Tribunal against the decision to impose a penalty and/or the amount of the

penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.

- 109.9 If the private landlord does not pay the whole or any part of a financial penalty which, the private landlord is liable to pay the Council may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

3 Product Safety - Incident Management Plan

Version: 4 (04/2023)

110. Foreword

111. Each local authority which deals with non-food product recalls or corrective actions with businesses should have an incident management plan (IMP) to demonstrate compliance with PAS 7100 (Code of practice on consumer product safety related recalls and other corrective actions).
112. This IMP is to support the local authority in assisting a business to manage a product safety incident and ensure informed decisions are made and accurate information is collected.
113. This plan is not a standalone document and must be used and read in conjunction with a copy of the latest version of PAS 7100. All Trading Standards teams have access to a free copy from BSI Online. Part II of the Code is aimed specifically for Regulators.
114. PAS 7100 covers non-food consumer products, it is not intended to conflict with existing sector specific schemes (e.g., automotive, medicines, medical devices) which should be referred to in respect of the product categories covered.
115. Nor is this document intended to instruct the local authority on how to undertake a full corrective action or to explain how to carry out a risk assessment. It is a template framework to guide you through the process.
116. For terms and definitions please see the business section of PAS 7100.

117. Contents

Page	Title
53	Organisation's Key Contacts
54	Fact Finding & Risk Assessment
55	Risk Assessment Outcome
57	Decision Flow Chart
58	Monitor, Follow up & Review
59	Local Government Sign Off
60	Annex I – Fact Finding Questions Form (Print out version)

118. Review

Date	Nature of update	Updated by	Version Number
24/9/20	Change to Service Lead Officer	GEB	2
25/1/21	References to RAPEX replaced with those to the Product Safety Database	GEB	3
26/4/23	Change to Service Lead Officer and general updates	GEB	4

- 119.** This IMP should be reviewed annually or after it has been used for a product safety incident.

120. Organisations Key Contacts

Key contacts within the organisation and partnership organisations.

Fact Finding / Support		
Job Title	Name / contact details	Stage to Involve
Lead Safety Officer*	Garry Brown 0121 704 6872 / gbrown@solihull.gov.uk	① / ④
Line Manager*	Richard Staveley 0121 704 8124 / rstaveley@solihull.gov.uk	①
Other Staff	Carrie Morris; James Shore camorris@solihull.gov.uk / jshore@solihull.gov.uk	① / ④
Internal Admin		
CAB	operations@citizensadvice.org.uk 0300 5000 922	⑤
Office for Product Safety & Standards[⊙]	OPSS.enquiries@beis.gov.uk 0121 345 1201	⑤
Reporting		
Job Title	Name / contact details	Stage to Involve
Chief Exec/Director /Service Lead (or suitable senior position)	Louise Baggott Interim Head of Safer Communities (Regulation & Enforcement) 0121 704 6819 / louise.baggott@solihull.gov.uk	⑤
CTSI	publications@tsi.org.uk	⑧
Internal Communications	cdivision@solihull.gov.uk	⑤**
Product Safety Database (OPSS)	https://www.product-safety-database.service.gov.uk/	⑥
Internal Emergency Planning/Resilience/Risk	cswrt@warwickshire.gov.uk 0121 704 6032	④

* Recommended to involve at an early stage.

⊙ A local authority should notify the Office for Product Safety and Standards when it becomes aware that:

- a producer has placed a product on the market, or
- where the producer is not based in the UK, a distributor has supplied a product that poses risks to the consumer that are incompatible with a safety requirement.

** Depending on outcome of risk assessment

121. Fact Finding & Decision Making

121.1 It is important to ascertain where the goods are in the supply chain. In order to do so, use the answers to the questions below.

121.2 The answers can also be used to guide decision making as to whether a product recall or other corrective action is required.

121.3 See also the information provided in **the Annexes** of PAS 7100.

a) Name of person reporting

b) Business details, including:

1. Legal name
2. Address
3. Contact phone / email

c) Details of product, including:

1. Nature of problem
2. Quantity affected
3. Location of product(s)
 - i. Retailed in UK only or also in Europe?
 - ii. No. under business control
 - iii. No. in retail
 - iv. Estimated no. with end user
 - v. Sold online?
4. Any reported incidents?
 - i. Have any injuries been reported?
 - ii. Age group of people being injured and/or target market?
5. How problem was identified?
 - i. Traceability of products i.e. batch coding
6. Any identified solutions?
7. Has the business carried out a risk assessment?

NB – See ANNEX I: These questions are reproduced in printable form with space to record the details obtained.

122 **Risk Assessment**

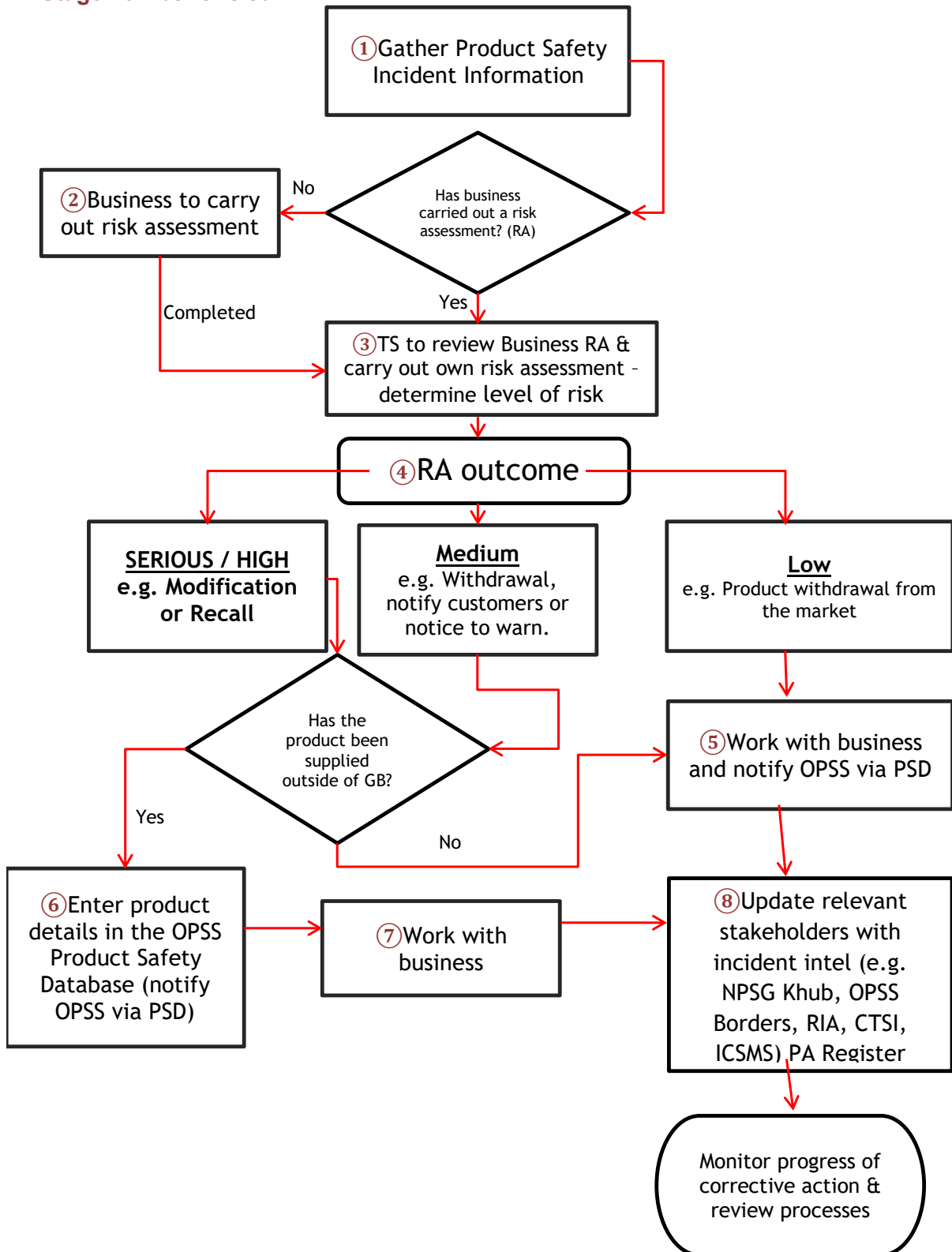
- 122.1 In order to inform the authority as to the severity of the risk regarding the safety incident, a risk assessment must be carried out by Trading Standards.
- 122.2 PAS 7100 explains the process including typical hazards and injury scenarios, severity of injuries and sensitivity analysis. There is also an online Risk Assessment tool (RAG) available at <https://ec.europa.eu/rag/#/screen/home>
Once the risk assessment is completed, it is advisable to peer review it either internally or with another authority.
Note that the relevant business should also carry out a risk assessment. If it is identified that the business has not carried out a risk assessment, the above link should be sent to the business for them to complete (or risk assess ascertained by other methods).
- 122.3 Once the business risk assessment has been received, comparisons should be undertaken between the two and corrective actions instigated in line with the higher identified risk.

123. Risk Assessment Outcome

- 123.1 Information required from a business will vary depending upon the type of business it is, their relationship with the Local Authority (e.g.: PA, HA or not known to LA). Local authorities should be aware of the limitations of the information provided and may need to use other sources if confidence is low in the data received – e.g. OPSS, CPSC, online reviews.
- 123.2 The outcome of the risk assessment will be either serious, high, medium or low risk. The risk will then inform as to whether the incident requires a recall or other corrective action (see Decision Flow Chart).
- 123.3 Advise the business of the outcome of the risk assessment and the appropriate action to take. If the incident requires an informative notice to consumers, there are template examples within PAS 7100. Advise the business to identify relevant consumers and consider the best way to provide the incident information to the target audience e.g. newspapers, business website, social media, specialist publications.
- 123.4 Notify OPSS via the Product Safety Database <http://www.product-safety-database.service.gov.uk/> including sufficient information to identify the producer / GB or NI importer and the product affected along with details of the action being taken to prevent risk to the consumer.
- 123.5 Guidance for local authority notifications covering Great Britain and Northern Ireland is available at: www.gov.uk/guidance/notification-of-unsafe-and-noncompliant-products .

1. Decision Flow Chart

Stage number circled



124. Monitor, Follow up & Review

Monitor:

124.1 This section should be undertaken in conjunction with Annexes of PAS 7100.

124.2 During the process of the recall (or corrective action) it is important to monitor the progress to ensure the maximum effectiveness of the actions agreed, this would include:

- Obtaining updates on the numbers of product that has been returned/modified/replaced.
- Review the numbers of further complaint data.
- Carry out additional risk assessments based upon new complaints data and amend corrective action if required.
- Review the actions and consider whether further actions are needed –such as additional consumer contacts such as second letters, further publications of the notice in other relevant media sources and websites.
- Update OPSS via PSD case and stakeholders of the changes.

Review:

124.3 On conclusion of the corrective action review the process and update the IMP and ensure the business updates their PSIP (Product Safety Incident Plan).

125. Local Government Sign Off

Position	Name	Signed	Date
Chief Executive			
Director			
Assistant Director			
Head of Trading Standards			

ANNEX I

Fact Finding Questions¹

a) Name of person reporting	
b) Business details, including:	
1. Legal name	
2. Address	
3. Contact phone / email	
c) Details of product, including:	
1. Nature of problem	
2. Quantity affected	
3. Location of product(s):	
i. Retailed in UK only or also in Europe?	
ii. No. under business control	
iii. No. in retail	
iv. Estimated no. with end user	

¹ To be used in conjunction with page 4.

v. Sold online?	
4. Any reported incidents?	
i. Have any injuries been reported?	
ii. Age group of people being injured and/or target market?	
5. How problem was identified?	
i. Traceability of products i.e. batch coding	
6. Any identified solutions?	
7. Has a risk assessment been carried out?	

4 Enquiries and Contacts

126. Complaints about Service

126.1 Complaints about our service will be investigated in accordance the Council's corporate complaints procedure which can be accessed via the Council's website:

[Complaints and feedback about council services \(solihull.gov.uk\)](http://solihull.gov.uk)

If you (or someone you know) needs a copy of this Policy in another language or format please let us know:

Tel: 0121 704 6000

or

Email: connectcc@solihull.gov.uk