

Private Sector Housing Enforcement Policy

Introduction

The council has a range of statutory duties and powers relating to private sector housing conditions and regulation. This policy sets out the general principles which will be applied in relation to the Council's approach to enforcement of private housing in Hounslow.

All action is taken with due regard to the circumstances of the individual property, the residents and the landlord. We will seek to ensure compliance whilst ensuring that the rights of individuals and organisations are safeguarded.

We will give priority to responding to the most urgent and severe problems. We will carry out an inspection of a property where there is a statutory duty to do so, or in cases where we consider that it is appropriate to do so. But we normally expect a tenant to have raised any concerns with their landlord in the first instance, before asking us for assistance, although we recognise that in some cases this isn't always possible.

All officers carry identification confirming they are authorised to exercise these powers in relation to private sector housing.

Targeted action

As well as responding to complaints from tenants and other residents regarding problem private sector properties, we will need to target our enforcement activity from time to time. This is to ensure that we meet our policy and enforcement objectives effectively. Examples (this is not an exhaustive list) of how we may target action include:

- Houses in multiple occupation
- Outbuildings and annexes
- Landlords and agents who seek to evade or persistently fail to comply with legal requirements relating to private sector housing
- Portfolio landlords and managing agents
- Empty properties
- Mixed use properties (e.g. residential use associated with retail/commercial property)
- Localities where there are particular problems, including wards, streets, and buildings
- To provide a co-ordinated approach with other agencies, alongside other initiatives; for example, fire safety, illegal immigration, anti-social behaviour, breach of planning or building control legislation.
- Landlords whose tenants receive Local Housing Allowance/Universal credit.
- Surveys to consider housing conditions and identify what action to take.
- Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC).

To ensure that there are checks and balances in our enforcement approach any targeted action will be authorised by a manager before it is undertaken.

Enforcement Options

There are several types of action that can be taken in relation to any given case, and in some instances, different action may be necessary at different stages of the regulatory process. Outlined below are the main enforcement options available to officers, and regardless of the circumstances, officers will always record the reasons for their choice of action.

Informal Action

Informal action may be taken when an issue is not sufficiently serious to warrant formal action, or where formal action will not achieve the desired result. We will also proceed with informal action where an owner has agreed to carry out works within a reasonable time. If an informal approach does not result in a satisfactory improvement, it may be appropriate to shorten the time period for compliance with a subsequent statutory notice.

Examples of informal action are verbal requests and advice, letters and emails. We will clearly state that we may take formal action if there is a failure to meet informal requests to carry out works to meet legal requirements.

When taking informal action, we will clearly differentiate between legal requirements and recommendations.

Issue Hazard Awareness Notice

This informs interested parties that the Local Authority is bringing certain hazards to the attention of the landlord but is not taking any further action. The use of this power is at the discretion of the Council.

Licensing of Houses in Multiple Occupation (HMOs)

The Housing Act lays down a number of licensing related offences including:

- Operating an unlicensed HMO
- Breach of licence condition or allowing an HMO to be occupied by more persons than a licence allows:
- Supplying incorrect information in a licence application:

Where an unlicensed HMO is identified by an authorised officer, an assessment will be made as to whether there are good reasons why an application had not been made. If there are no good reasons, the Council will consider formal enforcement action.

The management arrangements will also be taken into consideration under the provisions of;

- The Management of Houses in Multiple Occupation (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Service of formal notices or orders

In most cases, we will issue a consultation letter prior to serving statutory notices. This will give the recipient an opportunity to correct any problems before a statutory notice is served. Where a consultation letter is issued, it means a case is on a path leading towards the issue of statutory notices and possible legal action if there is no adequate response to our consultation letter.

In some cases, for example where residents' health, safety or well-being is or has been put at serious risk, we may commence formal enforcement immediately. In such cases, we will inform the owner, landlord agent or other appropriate person of this decision, and the reasons for it.

Statutory notices or orders will be served in any of the following circumstances:

- Where the council has a legal power or duty to serve notice or order
- Where statutory requirements have been breached
- Where remedial action needs to be taken to protect the safety or wellbeing of the tenants.
- Where the Owner/landlord has not carried out work within a reasonable time following informal action, or
- Where an owner/agent has a history of non-compliance or is seeking to evade their legal obligations.

Realistic timescales will be placed on statutory Notices; we will try and agree these with the owner/landlord/agent /manager /occupier, although the final decision will rest with the case officer. The most appropriate notice will be used in all cases. In some situations, it may be necessary to serve more than one notice on a property; either because of statutory requirements or due to the specific circumstances of the case.

In all cases where we serve a notice we will inform the person on whom the notice or order is served of the reason why this action is being taken, the timescale for completion of any works, the works that are required, representations that may be made, relevant appeal periods, details of any charges, and the consequences of non-compliance. Contact details will be provided so that the detail and requirements of the notice can be explained.

Emergency Action

In certain emergency situations we may take enforcement action that will involve carrying out work without the prior need to serve legal notice. For example, where it is not possible to contact the relevant person and there is an imminent risk of serious harm to the health or safety of occupiers or others (e.g. emergency remedial action under the Housing Act 2004).

Penalty Charge Notice

This power can be used where a landlord has failed to comply with a statutory requirement to provide a smoke or carbon monoxide alarm. Failure to pay will result in recovery of the debt through the County Court.

Simple Caution

Simple Cautions may be appropriate where someone has admitted to an offence, where it is their first offence of this type, and they have as far as practical assisted

officers in remedying the situation that led to the offence; for example, applying for a licence as soon as they are able or quickly complying with the requirements of a notice. Simple Cautions warn people that their behaviour has been unlawful and makes them aware of the legal consequences should they commit further offences.

Prosecution

Prosecution will normally be taken in instances where there is a failure to comply with a notice within the specified time period or there is a subsequent breach of the statutory notice.

- Whether there is sufficient and reliable evidence that an offence has been committed
- whether prosecution in the public interest test
- Whether there is a realistic prospect of conviction
- Whether there is a reasonable excuse

In deciding whether to take a prosecution in relation to any offence deemed to have been committed under any legislation enforced we will consider the following, in accordance with the Code for Crown Prosecutors:

In all instances, the decision to initiate a prosecution will be authorised by a manager, and the decision to start prosecution proceedings in court is taken by the Head of Legal Practice of the council's solicitors.

We will normally publicise details of any convictions which could help to publicise the action taken by the council, and the need to comply with the law or to deter others. We may provide information to the media about charges that have been laid before the Courts.

Civil penalties

The Council may serve notices imposing Civil Penalties, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- Failure to licence or other licensing offences under Selective Licensing
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Breaching a Banning Order
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The council's policy about civil penalties is set out in the attached Appendix1 "Civil penalties policy"

Rent Repayment Orders

The council can apply to the First-Tier Tribunal (FTT) for a rent repayment order (RRO) when the landlord has committed the following offences;

- 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 21 of the Housing and Planning Act 2016;3
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.
- Failure to licence of Houses in Multiple Occupation (section 72(1)) of the Housing Act 2004
- Failure to licence under Part 3 of the Housing Act 2004 (section 95(1)).

The landlord does not have to have been convicted of the offence in Court for a RRO application to be successful but if there is no conviction the LA will need to convince the FTT beyond reasonable doubt that the landlord has committed the offence.

The decision to apply for a RRO will be made on a case by case basis. The council will consider applying for a RRO where;

- a landlord has been convicted of any of the above offences and or
- the landlord has received rent that has been paid by Housing Benefit.

When determining how much rent should be recovered the council will have regard to the DCLG guidance “Rent Repayment Orders under the Housing and Planning Act” and will consider the following factors

- punishment of the offender
- deterrent to the offender and others from committing similar offences
- removal of any financial benefit
- the conduct of the landlord
- the financial circumstances of the landlord and
- whether the landlord has at any other time been convicted of a relevant offence.

Where the landlord fails to pay a rent repayment order, the council will apply to the county court for an Order of that Court. If necessary, the council will use county court bailiffs to enforce the order and recover the debt.

Works in Default

Works in Default will be considered as an option in cases of non-compliance with a statutory notice. We will normally give a person notice of the Council’s intention to carry out works in their default. Once we have started works it is an offence for that person to obstruct us or any of the contractors we have employed to carry out the works. We will seek to recover the full cost of the works including the cost of our time and expenses in accordance with the relevant statutory provisions.

We may carry out works in default as well as prosecution, particularly in cases where occupiers of a property are exposed to poor housing conditions for an unreasonable time pending a court hearing.

Recovery of expenses

The Housing Act 2004 allows councils to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. We will notify the amount of any charges prior to serving notices which involve charging for our action. Where we levy a charge for enforcement action this will be registered as a local land charge against the owner's property. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

We are also entitled to recover costs covering officers' time and expenses accrued in the case of works in default under various legislation.

We will recover all costs and fees when formal action is taken when we think it is reasonable to expect the owner to pay. The full costs of all officers' time, including overheads and any relevant expenses, will be charged.

The Council will seek recovery of all debts owed as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). To recover debts the Council will use the following means;

- Registering Local Land Charges
- The enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs.
- Use of tracing services to track down debtors and secure judgments to recover debts.
- Require rents to be paid to the Council instead of the landlord to recover outstanding debts, in appropriate cases where the legislation allows this.

Circumstances where we may take no action

We are not able to take any enforcement action where the landlord is the Council, because we are unable to take action against ourselves.

We will normally only take enforcement action against a Registered Social Landlord (RSL) in exceptional circumstances. We will expect RSL tenants to demonstrate to the Council that they have followed the complaints procedure of their landlord, as this is a form of redress that is not available to tenants of private landlords. We will then consider whether it is appropriate to use our powers.

There may be occasions where an investigating officer cannot substantiate the complaint or there is insufficient evidence to proceed. In such instances, the Council will not take any further action.

In cases where the criteria of the Housing Health & Safety Rating System (HHSRS) are met, no further action will usually be required.

Leaseholders

Leaseholders have their own alternative remedies under their lease, which are not available to a private tenant. Where leaseholder requests assistance in taking action against other leaseholders or freeholders, our assistance will be limited to:

- Category 1 and high Category 2 hazards where leasehold flat is tenanted.
- Contraventions of the HMO Management Regulations (this may necessitate action being taken against the leaseholder themselves).
- Statutory nuisances, serious or emergency situations affecting either the common parts or multiple flats in a leasehold block.

It other situations leaseholders are advised to contact:

The Leasehold Advisory Service - 31 Worship Street, London E2CA 2DX, Telephone 020 7374 5380 info@lease-advice.org.uk, or a solicitor who specialises in leasehold law.

Owner Occupiers

The Council will only take enforcement action against owner occupiers without their consent, in exceptional situations. Examples include:

- Where a problem is adversely impacting someone else, e.g. a drainage problem also affecting another property.
- Where tenants are living at the property of a resident landlord,
- Where conditions at a property pose a danger to the health and safety of the public or visitors to the property.
- Where action is necessary to protect the health and safety of a vulnerable or elderly owner occupier, and there is no alternative means to resolve the problem (including referral to other agencies).

General

We will use all available powers to meet our enforcement objectives. These include powers of entry, and powers relating requiring the production of documents, information about a person's identity or interest in land, and the power to require certificates regarding gas, fire and electrical safety in Houses in Multiple Occupation.

When considering or taking enforcement activity we will have regard to any relevant Government guidance, and other legal requirements that might apply, or example, the Data Protection Act 1998, Regulation of Investigatory Powers Act 2000 and the codes of practice under the Police and Criminal Evidence Act 1984

If a property becomes empty during the course of an investigation or after enforcement activity has begun, the council will normally continue to proceed with action where a statutory nuisance or Category 1 hazard exists, in order to secure compliance with legislative requirements. Evicting a tenant, for example, will not necessarily stop enforcement action.

Complaints

Anyone wishing to complain about Housing Enforcement action may do so by contacting the relevant case officer or manager.

Contact

For general enquiries about the services we provide, or to request assistance, please contact housing.enforcement@hounslow.gov.uk

Appendix 1 - Civil Penalties Policy

1. Introduction and background

1.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 provides local housing authorities with the power to impose a financial civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice [section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under part 2 [section 72]
- Offences in relation to the Selective Licensing of 'houses' under part 3 [section 95]
- Failure to comply with an Overcrowding Notice [section 139]
- Failure to comply with a regulation in respect of an HMO [section 234]
- Breaching a Banning Order
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

1.2 The Government has issued statutory guidance. - Civil Penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities April 2017. "The Guidance". The council must have regard to this guidance in the exercise of their functions in respect of civil penalties.

1.3 A civil penalty is a financial penalty imposed by the Local Housing authority as an alternative to prosecution. The authority can impose a civil penalty up to a maximum level of £30,000. There is no minimum level of penalty. The guidance states that the authority should develop and document their own policy on setting the appropriate level of civil penalty in a particular case.

2. Deciding whether to prosecute or impose a civil penalty

2.1 The council will take into consideration paragraph 3.3 of the guidance when deciding whether to prosecute or impose a civil penalty. The decision whether to prosecute will be decided on a case by case basis. Prosecution will be considered the preferred option where an offence is particularly serious or where the offender has committed similar offences in the past. More serious offences will be where there has been harm caused or an adverse impact on tenants or the wider community.

2.2 When deciding on whether to prosecute consideration will be given to working together with other local authorities where a landlord has committed offences in more than one local authority area.

2.3 Civil penalties may still be imposed for serious offences which fall into the higher banded offences in the matrix in 3.3 below where significant penalties can be imposed up to the maximum level of £30,000.

3. Deciding on the Level of Civil Penalty

3.1 The council will take into consideration paragraph 3.5 of the Guidance when deciding on the level of civil penalty to impose. The following factors will be considered to ensure that the civil penalty is set at the appropriate level; The severity of the offence; the culpability and track record of the offender; the harm caused to the tenant; the punishment of the offender; to deter the offender from repeating the offence; to deter others from committing similar offences and to remove any financial benefit the offender may have obtained as a result of committing the offence.

3.2 When setting the amount of civil penalty the council will have regard to the following two stage assessment.

Stage 1 - banding the offence in accordance with the penalty matrix in table 1 below.

Stage 2 - adjusting the level of fine to take account of other aggravating or mitigating factors

3.3 Table 1 matrix below combines the culpability of the offender with the severity of the offence and harm caused to give a starting point for the level of civil penalty to be issued. The following banding has been applied;

**the figures in red below are the proposed amendments to the amount of fine for each band.*

- Band 1 = £0 – £2000 ASP £1000
- Band 2 = £2,000 – £4,000 ASP £3,000
- Band 3 = £4,000 – £6,000 ASP £5,000
- Band 4 = £6,000 - £10,000 ASP £8,000
- Band 5 = £10,000 – 20,000 ASP 15,000
- Band 6 = £20,000 – 30,000 ASP 25,000

**The figures in red in the below table are the proposed changes for setting the band*

Table 1 Penalty Matrix to band offence				
Potential for harm and severity	high	Band 4	Band 5	Band 6
	medium	Band 2	Band 3	Band 4
	low	Band 1	Band 2	Band 3
		Low	Medium	high
	Level of Culpability			

4. Factors to be considered for each of the Relevant Offences

4.1 The council will have regard to the following factors for Stage 1 - banding the offence in accordance with the penalty matrix and for Stage 2 - adjusting the level of fine to take account of other aggravating or mitigating factors. These examples are not mandatory or exhaustive and are for indicative purposes only.

4.2 FACTORS TO BE CONSIDERED FOR LEVEL OF CULPABILITY

<u>Relevant Offences</u>	
<ol style="list-style-type: none"> 1. section 30 (failure to comply with improvement notice) 2. section 72 (offences in relation to licensing of HMOs) 3. section 95 (offences in relation to licensing of houses under Part 3 selective licensing) 4. section 139(7) (failure to comply with overcrowding notice); or 5. section 234 (failure to comply with HMO management regulations). 6. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 	
High	Where acting wilfully and deliberately in total disregard of legal requirements and causing harm.
	Where tenants' complaints or council intervention has resulted in harassment and or retaliatory eviction.
	Where there has been concealment of the offense.
	Where access has been obstructed.
	Where there has been provision of false information on occupancy.
	Where no reasonable precautions taken.
	landlords and agents who have a significant portfolio of properties. where renting properties is their main occupation. Large profit made by offender. Knowledge of legal requirements.
Medium	Where acting carelessly about compliance with legal duties or preventing harm.
	Failure to take reasonable precautions for avoiding commission of the offence.
	Failure to take all necessary steps to comply with requirements such as action against an obstructing or disruptive tenant or initiate court proceedings for possession.
	Where warning letters have been sent on legal requirements and landlord or agent has knowledge of offence but failed to act in a timely manner.
	Landlords and agents who have only control of a few properties (2-3). Where renting properties is not their only occupation.
Low	Landlord does not have complete control or responsibility for ensuring compliance.

	Where some reasonable precautions in place but not completely adequate.
	Where there has been partial compliance with legal requirements.
	Landlord is only involved in 1-2 properties. Where renting properties is not their only occupation. Low profit made by offender.

4.3 FACTORS TO BE CONSIDERED FOR LEVEL OF HARM AND SEVERITY

FAILURE TO COMPLY WITH AN IMPROVEMENT NOTICE [SECTION 30]	
High	<p>Defect(s) which gives rise to high level risk of harm with evidence to show actual impact on health safety and welfare of occupiers or visitors.</p> <p>Where multiple persons are affected such as large HMOs with 7+ occupiers.</p> <p>Where there is an Impact on vulnerable people such as young children or elderly or people with disabilities.</p>
Medium	<p>Defect(s) which give rise to moderate level risk of of harm with evidence of potential impact on the health safety or welfare of occupiers or visitors.</p> <p>Where multiple persons are affected such as dwellings or HMOs with 3-6 occupiers.</p>
Low	<p>Defect(s) which give rise to low level risk of of harm with little evidence of impact on the health safety or welfare of occupiers or visitors.</p> <p>Single person or family affected no vulnerable occupants.</p> <p>Smaller shared HMOs with 3-6 occupiers.</p>
OFFENCES FOR FAILING TO LICENCE - Houses in Multiple Occupation under part 2 section 72 and Selective Licensing of 'houses' under part 3 [section 95]	
High	<p>Severe overcrowding in respect of space and amenities, multiple beds in rooms. Defect(s) which gives rise to high level risk of harm with evidence of serious impact on the health safety and welfare of tenants.</p> <p>Where there is an Impact on vulnerable people such as young children or elderly or people with disabilities.</p> <p>Failure to address management issues with evidence of substantial harm and or disturbance to neighbours from ASB, noise and nuisance.</p>
Medium	<p>Moderate overcrowding in respect of space and amenities.</p> <p>Defect(s) which give rise to moderate level risk of of harm with evidence of potential impact on the health safety or welfare of tenants.</p> <p>Failure to address management issues with evidence of continued disturbance to neighbours from ASB, noise and nuisance.</p>

Low	<p>No overcrowding in respect of space and amenities.</p> <p>No defect(s) or defects which give rise to low level risk of of harm with little evidence of impact on the health safety or welfare of occupiers or visitors.</p>
<p>OFFENCES FOR NON-COMPLIANCE WITH LICENCE REQUIREMENTS Knowingly permits occupation above the limit imposed by licence S72(2); Breach of Licence conditions S72 (3);</p>	
High	<p>Serious levels of overcrowding above the limit imposed by the licence.</p> <p>Serious and persistent breaches of licence conditions such as failing to provide gas and electrical safety certificates, failing to maintain fire safety precautions, failure to address serious ASB issues, failure to address property management issues resulting in substantial disrepair and hygiene hazards.</p> <p>Persistently failing to comply with the council's waste and recycling requirements. large accumulations of waste in external areas. Evidence of pest infestations.</p>
Medium	<p>Moderate levels of overcrowding above the limit imposed by the licence. Renting a room which was prohibited by the licence conditions.</p> <p>Failure to address property management issues resulting in moderate levels of disrepair and hygiene hazards.</p> <p>Breaches of tenancy management issues and failure to address low level ASB. Evidence of Ad hoc failure to comply with the council's waste and recycling requirements and or failing to keep external areas in a clean, tidy and safe condition.</p>
Low	<p>Failure to display the licence or address relatively minor property or tenancy management issues.</p>
<p>FAILURE TO COMPLY WITH AN OVERCROWDING NOTICE [SECTION 139]</p>	
High	<p>Over-occupation of multiple rooms or extreme over-occupation of an individual room that has a serious impact on the tenants.</p> <p>Overcrowding that causes substantial harm and disturbance to neighbours from ASB, noise and nuisance</p>
Medium	<p>Moderate overcrowding where the impact on the tenants is less serious.</p>
Low	<p>Low level overcrowding with little impact on tenants</p>
<p>FAILURE TO COMPLY WITH A REGULATION IN RESPECT OF AN HMO [SECTION 234]</p>	
High	<p>Serious breaches of HMO Management regulations such as failure to provide gas and electrical safety certificates, failure to maintain fire safety precautions, failure to maintain essential services, failure to address property management issues resulting in substantial disrepair and hygiene hazards.</p>

	Persistently failing to comply with the council's waste and recycling requirements. large accumulations of waste in external areas. Evidence of pest infestations.
Medium	<p>Failure to address property management issues resulting in moderate levels of disrepair and hygiene hazards.</p> <p>Evidence of Ad hoc failure to comply with the council's waste and recycling requirements and or failing to keep external areas in a clean, tidy and safe condition.</p>
Low	Failure to display the manager contact details or relatively minor property management issues.
Breach of any duties under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	
High	<p>An electrical report indicates that C1 defects are present and where the works haven't been undertaken in accordance with the regulations.</p> <p>A remedial notice has been served by the Local Authority and the landlord has failed to take all reasonable steps to comply with it and the regulations have been breached.</p> <p>Defects which gives rise to high level risk of harm with evidence to show actual impact on health safety and welfare of occupiers or visitors.</p> <p>Where multiple persons are affected such as large HMOs with 7+ occupiers.</p> <p>Where there is an Impact on vulnerable people such as young children or elderly or people with disabilities.</p>
Medium	<p>Electrical safety standards not met; failure to carry out remedial work required by an inspection report; failure to comply with a Remedial Notice</p> <p>Defect(s) which give rise to moderate level risk of of harm with evidence of potential impact on the health safety or welfare of occupiers or visitors.</p> <p>Inspection and testing not completed at intervals of no more than 5 years; before tenancy commences; by 1/4/2021</p> <p>Where multiple persons are affected such as dwellings or HMOs with 3-6 occupiers.</p>
Low	<p>Reports not obtained and supplied within required timescales</p> <p>Electrical safety standards not met; failure to carry out remedial work required by an inspection report; failure to comply with a Remedial Notice</p> <p>Defect(s) which give rise to low level risk of harm with little evidence of impact on the health safety or welfare of occupiers or visitors. Single person or family affected no vulnerable occupants.</p> <p>Smaller shared HMOs with 3-6 occupiers.</p>

4.4 FACTORS TO BE CONSIDERED FOR ADJUSTING THE LEVEL OF FINE TO TAKE ACCOUNT OF OTHER AGGRAVATING OR MITIGATING FACTORS

Aggravating circumstances where the civil penalty may be adjusted upwards	Mitigating circumstances where the civil penalty may be adjusted downwards
Where the offender has gained financially from <ul style="list-style-type: none"> • Not carrying out remedial action. • lack of management arrangements • increased rental income from overcrowded conditions • non-payment of licence fee 	Where some arrangements were in place for property and tenancy management arrangements, but they were not adequate
Where there has been no action taken to remedy the offence or cooperation in the investigation of the offence	Where there has been a degree of cooperation
Where an offender has a history of non-compliance	Where this is a first offence and no serious harm impact
links to other crimes	
Where the offence impacts adversely on the council's priorities	

The burden to demonstrate inability to pay as with the burden on demonstrating mitigating circumstances rests on the offender.

4.5 Failure to Comply with a Banning Order

4.5.1 Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings.

4.5.2 Where it was determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

5. Review of Penalty

5.1 Objective 1: to check that provisional assessment meets the aims of the sentencing principles:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent for other potential offenders
- Reform of offender
- Protection of public

- Reparation by offender to victim(s)
- Reparation by offender to community

5.2 Objective 2: to check that provisional assessment is proportionate and will have an appropriate impact.

5.3 This step should take account of the offender's income and assets and adjust within band or change band accordingly. The general presumption should be that a penalty should not be revised downwards simply because an offender has (or claims to have) a low income. The Crown and Courts Act 2013 expressly permits the value of an offender's assets, eg, their rental portfolio, to be taken into account when determining an appropriate penalty.

5.4 For example, if a landlord with a large portfolio was assessed to warrant a low penalty it might require adjustment to have sufficient impact, and to conform to sentencing principles above.

6. Procedure

6.1 Before imposing a civil penalty on a person, the Council will give the person notice of the authority's proposal to do so [a 'Notice of intent']

6.2 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

6.3 After the end of the period for representations the Council will—

- 1) Decide whether to impose a financial penalty on the person, and
- 2) If it decides to impose a financial penalty, decide the amount of the penalty

6.4 In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.

6.5 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' below]

6.6 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

Discounts

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

6.8 In the event that the offender complied with the identified breach [for example by making an application to licence a previously unlicensed property] within the representation period at the 'Notice of Intent' stage, the Council would reduce the level of any imposed civil penalty by 20%.

6.9 A discount of 20% of the original calculated financial penalty should the penalty be paid within a specified time 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

Illustrative example

6.10. The landlord of an HMO property fails to obtain a licence. There are no other relevant factors or aggravating features. The offence is regarded as a band 3 offence, attracting a civil penalty of £7500. Upon receipt of the 'Notice of Intent' to impose a £7500 financial penalty, the landlord makes a complete application for the HMO licence within the period allowed for representations. No other representations [or representations that are up-held] are made to the Council.

6.11 The Council issues a 'Final Notice' imposing a financial penalty of £6000 [£7,500 with a 20% discount having been deducted due to compliance during the representation period]. In the event the landlord pays within 28 days of the date of the Final Notice a further 20% discount is given so that the landlord makes a discounted payment of £4,500.

7. Enforcement

7.1 Where the landlord or agent fails to pay a civil penalty the Council will refer the case to the county court for an Order of that Court. If necessary the Council will use county court bailiffs to enforce the Order and recover the debt.

7.2 where a landlord or agent receives two or more civil penalties over a 12 month period, the Council may include that person's details in the database of rogue landlords and property agents

7.3 If a landlord receives a civil penalty, that fact may be taken into account if considering whether the landlord is a fit and proper person to be the licence holder for an HMO or any other property subject to licensing