**Havant Borough Council**

**Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

**[As amended]**

**Statement of Principles for Determining Fixed Penalty Notice.**

**September 2024**

**Purpose of statement**

This statement is to define the principles that will be applied by Havant Borough Council (“the authority”) when determining the sum of financial penalty under Regulation 8 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

**Legal background**

**Duties placed upon relevant landlords**

A relevant landlord is required by regulation 4(1) of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to ensure:

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a fixed combustion appliance (other than a gas cooker); and
3. Checks are made by or on behalf of the landlord to ensure that each smoke and carbon monoxide alarm is in proper working order on the day the tenancy begins if it is a new tenancy.
4. Following a report made by a tenant or by their nominated representative to the landlord, that a prescribed alarm is found not to be in proper working order, the alarm is repaired or replaced as soon as reasonably practicable.

**Enforcement**

Where the authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1), the authority **must** serve a remedial notice on the landlord to include the necessary remedial action within 21 days.

The landlord has the right to make written representation against the notice for which the authority must have consideration.

Where a local housing authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with the remedial notice the authority must, if the necessary consent is given, arrange for an authorised person to take the remedial action specified in the remedial notice.

**Penalty**

Where the authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with a remedial notice the authority may require the landlord to pay a penalty charge of such amount as the authority may determine.

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

Where a local housing authority decides to impose a penalty charge, the authority must serve notice of that fact on the landlord.

**Principles**

A local housing authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

**Principles for service of fixed penalty charge**

The purpose of a penalty charge is:

1. To ensure a relevant landlord gains no financial advantage from not complying with the regulations.
2. To improve protection of the public by acting as a deterrent to relevant landlords.
3. To reduce the likelihood of future non-compliance
4. Influence behaviour of relevant landlords
5. To reclaim the Authority’s expenses to ensure tax payers are not unfairly penalised.

**Principles in judgement of breach of duty**

A Team Leader in Environmental Health (or equivalent in the event of change of title) shall review the evidence and determine whether in their opinion a breach of duty under Regulation 6 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 has been committed or not based on the balance of probability.

In doing so that person may make any reasonable request for information from the investigating officer’s case file or question the officer as they consider necessary in order to form an opinion.

**Principles in determining sum**

The authority will serve a penalty charge notice on a relevant landlord who fails to comply with a remedial notice served on them under Regulation 5(1) of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

The sum of the penalty charge shall be in accordance with table 1 below.

**Table 1.**

|  |  |  |
| --- | --- | --- |
|  | Penalty sum | Early payment reduction |
| First breach of duty | £2,500.00 | 50% |
| Any subsequent breach of duty | £5,000.00 | 0% |

The notice shall require the payment of the fixed penalty within 30 days.

An early payment reduction of 50% shall apply to a first breach of duty only if paid within 14 days.

**Service of Penalty Charge Notice**

The authority will serve a penalty charge notice within six weeks of non-compliance with a remedial notice in accordance with regulations 8 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

The authority will include in the penalty charge notice that which is required in accordance with regulation 9 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

**Review and Appeals**

The relevant landlord or his agent may request the authority review the penalty charge notice within 30 days. The authority will review its decision based on the landlord’s representations. All reviews will be conducted by the manager responsible for Environmental Health or alternatively a manager above that level in the cooperate hierarchy. The payment period (not including the early payment reduction period) shall be suspended whilst the authority conducts its review.

Where a relevant landlord can show on the balance of probabilities that the sum of the fixed penalty will cause unreasonable hardship to him or his family the reviewer may use discretion to extend the allowable payment period by varying the penalty notice.

In extreme cases a senior manager may use their discretion to reduce or waive the penalty but must have consideration of the capital and rental value of the subject premises in doing so.

A relevant landlord may appeal the decision of the authority’s review to the First-Tier Property Tribunal

**Revision of statement**

The authority may revise this statement of principles at any time and, where it does so, it will publish the revised statement.