This policy sets out the criteria for using a civil penalty as an alternative to prosecution, the use of Rent Repayment Orders and the methodology to be used in setting civil penalty fines. It takes into account the statutory guidance that has been issued by the Government under Schedule 9 and Section 41 of the Housing and Planning Act 2016 and should be read in conjunction with the Council’s Private Sector Housing Enforcement Policy.

**Introduction**

Section 126 and schedule 9 of the Housing and Planning Act 2016 came into force on the 6th April 2017. These provisions give the Council as the local housing authority the power to issue a financial penalty for certain Housing Act 2004 offences after the 6th April 2017 as an alternative to prosecution.

The offences include:

* Failing to comply with an Improvement Notice (section 30)
* Offences in relation to licensing of Houses in Multiple Occupation (section 72)
* Offences in relation to licensing of houses under part 3 of the Act (selective Licensing) (section 95)
* Offences in relation to the contravention of an overcrowding notice (section 139)
* Failure to comply with management regulations in respect of House in Multiple Occupation (section 234)
* Failure to comply with Regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit the Council to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted the Council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.

In determining the Civil Penalty amount, the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and also to the DCLG developed Civil Penalty Matrix.

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.

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](https://www.cps.gov.uk/publication/full-code-test)” which provides two tests:

1. The evidential test and
2. The public interest test.

The Council consults this code when determining whether to seek a prosecution for offences committed and will continue to do so on a case-by-case basis in line with this procedure and its Private Sector Housing Enforcement Policy.

1. **Background**

Civil Penalties were introduced by the Housing and Planning Act 2016 under Section 126 and Schedule 9 of that Act. The powers enable Local Authorities to impose Civil Penalties of up to £30,000 in respect of the following offences:

a) Failure to Comply with an Improvement Notice under Section 30 of the Housing Act 2004;

b) Offences relating to Licensing of HMOs under Section 72 of the Housing Act 2004;

1. Section 72 (1) being in control or managing an HMO which is required to be licensed but is not so licensed;
2. Section 72 (2) being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence;
3. Section 72 (3) being a licence holder who fails to comply with any condition of a licence.

c) Offences in relation to Licensing of Houses under Part 3 of the Act (Selective Licensing);

* 1. Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed;
  2. Section 95 (2) being a licence holder who fails to comply with any condition of a licence.
  3. Offences of contravention of an overcrowding notice under Section 139 of the Housing Act 2004;
  4. Failure to comply with management regulations in respect of HMOs under Section 234 of the Housing Act 2004.

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 its functions in respect of civil penalties.

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.

1.1 The Government’s intentions and expectations

The Government has said that it wants to support good landlords who provide decent, well-maintained homes, and avoid unnecessary regulation which increases costs for landlords and pushes up rents for tenants. However, it has also pledged to crack down on rogue landlords who flout the law and knowingly rent out unsafe and substandard accommodation.

The Housing and Planning Act 2016 introduces a number of measures to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:

* **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
* **Extension of rent repayment orders** to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017);
* **Database of rogue landlords and property agents** who have been convicted of certain offences or received multiple civil penalties (scheduled to come into force on 1 October 2017);
* **Banning orders** for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).

When introducing civil penalties through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly as a way of clamping down on rogue landlords

Although the Government states (in its guidance) that, generally, it would expect the maximum civil penalty of £30,000 to be “reserved for the very worst offenders”, it recommends that the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord’s previous record of offending.

1. **Decision making**

Ultimately, it is for the Local Authority to decide which option it wishes to pursue but as a general principle, local authorities should normally prosecute where an offence is particularly serious or where the offender has committed similar offences in the past.

Prosecution in serious cases demonstrates that the Local Authority will not hesitate to take formal action where needed and is likely to act as a strong deterrent both to the offender and other rogue landlords. A prosecution also enables the Local Authority to apply for a banning order following a successful conviction.

The Council has an enforcement matrix which is used to determine the most appropriate course of action in enforcement cases. The principle of the enforcement matrix is to provide a score based on a number of factors, both negative and positive. Bands are provided to reflect the score produced and the appropriate courses of action for dealing with the identified situation.

The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

* 1. The severity of the offence: The more serious the offence, the higher the civil penalty should be.
  2. The 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.
  3. The 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 the local housing authority imposes a civil penalty.
  4. The 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 demonstrates the consequences of not complying with their responsibilities.
  5. Whether it will 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.
  6. Whether it will deter others from committing the offence: 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 housing 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.
  7. Whether it will 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.

1. **Principles underpinning civil penalty action**

All of the Private Sector Housing Team’s enforcement activity will be:

3.1 Targeted – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people’s health and safety at risk.

3.2 Proportionate – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.

3.3 Fair and objective – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.

3.4 Transparent – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.

3.5 Consistent– Enforcement action will be undertaken by well-trained investigators, and the Private Sector Housing Team will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and share and develop good practice.

3.6 Accountable – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Private Sector Housing Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

**4. Burden of proof**

The same criminal burden of proof is required for a civil penalty as for a prosecution. This means that before formal action is taken the Council must be satisfied that if there was a prosecution there would be a realistic prospect of conviction.

The Council must determine beyond reasonable doubt that the offence has been committed and this evidence would be required if an appeal is made against the civil penalty.

As also outlined in the Enforcement Policy, the local authority will have regard to the Code for Crown Prosecutors when determining whether to take action.

There are two stages to this code:

1. The evidential stage, and
2. The public interest stage.

**5. Determining the offence category – Harm**

5.1 Definition of Harm

For the purpose of this policy, the council will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004.

**“Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm**.”

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

* The person i.e. physical injury, damage to health, psychological distress
* To the community i.e. economic loss, harm to public health
* Other types of harm i.e. public concern/feeling over the impact of poor housing conditions on the local neighbourhood. The nature of harm will depend on the personal characteristics and circumstances of the victim e.g. tenant. 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.

The seriousness of the harm the offence had caused, or could foreseeably cause, by the offence(s) must be assessed. When using this table to assess the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur. Even if some harm has already occurred, consideration will still be given to whether there was the potential for even greater harm to have occurred.

|  |  |
| --- | --- |
| Level A | * Death * Physical or mental impairment resulting in a lifelong dependency on third party care * Significantly reduced life expectancy * A progressive, permanent or irreversible condition * Harm outcome amounting to Class I and/or II as defined by Annex C of the HHSRS Operating Guidance |
| Level B | * Physical or mental impairment, not amounting to level A, but still has a substantial effect on the victim’s ability to carry out day to day activities or on their ability to return to work * Harm outcomes equating to Class III and/or IV as defined by Annex C of the HHSRS Operating Guidance |
|  |  |
| Level C | * Any other cases not falling within Level A or B |

5.2 Factors that indicate a higher degree of harm include:

* Multiple victims
* Especially serious or psychological effect on the victim
* Victim is particularly vulnerable
* Examples of Harm Categories

|  |  |
| --- | --- |
| Level A | Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; e.g danger of electrocution, carbon monoxide poisoning or serious fire safety risk |
| Level B | Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; e.g falls between levels, excess cold, asbestos exposure |
| Level C | Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; e.g localised damp and mould, entry by intruders |

**6. Determining the offence category – Culpability**

In determining culpability, the Council will have regard to 4 levels of culpability.

Where the offender –

* 1. Has the **intention** to cause harm, the highest culpability where an offence is planned
  2. 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.
  3. Has **knowledge** of the specific risks entailed by their actions even though they do not intend to cause the harm that results.
  4. Is **negligent** in their actions.

Examples of **Culpability**

|  |  |
| --- | --- |
| Very High | Where the offender intentionally breached, or flagrantly disregarded, the law or  Who has a high public profile and knew their actions were unlawful  For example, by failing to comply with a notice or regulations |
| High | Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.  For example, failing to comply with a strict liability in the HMO regulations |
| Medium | The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence.  For example, partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items. |
| Low | The offence committed has some fault on the part of the landlord or property agent but there are other circumstances.  For example, obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence. There was no warning/circumstance indicating a risk. Failings were minor and occurred as an isolated incident |

**7. Determining the Civil Penalty Level**

Once the levels of **culpability** and **harm** have been assessed the matrix below will be used to assess the correct **penalty level** and then provide the banding for the civil penalty. Any cases that is assessed at a higher level (5-6) will be referred to a Senior Officer (Team Leader or above) in order to consider for prosecution.

7.1 Penalty levels

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Level of Harm | Very High  Culpability | High  Culpability | Medium Culpability | Low  Culpability |
| A | 6 | 5 | 4 | 3 |
| B | 5 | 4 | 3 | 2 |
| C | 4 | 3 | 2 | 1 |
|  |  |  |  |  |

7.2 Penalty Bands

|  |  |  |
| --- | --- | --- |
| Penalty Levels | Bands | Mid-point |
| 1 | £500.00 - £4,999.00 | £2,500.00 |
| 2 | £5,000.00 - £9,999.00 | £5,000.00 |
| 3 | £10,000 - £14,999.00 | £12,500.00 |
| 4 | £15,000.00 – £19,999.00 | £17,500.00 |
| 5 | £20,000.00 – £24,999.00 | £22,500.00 |
| 6 | £25,000.00 - £30,000.00 | £27,500.00 |

£30,000 is the maximum level of fine permitted under the legislation. The starting point in each band will be mid-point, rounded up.

7.3 Mitigating Factors

The penalty may be decreased by £500.00 for each mitigating factor up to a minimum of the lowest of the band level determined above.

7.4 Factors reducing seriousness or reflecting personal mitigation

* No history of previous offences
* Steps taken to voluntarily remedy problem
* High level of co-operation with the investigation beyond that which will always be expected
* Good previous record of property maintenance
* Self-reporting and acceptance of responsibility
* Good character and/or exemplary conduct
* Mental disorder or learning disability where linked to the commission of offence
* Serious medical conditions requiring urgent, intensive or long-term treatment
* Sole or primary carer for dependant relative

7.5 Aggravating Factors

The penalty may be increased by £500.00 for each aggravating factor up to a maximum of the top of the band level determined above.

When considering mitigating and aggravating factors the civil penalty imposed must remain proportionate to the offence. An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

Below is a list of some, but not all factual elements that provide the context of the offence and factors relating to the offender. 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 convictions** (See appendix 1) **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.

7.6 Factors increasing seriousness

Statutory aggravating factors:

* Previous convictions, having regard to

1. The nature of the offence to which the conviction relates and its relevance to the current offence; and
2. The time that has elapsed since the conviction

Other aggravating factors include:

* Targeting vulnerable people (See appendix 2)
* Motivated by financial gain (see appendix 3)
* Deliberate concealment of illegal nature of activity
* Established evidence of wider/community impact
* Obstruction of justice
* Record of providing substandard accommodation
* Record of poor management or not meeting legal requirements.
* Refusal of free advice or training
* Member of Accreditation scheme

7.7 Review any financial element of the penalty

Check whether the proposed level of financial penalty is proportionate to the overall means of the offender. The Council may increase or reduce the proposed fine, if necessary moving outside of the range in the table above. Full regard should be given to the general principle where multiple offences are involved.

**8. General principles to follow in setting a penalty**

The Council should 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 offender.

The level of financial penalty should reflect the extent to which the offender 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 offence; it should not be cheaper to offend than to take the appropriate precautions.

The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences and that funds from the financial penalties should fund private rented sector teams in the Council. To cover the costs of the work put into serving any financial penalty notice, the costs of serving the notice will be added to the overall penalty.

This will also act as a deterrent to non-compliant landlords as it is clear that landlords or agents who do not apply will know that they will have to pay for the cost of any enforcement action (where that has not been recovered under other powers).

The Council has calculated that the average cost of serving a financial penalty notice is £250.00 and **this will be added to the penalty** as a deterrent to non-compliant landlords or agents. This may be reduced or increased where a case is either very straightforward or alternatively takes longer than normal.

A Fixed penalty fine of £500.00 will be issued for non-compliance with an Improvement Notice start date, unless the landlord can prove that he/she has made every attempt to comply with the Start Date, but was impeded, prevented and/or obstructed to do so.

8.1 Review of the penalty

The Council should review the penalty and, if necessary adjust the initial amount reached to ensure that it fulfils the general principles set out above. Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at. 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.

8.2 Reductions

Consider any factors which indicate a reduction in the penalty and in so doing the LA should 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):

* Impact of the financial penalty on offender’s ability to comply with the law or make restitution to victims;
* Impact of the financial penalty on employment of staff, service users, customers and local economy.

8.3 Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt. 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 admitted guilt
* The circumstances in which they admitted guilt
* The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances there will be a reduced or no level of discount.

For example, where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour. Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

8.4 Discounts

The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:

* In the event that the offender complied with the identified breach (for example by making an application to licence a previously unlicensed address) within the representation period at the “Notice of Intent” stage, the Council would reduce the level of any imposed civil penalty by 20%;
* A discount of 20% of the original calculated financial penalty should the penalty be paid within a specified time of period (normally 28 days). This discount would be in addition to any reduction applied as a result of compliance at the “Notice of Intent” stage.

8.5 Additional actions

In all cases the Council must consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The Council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.

8.6 Multiple Offences

Where the Council is satisfied that more than one offence is being committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices, (for example, where there are multiple breaches of the HO management regulations).

However, where satisfied on the merits of the case and/or where the Council consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the Council to do that. The Council may take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

**9. Rent Repayment Orders**

Section 40 of the Housing and Planning Act 2016 came into force on the 6th April 2017. This confers a power on the First-tier Tribunal to make a rent repayment order where a landlord has committed one of a number of offences. The Housing Act 2004 initially introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMOs. The Housing and Planning Act 2016 extended this to include Rent Repayment Orders for a much wider range of offences including:

* Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
* Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
* Breach of a banning order made under section 21of the Housing and Planning Act 2016 (due to be enacted in November 2017)
* Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
* Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty. The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit. The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

**10. Totality principle**

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour. 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](file:///J:\HBC\Corporate%20data\Community%20Group\Environmental%20Services\Environmental%20Health\EHEnvironment\Laurent\HOUSING\PRIVATE%20SECTOR%20HOUSING\Definitive_guideline_TICs__totality_Final_web%20(1).pdf).

‘The total financial penalty is inevitably cumulative

The Council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LA. 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 financial penalties. There are a number of ways in which this can be achieved.

For example:

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

Where separate financial penalties are passed, the Council must be careful to ensure that there is no double-counting.

10.1 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.

10.2 Process for imposing a civil penalty and the right to make representations

Before imposing a financial penalty on a person, the Council will give the person notice of the authority‘s proposal to do so a Notice of Intent. A person who is given a Notice of Intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within a 28 day period, this period starting the day after the date on which the Notice of intent was given In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council‘s intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them. After the end of the period for representations the Council will—

* Decide whether to impose a financial penalty on the person, and
* If it decides to impose a financial penalty, decide the amount of the penalty In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.

In the event that the Council has given Notice of Intent to impose a financial penalty to two or more persons for the same offence, the Council‘s decision as regards the imposition of any final penalty will be based upon the circumstances of each individual case and upon any received representations. In this regard, the payment or intended payment of a penalty by one recipient will not, in itself, be reason for the Council to determine that it should not impose a penalty on a second or further person.

Furthermore, an offender’s compliance with the identified breach during the representation period would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate i.e. compliance at that stage would be relevant to the amount of any imposed financial penalty. See ‘Discounts’ above.

If the Council decides to impose a financial penalty on the person, it will give the person a notice (a “Final Notice”) imposing that penalty. The Final Notice will set out—

1. The amount of the financial penalty,
2. The reasons for imposing the penalty,
3. Information about how to pay the penalty,
4. The period for payment of the penalty,
5. Information about rights of appeal, and
6. The consequences of failure to comply with the notice

**11. Procedure and appeals**

The procedure for imposing a civil penalty is set out in Schedule 13A of the Housing Act 2004 and summarised in the guidance. There is no scope for the Council to deviate from this procedure.

At any time, if circumstances dictate, the Council may withdraw a notice or reduce the amount specified in a notice in relation to a civil penalty.

A landlord receiving the final notice of a civil penalty may appeal to the First- tier Tribunal against the decision to impose a penalty or the penalty amount. The appeal has the effect of suspending the notice and requirement to pay until determined.

**12. Monitoring and Review**

The service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

**13. Application of the policy**

All Private Sector Housing Officers must have regard to this policy when making enforcement decisions.

If you have any comments or queries on this policy, please contact: Mr David Fitzgerald

Private Sector Housing Manager

By email: for the attention of Mr David Fitzgerald at: [EHealth@havant.gov.uk](mailto:EHealth@havant.gov.uk)

By telephone: 02392 446670

Or at this address:

Havant Borough Council: The Plaza, Civic Centre Road, Havant, Hampshire, PO9 2AX

Havant Borough Council’s Environmental Health and Licensing Enforcement Policy

Available at: <https://havant.moderngov.co.uk/documents/s52103/Enforcement%20Policy%20V8.pdf>

**Appendix 1**– Non- exhaustive list of relevant offences

**Housing law or landlord and tenant**

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

**Offences involving fraud**

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 Housing Benefit)
* Conspiracy to defraud
* Obtaining money or property by deception
* People trafficking
* Being struck off as the company director

**Offences involving violence**

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
* Racially aggravated criminal damage
* Common assault
* Common assault which is racially aggravated
* Assault occasioning actual bodily harm
* Possession of an offensive weapon
* Possession of a firearm

**Offences involving drugs**

Consideration should be given to the nature of the offence and what bearing it could

have on the management of a private rented property. The nature, quantity and class of

drugs should be taken into account.

**Offences involving sexual offences**

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

**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.

**Appendix 2** – Non- exhaustive list of vulnerable people

* Young adults and children
* Disabled persons
* People on a low income
* Persons with a Drug or Alcohol addiction
* Victims of domestic abuse
* Looked after children
* 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.

**Appendix 3** - Examples of Financial Gain

|  |  |
| --- | --- |
| Offence | Potential Financial Benefits |
| Failure to comply with an Improvement Notice (S.30) | The cost of any works which the notice required. |
| Offences in relation to HMO licensing (S.72) | The rental income whilst the HMO was operating unlicensed, the cost of complying with any conditions on the licence, the cost of the licence fee. |
| Offences in relation to licensing of housed under Part 3 of the Act (S.95) | The rental income whilst the HMO was operating unlicensed, the cost of complying with any conditions on the licence, the cost of the licence fee. |
| Offence of contravention of an overcrowding notice (S.139) | Rental income whilst the property is being occupied overcrowded. |
| Failure to comply with management regulations in respect of HMOs (S.234) | The cost of any works needed to avoid a breach of the regulations. |