

Statement of principles for determining financial penalties

Date: 10 November 2016

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction

This statement sets out the principles that Trafford Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

Purpose of the Statement of Principles

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015.

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

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

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord under Regulation 5.

If the landlord fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge under Regulation 8.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This is done in writing to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served. A visit to the property by a Housing Standards Officer to confirm the remedial action may also be required.

The purpose of imposing a financial penalty

The purpose of the Council exercising its regulatory powers is to protect the interests of the public.

The aims of financial penalties on landlords are to:

- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial action.
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms after being required to so.
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Criteria for the imposition of a financial penalty

A financial penalty charge will be considered appropriate if the Council is satisfied, on the balance of probabilities that the landlord who had been served with remedial notice under Regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

Criteria for determining the amount of a financial penalty

The Regulations state the amount of the penalty charge must not exceed £5,000.

The penalty charge comprises two parts, a punitive element for failure to comply with a remedial notice and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by the Council.

The penalty charge is payable within 29 days beginning with the day on which the penalty charge notice is served.

The Council offers an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served.

The charges are as follows:

- £2,000 for the first breach to comply with a remedial notice
- £1,000 for early payment (within 14 days), representing 50% reduction, for the first breach to comply with a remedial notice
- £5,000 for each subsequent breach to comply with a remedial notice
- £2,500 for early payment, representing 50% reduction, for each subsequent breach to comply with a remedial notice

Review of Penalty Charge Notices

If a landlord does not agree with a penalty charge, they can make a request to the authority for it to be reviewed. This request must be in writing and within the time period specified in the penalty charge notice.

The Council will consider any representations and will decide whether to confirm, vary or withdraw the penalty charge notice. A landlord may appeal to the First-tier Tribunal if the penalty charge notice is confirmed or varied by the authority after a review. The Tribunal can then quash, confirm or vary the Council's decision.

If the penalty charge notice is not paid, then recovery of the penalty charge will be by an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn.

Remedial Action taken in default of the landlord

Where the Council is satisfied that a landlord has not complied with a remedial notice in the required timescale the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach.

All communications for representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be sent to:

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Trafford Council
Regulatory Services
Town Hall
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