

## Decision by Portfolio Holder



**Report reference: PHD-006-2020/21**  
**Date of report: 01-February-2021**

**Epping Forest  
District Council**

**Portfolio:** Commercial and Regulatory Service – Cllr A Patel  
**Author:** Sally Devine (Ext) 4149 Democratic Services: J Leither  
**Subject:** Amendment to the Fixed Penalty Matrix for Private Sector Housing Enforcement

**Decision:**

**To amend the Fixed Penalty Matrix in The Enforcement and Service Standards: Private Housing, document, to introduce a new charge of £5000 for ‘failure to renew an HMO licence’.**

<b>ADVISORY NOTICE:</b> <i>A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest. A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.</i>	
I have read and approve/ <del>do not approve</del> (delete as appropriate) the above decision:	
Comments/further action required: None	
Signed: Councillor A Patel	Date: 17 <sup>th</sup> February 2021
<i>Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:</i>  None	<i>Dispensation granted by Standards Committee:</i> Yes/No or n/a  N/A
<b>Office use only:</b> Call-in period begins: 17 <sup>th</sup> February 2021	Expiry of Call-in period: 24 <sup>th</sup> February 2021

***After completion, one copy of this pro forma should be returned to Democratic Services IMMEDIATELY***

**Reason for decision:**

The existing Fixed Penalty Matrix (FPM) is used by officers to establish the appropriate charging regime where a landlord is in breach of certain offences in the Housing Act 2004 and this includes failure to licence a licensable HMO. However, the current charges do not differentiate between an offence of failing to renew an HMO licence and that of never having licensed the HMO in the first instance. The offence of ‘failing to renew’ is less serious than ‘failing to licence for the first time and therefore the FPM should be amended to reflect this. It is therefore proposed that a civil penalty charge of

£5000 be made for failure to renew an HMO licence which is considered fair and proportionate and is less than the charge for failing to licence an HMO.

### **Options considered and rejected:**

The option not to amend the FPM to address the disproportionate charge to landlords for failure to renew an HMO licence has been rejected as it is unreasonable on the recipient of the fine and it exposes the Council to challenge in the courts and adverse reputational risk.

### **Background Report:**

The Enforcement and Service Standards: Private Housing document, sets the Councils policy for enforcement of property standards in the private rented sector. It includes, as an Appendix to the document, a Financial Penalty Matrix (FPM) for certain Housing Act 2004 related offences that are applied when issuing civil penalties as an alternative to prosecution.

The FPM allows for a consistent, fair and transparent charging regime that is easy for landlords to understand and is straightforward for enforcement officers to administer. It generally works well. However, officers now consider that an amendment should be made in relation to the penalty for failure to renew an HMO licence, as to apply it in its current form, is disproportionately high, fee which is unfair to landlords and exposes the Council challenge in the courts.

The Council operates a mandatory HMO Licensing Scheme and landlords that operate licensable HMOs must apply and pay for an HMO licence at the start of the rental and must continue to keep the property licensed, through a licence renewal process, which is typically every 5 years, but can be less in certain circumstances.

The existing FPM (and the legislation) does not differentiate between an offence of failing to renew an HMO licence and that of never having licensed the HMO at all. In practice, the offence of failure to operate without a licence is a much more serious offence than failure to renew a licence that already exists. The formula for determining the fine in accordance with the FPM for both the offences is 'double the Local Housing Allowance for 6 months (extended to up to a maximum 12months depending on length of time the premises has not been licensed)'. If applied as per the existing matrix, the fine would be £31,702.32 for a 6-bedroom, 4 storey HMO in Loughton, reduced by 50% if paid within 28 days. Whilst this is an appropriate penalty to a landlord operating an HMO without a licence, it is a disproportionate amount for failing to *renew* a licence where the existing licence has lapsed.

There are additional financial penalties that can be directed at landlords for failing to comply with conditions during the period of a licence. In addition, our Policy already penalises a landlord for failing to renew his/her licence within the permitted time, by reducing the length of the renewed licence from 5 years to 1 year, which in itself, indirectly carries its own financial penalty, as the landlord of an HMO described above would currently pay £841 for a 1 year licence, instead of the same amount for a maximum 5 year period.

It is therefore proposed, that the "Penalty Notices for Certain Offences" in The Enforcement and Service Standards: Private Housing document, be amended to introduce a separate civil penalty for 'failure to renew an HMO licence' of £5000 (reduced to £2,500 if paid within 28 days). This is in line with other 'administrative offences' and is considered a fair and proportionate penalty. The proposed FPM with

the new charge (highlighted in red) is attached at Appendix A.

**Resource Implications:** None

**Legal and Governance Implications:**

Housing Act 2004

The Enforcement and Service Standards: Private Housing document details the Councils policy towards enforcement of property standards within the private rented sector. Regular review of such policies is required as a process of good governance and the proposal in this report is consistent with this.

**Safer, Cleaner and Greener Implications:**

The Fixed Penalty Matrix is designed to penalise the worst landlords and ultimately remove the criminal element from the private rented sector. The FPM must be fair and proportionate, in line with the Hampton Principles for enforcement and the proposal to have a separate charge for failure to renew an HMO licence, addresses a current disproportionate penalty

**Consultation Undertaken:**

NA

**Background Papers:**

None

**Impact Assessments:**

The Fixed Penalty Matrix is designed to penalise the worst landlords and ultimately remove the criminal element from the private rented sector. The FPM must be fair and proportionate, in line with the Hampton Principles for enforcement and this proposal addresses a current disproportionate penalty

**Risk Management:**

To not address the disproportionate charge in the current FPM, to landlords that fail to renew their HMO licence, exposes the risk to the Council of appeal to the courts and reputational loss to the Council.

**Equality Analysis:**

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as Appendix B to the report.

**Key Decision Reference (Y/N):** N

## Appendix A: Penalty notices for certain offences

FINANCIAL PENALTY MATRIX: Housing and Planning Act 2016			
Offence under Housing Act 2004	Fixed Penalty Notice (FPN)	Multiplier based on severity of offence	Discounts and accelerators
Failure to comply with an Improvement Notice s.30	Equivalent to 4 months LHA income for each Category 1 Hazard affecting each dwelling		Discount of 50% where FPN paid in full within 28 days
	Equivalent to 2 months LHA For each Category 2 Hazard		Double the penalty charge where a 2 <sup>nd</sup> FPN is served on the landlord within 12 months
Failure to comply with an Overcrowding Notice s.139	Equivalent to four times the LHA rate for the number of rooms the property is short (according to the Epping HMO Amenity standard) for the period of the contravention, minimum of six months and a maximum of 12 months.		Discount of 50% where FPN paid in full within 28 days
Failure to licence a licensable HMO s.72	Equivalent to twice the LHA rate for the entire property for the period it was not licenced – minimum 6 months and up to 12 months		Discount of 50% where FPN paid in full within 28 days
Failure to renew an HMO Licence	Fixed Penalty Notice (FPN)		£5,000. Discount of 50% where FPN paid in full within 28 days
Failure to comply with an HMO licence condition s.234	Equivalent to twice the LHA rate for the entire property per breach of condition	X 2 for breach of <b>major</b> condition (as specified in the HMO licence) X 1 for breach of <b>minor</b> condition (as specified in the HMO licence)	Discount of 50% where FPN paid in full within 28 days
Failure to comply with HMO Management Regulations s.234	Equivalent to twice the LHA rate for the entire property per breach of Regulation	X 0.5 (Regulation 3): providing information to occupiers X 2 (Regulation 4): taking safety measures, including fire safety measures X 1 (Regulation 5):	Discount of 50% where FPN paid in full within 28 days

		<p>maintaining the water supply and drainage</p> <p>X 1 (Regulation 6): supplying and maintaining gas and electricity, including having it regularly inspected</p> <p>X 1 (Regulation 7): maintaining common parts (defined in regulation 7(6)), fixtures, fittings and appliances</p> <p>X1 (Regulation 8): maintaining living accommodation</p> <p>X 1 (Regulation 9): providing waste disposal facilities</p>	
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The above matrix applies to a first offence. If, within the next 12 months, the same landlord commits **any** subsequent offence included within this Financial Penalty Matrix, the maximum penalty of £30,000 will be charged.

For example:

Failure to comply with an Improvement Notice

1. The charge for a 2 bed property (£830 pcm) with 1 category one hazard and 3 category two hazards:  
 $(830 \times 4 \times 1) + (830 \times 2 \times 3) = £8,300$  reduced to £4,150 if paid within 28 days.
2. The charge for a 4 room HMO (£300 pcm per room) with 1 category one hazard and 3 category two hazards would be (assuming the hazards affect all rooms):  
 $(300 \times 4 \times 4 \times 1) + (300 \times 4 \times 2 \times 3) = £12,000$  reduced to £6,000 if paid within 28 days.

Failure to comply with an Overcrowding Notice

1. The charge for an overcrowded HMO that is two rooms short (£300 pcm per room) with evidence that this level of occupation has continued for 9 months:  
 $(300 \times 2 \times 9 \times 4) = £21,600$  reduced to £10,800 if paid within 28 days

Failure to licence an HMO

1. The charge for operating a 5 room HMO (£300 pcm) without a licence for 6 months:  
 $(300 \times 5 \times 6 \times 2) = 18,000$  reduced to £9,000 if paid within 28 days

Failure to comply with a licence condition

1. The charge for failing to comply with 2 'minor' conditions and 1 'major' condition in a 4 room HMO (total £1200 pcm):  
 $(1 \times 2 \times 1200) + (2 \times 1 \times 1200) \times 2 = £9,600$  reduced to £4,800 if paid within 28 days

Failure to comply with the Management Regulations:

1. The charge for a 4 room HMO (total £1200 pcm) with the following breaches -1 x Regulation 3, 4 x Regulation 4 and 1x Regulation 6:  
 $(0.5 \times 1 \times 1200) + (2 \times 4 \times 1200) + (1 \times 1 \times 1200) \times 2 = £22,800$  reduced to £11,400 if paid within 28 days

Failure to comply with a second offence within 12 months of **any** previous penalty subject to this financial penalty matrix:

1. For example, the charge for breaching a Management Regulation within 12 months of receiving a penalty charge for failing to comply with an Improvement Notice is £30,000

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## Equality Impact Assessment

1. Under s.149 of the Equality Act 2010, when making decisions, Epping District Council must have regard to the Public Sector Equality Duty, ie have due regard to:
  - eliminating unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Act,
  - advancing equality of opportunity between people who share a protected characteristic and those who do not,
  - fostering good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
2. The characteristics protected by the Equality Act are:
  - age
  - disability
  - gender
  - gender reassignment
  - marriage/civil partnership
  - pregnancy/maternity
  - race
  - religion/belief
  - sexual orientation.
3. In addition to the above protected characteristics you should consider the cross-cutting elements of the proposed policy, namely the social, economic and environmental impact (including rurality) as part of this assessment. These cross-cutting elements are not a characteristic protected by law but are regarded as good practice to include.
4. The Equality Impact Assessment (EqIA) document should be used as a tool to test and analyse the nature and impact of either what we do or are planning to do in the future. It can be used flexibly for reviewing existing arrangements but in particular should enable identification where further consultation, engagement and data is required.
5. Use the questions in this document to record your findings. This should include the nature and extent of the impact on those likely to be affected by the proposed policy or change.
6. Where this EqIA relates to a continuing project, it must be reviewed and updated at each stage of the decision.
7. All **Cabinet, Council, and Portfolio Holder reports must be accompanied by an EqIA**. An EqIA should also be completed/reviewed at key stages of projects.
8. To assist you in completing this report, please ensure you read the guidance notes in the Equality Analysis Toolkit and refer to the following Factsheets:
  - Factsheet 1: Equality Profile of the Epping Forest District
  - Factsheet 2: Sources of information about equality protected characteristics
  - Factsheet 3: Glossary of equality related terms
  - Factsheet 4: Common misunderstandings about the Equality Duty
  - Factsheet 5: Frequently asked questions
  - Factsheet 6: Reporting equality analysis to a committee or other decision making body

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## Section 1: Identifying details

Your function, service area and team: Regulatory Service

If you are submitting this EqlA on behalf of another function, service area or team, specify the originating function, service area or team: No

Title of policy or decision: **Amendment to the Fixed Penalty Matrix for Private Sector Housing Enforcement**

Officer completing the EqlA: Tel: 01992 564149 Email: sedvine@eppingforestdc.gov.uk

Date of completing the assessment: 4.12.2020

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## Section 2: Policy to be analysed

2.1	Is this a new policy (or decision) or a change to an existing policy, practice or project? Change to an existing policy document
2.2	<p>Describe the main aims, objectives and purpose of the policy (or decision):</p> <p>The existing Fixed Penalty Matrix used by officers to establish the appropriate charging regime where a landlord is in breach of certain offences in the Housing Act 2004 does not differentiate between an offence of failing to renew an HMO licence and that of never having licensed the HMO in the first instance. As a result the existing charge for failure to renew is disproportionately high; it is unreasonable on the landlord concerned, and exposes the Council to risk of challenge in the courts</p> <p>What outcome(s) are you hoping to achieve (ie decommissioning or commissioning a service)? To amend the Fixed Penalty Matrix in The Enforcement and Service Standards: Private Housing, document, to introduce a separate and lesser charge of £5000 for 'failure to renew an HMO licence', compared to the more significant offence of failing to operate a licensable HMO in the first instance.</p>
2.3	<p>Does or will the policy or decision affect:</p> <ul style="list-style-type: none"><li>• service users yes</li><li>• employees no</li><li>• the wider community or groups of people, particularly where there are areas of known inequalities? no</li></ul> <p>Will the policy or decision influence how organisations operate? It will support the fair enforcement of landlords operating HMOs across the District</p>
2.4	Will the policy or decision involve substantial changes in resources? No
2.5	Is this policy or decision associated with any of the Council's other policies and how, if applicable, does the proposed policy support corporate outcomes? No

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### **Section 3: Evidence/data about the user population and consultation<sup>1</sup>**

As a minimum you must consider what is known about the population likely to be affected which will support your understanding of the impact of the policy, eg service uptake/usage, customer satisfaction surveys, staffing data, performance data, research information (national, regional and local data sources).

3.1	What does the information tell you about those groups identified? Relates only to landlords operating HMOs in the District
3.2	Have you consulted or involved those groups that are likely to be affected by the policy or decision you want to implement? If so, what were their views and how have their views influenced your decision? Not necessary, this is a Council decision that will benefit a landlord subject to a charge,
3.3	If you have not consulted or engaged with communities that are likely to be affected by the policy or decision, give details about when you intend to carry out consultation or provide reasons for why you feel this is not necessary: It is not appropriate or necessary to consult. The proposal is to reduce a penalty charge that is currently disproportionate to the offence. There will be no objection to the recipient of the fine, and whilst the fine will be reduced, it will still be substantial and will not be to the detriment of tenants living in an HMO

## Section 4: Impact of policy or decision

Use this section to assess any potential impact on equality groups based on what you now know.

<b>Description of impact</b>	<b>Nature of impact</b> Positive, neutral, adverse (explain why)	<b>Extent of impact</b> Low, medium, high (use L, M or H)
Age	Neutral – the impact has no particular relevance to this criterion	L
Disability	Neutral – the impact has no particular relevance to this criterion	L
Gender	Neutral – the impact has no particular relevance to this criterion	L
Gender reassignment	Neutral – the impact has no particular relevance to this criterion	L
Marriage/civil partnership	Neutral – the impact has no particular relevance to this criterion	L
Pregnancy/maternity	Neutral – the impact has no particular relevance to this criterion	L
Race	Neutral – the impact has no particular relevance to this criterion	L
Religion/belief	Neutral – the impact has no particular relevance to this criterion	L
Sexual orientation	Neutral – the impact has no particular relevance to this criterion	L

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## Section 5: Conclusion

		Tick Yes/No as appropriate	
5.1	Does the EqlA in Section 4 indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups?	No X <input type="checkbox"/>	
		Yes <input type="checkbox"/>	If ' <b>YES</b> ', use the action plan at <b>Section 6</b> to describe the adverse impacts and what mitigating actions you could put in place.

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## Section 6: Action plan to address and monitor adverse impacts

What are the potential adverse impacts?	What are the mitigating actions?	Date they will be achieved.

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**Section 7: Sign off**

**I confirm that this initial analysis has been completed appropriately.  
(A typed signature is sufficient.)**

Signature of Head of Service:



Date:

Signature of person completing the EqIA:



Date: 4.12.2020

**Advice**

Keep your director informed of all equality & diversity issues. We recommend that you forward a copy of every EqIA you undertake to the director responsible for the service area. Retain a copy of this EqIA for your records. If this EqIA relates to a continuing project, ensure this document is kept under review and updated, eg after a consultation has been undertaken.