

LONDON BOROUGH OF WALTHAM FOREST

**STANDARD OPERATING PROCEDURE
HOUSING AND LICENSING TEAM ENFORCEMENT POLICY**

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Approved by David Beach

Director of Regulatory & Contingency Planning Services

Approved by: Cabinet

1.0 Introduction

1.1 The Council has had regard to the Regulators' Code (BRDO, 2013) in the preparation of this policy.

1.2 This policy sets out the Council's principles for enforcing and executing its duties as a Housing Authority under the following Acts and Regulations made thereunder:

- The Public Health Act 1936
- The Local Government (Miscellaneous Provisions) Acts 1976 and 1982
- The Building Act 1984
- The Housing Act 1985
- The Environmental Protection Act 1990
- The Housing Act 2004
- The Equality Act 2010
- The Housing and Planning Act 2016
- The Tenant Fees Act 2019

1.3 Duties fall under four main headings as follows:

- Undertaking inspections/audits and providing guidance to ensure that residential accommodation meets minimum legal standards. Taking formal action as necessary to secure compliance with statutory requirements
- The administration and enforcement of the mandatory licensing of prescribed HMO accommodation. The administration and enforcement of the additional licensing of prescribed HMO accommodation
- The administration and enforcement of the selective licensing [PRPL] of other privately rented homes.
- Maximising the use of the existing housing stock through a range of measures to bring vacant homes back into use.

1.4 This policy should be read in conjunction with the Environment & Regeneration Services Enforcement Protocol (Issue 10), which sets out the general parameters of enforcement. It also follows the principles laid down in the Code for Crown Prosecutors, Enforcement Concordat and the Regulators Code 2014.

1.5 In this policy, the term 'landlord' should be read as including letting agents, managing agents and any other person involved in the letting or management of privately rented accommodation.

2.0 Aim of Policy

2.1 The council aims to protect public health, reduce anti-social behaviour and safeguard housing standards by ensuring compliance with the relevant legislation, whilst recognising the needs of local businesses.

2.2 The council considers the need for transparency and consistency in the discharge of its functions under the above legislation to be of primary importance. The objective of this policy is to promote both principles in the exercise of the council's functions and, in particular, to maximise consistency in the use of the council's enforcement powers.

3.0 Policy

3.1 The protection of public health and the tackling of anti-social behaviour will be paramount when enforcing the law and all assistance will be given to landlords and tenants to comply with legal requirements.

3.2 All enforcement action taken will be in accordance with statutory Codes of Practice, Council procedures and protocols, and official guidance from central and local government bodies.

3.3 Reasonable effort will be made to ensure compliance with the law by a process of advice and education. Formal action must be considered in the following circumstances:

- Where there is a serious risk to public health
- Where there is a blatant or deliberate contravention of the law
- Where there is history of non-compliance, or cooperation for an informal approach is not forthcoming
- Where landlords fail to take action in the timescales agreed within an informal process.

4.0 Authorisation of Officers

4.1 All Housing and Licensing Officers are fully trained, competent and authorised to carry out their duties. All investigations will be carried out in accordance with the requirements of the:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000

5.0 Overview of approach to enforcement

- 5.1 In safeguarding housing conditions and wider environmental issues arising from rented homes in Waltham Forest, the Council wants to work with responsible landlords to help them to reduce anti-social behaviour and raise housing standards. However, where appropriate and necessary, the Council will instigate appropriate enforcement action against landlords who fail to comply with their legal requirements.
- 5.2 The Council will expect landlords to have a good understanding of the housing standards and management issues that should be met in privately rented accommodation; it would expect landlords to refer to the Council's guide to minimum property standards and to liaise with Council officers or other professionals to confirm the extent to which additional requirements apply to any addresses let out as HMOs.
- 5.3 Generally, it is the Council's preference that landlords are first given the opportunity, wherever possible, to investigate any reported problems at their properties. The Council expects responsible owners to undertake necessary repairs and improvements without the need for the Council to instigate formal action.
- 5.4 In making enforcement decisions the Council will have due regard to the need to eliminate discrimination and advance equality of opportunity. The Council will carefully consider any equalities impacts arising out of enforcement decisions and consider whether the approach proposed is a proportionate means of achieving a legitimate end. The Council will seek to mitigate any adverse equalities impacts where possible.

6.0 Informal Action

- 6.1 In most cases, on receipt of a complaint regarding housing conditions at an address, the Council would first write to the landlord to highlight the alleged deficiencies and request that the complaint be investigated, and remedial action be taken as necessary. A visit may be made at the outset in cases where the initial complaint indicates that an immediate investigation by a Council officer is warranted.
- 6.2 In cases where officers visit an address, whether this is a result of a landlord's failure to adequately resolve a highlighted issue or as part of an audit or other investigation, written or verbal advice may be deemed sufficient should the inspection highlight only minor deficiencies.
- 6.3 With regard to assessments made under the Housing Health and Safety Rating System [HHSRS] made under Part 1 of the Housing Act 2004, the Council would not normally take formal action if the identified defects equated only to minor or moderate Category 2 hazards.
- 6.4 Where written advice is deemed necessary and is provided, suggested timescales will normally be included to undertake any specified works or actions. For defects that relate to moderate or minor Category 2 hazards, a Hazard Awareness Notice may be issued.
- 6.5 If there are more substantial issues to be addressed, the letter will detail the actions to be taken and timescales. A clear distinction will be made in the letter between what is required by law and anything included that is recommended good practice.

7.0 Formal Action

7.1 If formal action is considered appropriate, the following options are available:

7.2 Statutory Notices

7.2.1 These are notices used when a landlord is failing to comply with housing or other health and environmental legislation. They normally require that necessary remedial action be taken at a specified property by the owner within a specified time period, which will vary depending on the nature and scale of the works.

7.2.2 For defects that give rise to Category 1 HHSRS hazards under Part 1 Housing Act 2004, the Council has a duty to take appropriate enforcement action to deal with that hazard. The Council will also normally seek to deal with any significant Category 2 hazards identified at an address, whether or not Category 1 hazards are also present.

7.2.3 In the event that a landlord fails to deal informally with any opportunity to remedy a Category 1 and/or significant Category 2 hazard, the Council will instigate appropriate enforcement action. Such action will vary depending upon the circumstances of the case. It is most likely to involve the service of an Improvement Notice requiring remedial works but could also involve a Prohibition Order prohibiting the use of all or part of the property, a Demolition Order or a Hazard Awareness Notice. Expedited or suspended enforcement actions are also available, which are dealt with under 'emergency or suspended enforcement actions' below.

7.2.4 In cases where an address contains one or more Category 1 hazards, it is unlikely that the service of a Hazard Awareness Notice would be the preferred enforcement action, unless the circumstances of the occupiers were such that other options were not practical [e.g. major improvement works required in a home occupied by a frail resident]. In cases where a formal notice other than a Hazard Awareness Notice was served, a charge would normally be made for this.

7.2.5 Other formal notices served by the Council will not relate to the landlord undertaking remedial works but will cover a range of other matters including exercising a right of entry under s.239 of the Housing Act 2004 and a request to provide information or the need to abate or avoid overcrowding.

7.2.6 Legal Notices served by the Council will detail any rights of appeal and an extension of time to comply with any notices requiring works can be requested if there are legitimate reasons. However, failure to comply with the requirements of any issued Notice is an offence and would normally result in prosecution or, where appropriate, the issuing of a civil penalty.

7.3 Work in default

7.3.1 In situations where a landlord fails to comply with a formal notice requiring remedial works, the Council may undertake these works in default of the owner and take steps to recover any costs incurred. This power may be exercised in addition to any prosecution proceedings taken for non-compliance with this notice.

7.4 Emergency or suspended enforcement actions

7.4.1 Where there is a Category 1 HHSRS hazard present that is considered to represent an imminent risk of serious harm to the health and safety of the occupiers of a dwelling, the Council may serve an Emergency Prohibition Order or take Emergency remedial action. Such emergency actions would involve either the removal of certain defects giving rise to the immediate risk or the closure of all or part of a dwelling.

7.4.2 The Council also has the power to suspend action taken under Part 1 Housing Act 2004 in situations where it has the power or duty to take enforcement action through the service of an Improvement Notice or a Prohibition Order. Such action would not normally be the preferred enforcement action unless the circumstances of the current occupiers were such that other options were not practical.

7.5 Licensing

7.5.1 All privately rented property in the Borough, with some published exceptions, is required to have an appropriate property licence. In determining an application for any property licence, the Council must decide whether to grant or refuse a licence. Where the Council is minded to grant a licence, the licence period should not exceed 5 years. The document 'Licensing – Fit and Proper Person test and associated issues' sets out in some detail Council policy in relation to the determination of licence applications. A summary of these provisions and the adopted approach is detailed in paragraphs 7.5.2 to 7.5.6 below.

7.5.2 In order to secure a property licence, the licence holder [and manager if different] will be assessed against 'Fit and Proper Person' criteria. In granting a licence, the Council must be satisfied that the licence holder and any separate manager of the address are fit and proper persons.

7.5.3 In applying the Fit and Proper Person test, the Council will consider a range of relevant factors. The Council's general approach, illustrated with examples that are not intended to be exhaustive, will be:

- To consider the nature of any convictions – convictions relating to fraud, running an unlicensed HMO or violence are likely to be relevant in determining 'fit and proper'. A landlord that has criminal convictions for harassment and/or illegal eviction is unlikely to be deemed fit and proper. A conviction based upon the existence of a significant hazard may give some clue as to the applicant's approach to health and safety. An administrative or technical breach of a provision is unlikely to carry any significant weight in determining 'fit and proper' status.
- More than one contravention or conviction will normally carry more weight than isolated or one-off incidents, unless the single breaches are particularly serious.

7.5.4 Each case will be considered on its own merits and any mitigating factors considered. The Council will adopt a common-sense approach, exercising its discretion reasonably and proportionately, taking into account relevant considerations and ignoring irrelevant ones.

7.5.5 Where there is a failure of a licence holder or manager to meet the Fit and Proper Person test, a licence application will be refused [unless an appropriate alternative licence holder or manager is identified] and any existing licence revoked [unless the failure relates to the property manager and an appropriate alternative manager is identified].

7.5.6 In the event that there are no contra-indications [that relate to person or property], the Council will normally grant a licence that has a 'full-term' duration of up to 5 years. However, where the Council identifies concerns relating to either the property to be licensed [for example a breach of planning regulations] or to the licence holder/manager [but not such that the Fit and Proper Person test is failed outright] then a shorter licence term may be granted dependent upon the circumstances and nature of concerns as to why a 'full-term' should not be granted.

7.5.7 The operation of the licensing regime places a number of obligations on landlords, including the need to:

- Ensure that relevant properties are licensed
- Carry out necessary safety checks and provide relevant documentation when necessary
- Comply with a set of licence conditions, including the need to deal with any anti-social behaviour at their rented property and to keep the property in a reasonable state or repair.

7.5.6 A failure to meet one or more of the licensing requirements will be individually assessed but may result in one, or a combination of 2 or more, enforcement outcomes including:

- A written warning or simple caution
- Prosecution
- The imposition of a civil penalty
- The service of formal notices
- Refusal or revocation of a licence and/or the granting of a shorter licence period through a consequent failure to meet fit and proper person criteria.

7.6 Simple Caution

The purpose of a Simple Caution is to deal quickly and simply with less serious offenders by diverting them away from the courts, and to reduce the chances of repeat offences. Simple Cautions will be kept on file for three years. A Caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the Caution. If the offender refuses to accept a Simple Caution, a prosecution will normally be pursued.

7.7 Prosecution

Where formal action is required, a prosecution may be necessary if the alleged offence is serious enough. Any decision to prosecute will be taken in accordance with the Regulators Compliance Code, the Council's Enforcement Protocol and the Code for Crown Prosecutors.

The following factors will be taken into account:

- The seriousness of the offence
- The previous history of the party concerned
- The willingness of the party to prevent a recurrence of the problem
- Whether the issuing of a simple caution would be more appropriate or effective
- Whether the offence was committed deliberately, any evidence of obstruction of the officers in their lawful duty or of the investigation
- Financial considerations - the benefit obtained from the alleged offending.

7.8 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:

- I. Failure to comply with an Improvement Notice
- II. Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- III. Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
- IV. Failure to comply with an Overcrowding Notice
- V. Failure to comply with a regulation in respect of an HMO
- VI. Breaching a Banning Order
- VII. A further breach of the Tenant Fees Act 2019 that occurs within five years of the imposition of a financial penalty or conviction for a previous breach (a civil penalty of up to £5000 may be imposed in respect of an initial breach of the Tenant Fees Act 2019)

The Council will determine, on a case-by-case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above. Examples of situations in which a decision to prosecute would normally be taken include:

- Where the offence committed is judged to be particularly serious
- Where the offender has committed similar offences in the past.

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty will be calculated in accordance with the matrix and guidance set out in the attached Appendix 1 – as civil penalties under the Housing and Planning Act 2016 in respect of i) to vi) above and Appendix 2 for formal actions resulting in a civil penalty under the Tenant Fees Act 2019.

7.9 Rent Repayment Orders

The Council may apply to the First Tier Tribunal for a Rent Repayment Order (RRO) where a landlord has committed a relevant offence (as set out in Section 40 Housing and Planning Act 2016) to recover an amount in respect of a relevant award of universal credit paid in respect of rent under the tenancy for up to 12 months. An application for an RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a Civil Penalty.

7.10 Banning Orders

For serious offenders, where a landlord has committed one or more offences specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017, the Council may apply to the First Tier Tribunal for a banning order that bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

A banning order, if granted, must be for a minimum period of 12 months. There is no statutory maximum period for a banning order.

The Council will generally pursue a banning order for the most serious offenders. It will take into account the seriousness of the offence(s), whether the landlord has committed other banning order offences (or received any civil penalty in relation to a banning order offence) and any history of failing to comply with their obligations or legal responsibilities. It will also take into account other relevant factors, including:

- The harm, or potential harm, caused to the tenant
- The need to punish the offender
- The need to deter the offender from repeating the offence
- The need to deter others from committing similar offences.

8.0 Complaints and Appeals Procedures

8.1 Some legal notices have a statutory appeals procedure, and landlords are entitled to appeal against such notices through the specified appeal provisions.

8.2 We are always willing to discuss with you the reasons why we have acted in a particular way or asked you to act in a particular way. You can contact Julia Morris, Assistant Director, Regulatory Services, at Julia.morris@walthamforest.gov.uk to discuss our approach to enforcement against you for a specific case/address.

8.3 We manage complaints about our service through Waltham Forest's Corporate Complaints Policy. Click on complaining about council services or telephone 020 8496 3000.

Private Sector Housing Enforcement Policy

Appendix 1 – Civil penalties under the Housing and Planning Act 2016

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provide local authorities with the power [through the creation of section 249A Housing Act 2004] to impose a 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]

In addition, section 23 Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

The Council has the power to impose a civil penalty of up to £30,000, with a level of civil penalty imposed in each case in line with its policy.

This guidance outlines the Council’s policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.

The Council considers the need for transparency and consistency in the discharge of its functions under the Housing Act 2004 to be of primary importance. The general objective of this policy is, therefore, to promote both transparency and consistency in the imposition of financial penalties under the 2004 Act so that, for example, those managing and having control of rented properties in the borough (a) know how the Council will generally penalise relevant offences and (b) are assured that, generally, like cases will be penalised similarly, and different cases penalised differently. For these reasons in particular, the Council will depart from this policy and the guidance below in exceptional circumstances only. It will consider carefully, and on a case-by-case basis, whether any such circumstances exist, in light of the information with which it is provided. The further objectives of using financial penalties in particular as a means of enforcing the above offences are explained below.

Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016¹. Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties.

Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a. **Severity of the offence.** *The more serious the offence, the higher the penalty should be.*
- b. **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.*
- c. **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 imposing a civil penalty.*
- d. **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 demonstrate the consequences of not complying with their responsibilities.*
- e. **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.*
- f. **Deter others from committing similar offences.** *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 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.*
- g. **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 Civil Penalties Under the Housing and Planning Act 2016: Guidance for Local Authorities

The Council will consider the above factors when deciding where, within the relevant band of the Civil Penalties Matrix below, a particular offence and penalty fall. Further, the Council considers factors (d) to (g) above, inclusive, to be primary objectives of financial penalties and will attach particular weight to them when determining the appropriate level of penalty.

Civil Penalties Matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide indicative ‘tariffs’ under the various offence categories, with the final level of the civil penalty adjusted in each case, and generally within the relevant band, to take into account aggravating and mitigating factors.

In deciding what level of penalty to impose, officers will conduct the following four stage process. First, they will consider within which band the offence (and offender) initially falls, giving the presumptive band width. Second, any aggravating and/or mitigating factors are considered, which may have the effect of increasing or decreasing the penalty within the relevant band. Third, if there are any exceptional circumstances, the penalty may be increased or decreased beyond the relevant band. Fourth, if any of the **Discounts**, as set out below, apply, the penalty will be decreased, which may result in the penalty falling below the relevant band.

Once the band has been identified, the assumption is that the indicative minimum tariff will apply, being the sum set out in the text below the matrix. If a single aggravating factor is identified, the indicative minimum tariff will normally be increased by up to, but not exceeding, £5000. If there are numerous aggravating factors officers may consider that to amount to exceptional circumstances, so that the penalty may be increased beyond the presumptive band width. There may be an increase in the penalty in respect of each such factor.

The indicative minimum tariff will normally be reduced by up to, but not exceeding, £5000 if one or more mitigating factors is/are identified. For the avoidance of doubt, the presence of one or more mitigating factors will not of itself amount to exceptional circumstances so that the penalty may not thereby fall below the band width. The Council has not provided a list of mitigating factors in this policy because it acknowledges that there are myriad possible circumstances that might, at the officer’s discretion, give rise to mitigation. The Council may, exceptionally, including for the reason given above, increase the penalty above the band maximum or, again exceptionally, decrease it below the minimum ‘tariff’. In order to meet the objectives of this policy and of financial penalties in particular, however, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty beyond band limits in exceptional circumstances only [excluding any **Discounts** as set out below]. The Council will consider on a case-by-case basis, in light of the information with which it is provided, whether any such circumstances exist.

| Band number | Severity of offence | Band width [£] |
|-------------|---------------------|----------------|
| 1 | Moderate | 0-5000 |
| 2 | | 5000-10000 |
| 3 | Serious | 10000-15000 |
| 4 | | 15000-20000 |

| | | |
|---|--------|-------------|
| 5 | Severe | 20000-25000 |
| 6 | | 25000-30000 |

Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

Failure to comply with an Improvement Notice

Maximum Court fine that can be levied for failure to comply with an Improvement Notice - Unlimited

An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

In most cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards.

The civil penalty for a landlord controlling five or fewer dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** matter, representing a band 3 offence, attracting a civil penalty of at least £12500.

Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio) the failure to comply with the requirements of an Improvement Notice would be viewed as being a **severe** matter attracting a civil penalty of £22500 or above.

Aggravating features/factors specific to non-compliance with an Improvement Notice

- The nature and extent of hazards that are present. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property would justify an increase in the level of the civil penalty

Generic aggravating features/factors

The Council will have regard to the following general factors in determining the final level of the civil penalty:

- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the

landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action

- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s]

Failure to License offences

Maximum Court fine that can be levied for failure to license an HMO or Part 3 House – Unlimited

Failure to license a Mandatory ‘HMO’

Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority. HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

The Council would view the offence of failing to license an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

Under the Council’s policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** matter, representing a band 3 offence, attracting a civil penalty of at least £12500. Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), the failure to license an HMO would be viewed as being a **severe** matter attracting a civil penalty of £22500 or above [a band 5 offence]

Aggravating features/factors specific to non-licensing offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

Generic aggravating features/factors

As set out under ‘Improvement Notice’ above

Failure to license a property under the Council’s Additional [HMO] Licensing Scheme

The Council has designated the whole of the borough as an additional licensing area. The scheme came into force on 1 April 2020 and expires on 31 March 2025. Under the scheme, most HMOs occupied by three or more persons forming two or more households sharing one

or more basic amenities such as a WC or kitchen, but which fall outside the scope of mandatory HMO licensing, will be required to hold an additional licence in order to be legally let.

The Council would view the offence of failing to license an HMO under its additional licensing scheme as a significant failing. The Council has introduced additional HMO licensing, amongst other reasons, in order to regulate management, conditions, standards and safety in the properties considered to represent a higher risk to tenants as regards such matters as fire safety and overcrowding compared with properties occupied by a single-family household.

Under the Council's policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **moderate** matter, representing a band 2 offence, attracting a civil penalty of at least £7500. Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), the failure to license an HMO would be viewed as being a **serious** matter attracting a civil penalty of £17500 or above [a band 4 offence]

Aggravating features/factors specific to non-licensing offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

Generic aggravating features/factors

As set out under 'Improvement Notice' above

Failure to license a property under the Council's Selective Licensing Scheme

Waltham Forest Council has also exercised their powers under section 80 Housing Act 2004 and has designated 18 of 20 wards as a selective licensing area [Hatch Lane and Endlebury wards are excluded]. Under this scheme, which came into force on 1st May 2020 and expires on 30 April 2025, most privately rented homes which are occupied by a single-family household or by no more than 2 unrelated persons, are required to have a property licence to operate in the borough. Through the Selective Licensing scheme, which was introduced to combat anti-social behaviour and tackle poor conditions that exist in privately rented homes, the Council intends to improve the professionalism of private landlords and drive up property standards.

The Council would view the offence of failing to ensure that a rented home was licensed under its Selective Licensing Scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.

Under the Council's policy the civil penalty for a landlord controlling five or fewer dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a

moderate band 2 offence, attracting a civil penalty of at least £7500 in respect of a failure to obtain the necessary Selective Licence under part 3 Housing Act 2004.

Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio) the failure to obtain the necessary Selective Licence would be viewed as being a **serious** matter attracting a civil penalty of £17500 or above [a band 4 offence].

Aggravating features/factors specific to non-licensing offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that required a Selective Licence and was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

Generic aggravating features/factors

As set out under 'Improvement Notice' above

Breach of licence conditions

Maximum Court fine that can be levied for failure to comply with a licence condition - unlimited

All granted property licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property, including:

- Undertaking Gas Safe and electrical checks
- Installing and maintaining smoke alarms
- Obtaining tenant references, providing written tenancy agreements and protecting deposits
- Notifying the Council in any specified changes in circumstances
- Carrying out specified measures to prevent or address anti-social behaviour
- Maintaining the property in reasonable repair
- Ensuring that the gardens are tidy and free from refuse
- For HMO, licences granted under part 2, carrying out works that were a condition of the granted licence or reducing occupation levels as necessary

It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

In determining the level of a civil penalty, the Council will therefore initially consider;

- a) The number and nature of the licence condition breaches; and

b) The nature and extent of deficiencies within each specified licence condition

Clearly, the circumstances of breach of licence condition offences have the potential to vary widely from case to case but, as a guide:

- The civil penalty for a landlord controlling five or fewer dwellings [or 1 or 2 HMOs], with no other relevant factors or aggravating features [see below], for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair would each be regarded as a **moderate** band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), these same offences would be regarded as a more serious **moderate** band 2 offence, attracting a civil penalty of £3500 for a 'professional' landlord or agent.
- The civil penalty for a landlord controlling five or fewer dwellings [or 1 or 2 HMOs], with no other relevant factors or aggravating features [see below], for a failure to provide or maintain smoke alarms in working order, to fail to address serious ASB issues such as the use of a licensed premises for illegal purposes or the failure to carry out works/improvements imposed as a condition of a granted HMO licence would each be regarded as a **serious** band 3 offence, attracting a civil penalty of at least £12500. Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), these same offences would be regarded as a **severe** band 5 offence, attracting a civil penalty of £22500 or above for a 'professional' landlord or agent.

Aggravating features/factors specific to non-licensing offences

- None – the nature of the licence condition breaches and their impact upon the occupiers would be an integral part of the initial assessment process

Generic aggravating features/factors

As set out under 'Improvement Notice' above

Failure to Comply with an Overcrowding Notice

Maximum Court fine that can be levied for failure to comply with an Overcrowding Notice – Unlimited

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. The notice specifies, on a room-by-room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant[s] of an HMO to unacceptably cramped living conditions.

Under the Council's policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below] would be regarded as a **serious** band 3 offence, attracting a civil penalty of at least £12500. This 'basic' civil penalty would increase to a **severe** band 5 offence, attracting a civil penalty of £22500 or above, for a

'professional' landlord or agent controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or having demonstrated experience in the letting/management of property (irrespective of the size of the portfolio).

Aggravating features/factors specific to non-compliance with an Improvement Notice

- The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty

Generic aggravating features/factors

The Council will have regard to the following general factors in determining the final level of the civil penalty:

- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.

Failure to Comply with The Management of Houses in Multiple Occupation [England] Regulations 2006

Maximum Court fine that can be levied for failure to comply with each individual regulation - unlimited

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing certain HMOs in respect of:

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

Note - The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 place similar obligations on the managers of HMOs as defined by Section 257 Housing Act 2004

It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others. Furthermore, and using Regulation 8 as an example, a breach of this regulation could relate to defects to an individual window in one HMO but multiple defects to the structure, fixtures & fittings in number of rooms in a second HMO.

In determining the level of a civil penalty, the Council will therefore initially consider;

- a) The number and nature of the management regulation breaches; and
- b) The nature and extent of deficiencies within each regulation

Clearly, the circumstances of HMO Management Regulation offences have the potential to vary widely from case to case but, as a guide:

- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a **moderate** band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio) these same offences would be regarded as a more serious **moderate** band 2 offence, attracting a civil penalty of at least £3500 for a 'professional' landlord or agent.
- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a **serious** band 3 offence, attracting a civil penalty of at least £12500. Where a landlord or agent is controlling/owning a significant property portfolio, being three or more HMOs and/or six or more dwellings, and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio) these same offences would be regarded as a **severe** band 5 offence, attracting a civil penalty of £22500 or above for a 'professional' landlord or agent.

Aggravating features/factors specific to non-licensing offences

- None – the nature of the Management Regulation breaches and their impact upon the occupiers would be an integral part of the initial assessment process

Generic aggravating features/factors

As set out under 'Improvement Notice' above

Failure to Comply with a Banning Order

Maximum Court fine that can be levied for failure to comply with a Banning Order – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

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. 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.

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. As the burden lies with the recipient of any such notice to explain why, exceptionally, the Council should, or should not, depart from the Civil Penalties Matrix and guidance above, the Council will expect the recipient of a Notice of Intent to explain and provide cogent evidence to support the existence of any such circumstances when he or she makes representations in response to the notice.

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—

- (a) Decide whether to impose a financial penalty on the person, and
- (b) 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.

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' below]

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 and summarise—

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,

- d) The period for payment of the penalty,
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

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 license 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 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

The landlord of an HMO property fails to obtain a licence. They only operate one HMO and there are no other relevant factors or aggravating features. The offence is regarded as a serious matter, representing a band 3 offence, attracting a civil penalty of at least £12500. Upon receipt of the 'Notice of Intent' to impose a £12500 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 upheld] are made to the Council.

The Council issues a 'Final Notice' imposing a financial penalty of £10000 [£12500 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 £7500.

Appendix 2 – Civil penalties under the Tenant Fees Act 2019

Section 8 of The Tenant Fees Act 2019 provides local authorities with the power to impose a civil penalty in situations where a breach of the Tenant Fees Act 2019 has been identified.

Under the Tenant Fees Act, landlords are prohibited from imposing charges or payments in connection with a tenancy or licence unless that payment is one of a specified number of ‘permitted payments’. Each separate ‘prohibited payment’ represents a breach of the Tenant Fees Act 2019:

- The Tenant Fees Act 2019 enables the Council to serve notices imposing Civil Penalties of up to a maximum of £5,000 where a landlord or agent has required a tenant to make a ‘prohibited payment’
- The Tenant Fees Act 2019 enables the Council to impose Civil Penalties of up to a maximum of £30,000 where a landlord or agent has required a tenant to make a ‘prohibited payment’ within 5 years of a previous conviction or the imposition of a Civil Penalty [as an alternative to instigating prosecution proceedings]
- The Tenant Fees Act 2019 enables the Council to serve notices imposing Civil Penalties of up to a maximum of £5,000 where a landlord or agent is in breach of the requirement to repay the holding deposit

This guidance outlines the Council’s policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty, including cases where it has determined to impose a civil penalty as an alternative to prosecution proceedings.

Its primary objective, like the objective of the policy and guidance described in Appendix 1 above, is to promote both transparency and consistency in the imposition of Civil Penalties so that, for example, those affected (a) know how the Council will generally penalise relevant offences and (b) are assured that, generally, like cases will be penalised similarly, and different cases penalised differently. For these reasons in particular, the Council will depart from this policy and the guidance below in exceptional circumstances only. It will consider carefully, and on a case-by-case basis, whether any such circumstances exist, in light of the information with which it is provided. The further objectives of using Civil Penalties in particular as a means of enforcement are explained below.

Statutory Guidance

The Government has issued statutory guidance for local authorities in respect of the exercise of their enforcement functions under the Tenant Fees Act 2019² Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties.

Paragraph 6.3 of the statutory guidance states that local authorities should consider the following factors to help ensure that the financial penalty is set at an appropriate level:

a) Severity of the breach

The more serious the breach, the higher the penalty should be. This should include considering:

² Tenant Fees Act 2019 – Statutory Guidance for Enforcement Authorities

- the track record of the landlord or agent – a higher penalty will be appropriate where the landlord or agent 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. Agents and landlords are running a business and should be expected to be aware of their legal obligations; and
- Harm caused to the tenant - the greater the harm, the greater the amount should be when imposing a financial penalty.

b) Punishment of the landlord or agent.

A financial 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 breach and previous track record of the offender, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the landlord or agent and demonstrates the consequences of not complying with their legal obligations.

This should include considering:

- Deterring the landlord or agent from repeating the breach;
- Deterring others from committing similar breaches; and
- Remove any financial benefit the landlord or agent may have obtained because of committing the breach.

c) Aggravating and mitigating factors

In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating and/or mitigating factors in each case.

Below is a non-exhaustive list of factors that enforcement authorities may wish to consider depending on the circumstances and local priorities:

Aggravating factors include:

- Previous convictions or record of non-compliance
- Motivated by financial gain
- Obstructive to the investigation
- Deliberate concealment of the activity or evidence
- Tenant is a vulnerable individual

Mitigating factors include:

- Co-operation with the investigation
- Prompt repayment of prohibited charge to the tenant
- Evidence of health reasons preventing reasonable compliance (poor mental health, unforeseen health issues and/or emergency health concerns)

- No previous breaches
- Landlord or agent is a vulnerable individual, where vulnerability is linked to the breach being committed
- Good character / exemplary conduct
- Reduction for admission of guilt
- Whether landlord or agent's primary trade or income is connected with the private rented sector

d) Fairness and proportionality.

The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach.

Factors to consider include:

- **Totality principle.** If issuing a financial penalty for more than one breach, or where the landlord or agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches. Where the landlord or agent is issued with more than one financial penalty, the enforcement authority should consider the guidance 'Offences Taken into Consideration and Totality by the Sentencing Council for England and Wales'.
- Impact of the financial penalty on the landlord or agent's ability to comply with the law and whether it is proportionate to their means (e.g. risk of loss of home)
- Impact of the financial penalty on third parties (e.g. employment of staff or other customers)

In determining an appropriate level for the penalty, the Council will consider the status of the landlord as part of its assessment of the severity of any breach. In this regard, and whilst recognising that all landlords are running a business and should be aware of their legal obligations, it will normally impose a higher penalty in respect of breaches committed by a 'professional' landlord or agent controlling/owning a significant property portfolio being three or more HMOs and/or six or more dwellings, and/or having demonstrated experience in the letting/management of property (irrespective of the size of the portfolio). Those definitions apply below, notwithstanding not being repeated on each occasion.

The Council will apply the totality principle in situations where a landlord is identified as having committed multiple breaches of the Tenant Fees Act, with each imposed penalty set at lower reduced level.

The Council will consider the above factors when determining the amount of the appropriate penalty in any given case. Further, the Council considers the principles identified at (b) above to be particular objectives of the Civil Penalties for which the 2019 Act provides, to which it will therefore attach particular weight when deciding the amount of any penalty.

In the event that the Council determines to impose one or more financial penalties, it will apply discounts [see 'discounts' below] including a discount that reflects the offender having remedied the breach that gave rise to the proposed penalty and a second discount for admission of guilt [payment within 28 days of penalty being imposed].

Civil penalties of up to £5000 per breach

'Non-professional' landlord not controlling/owning a significant property portfolio

| Number of breaches/penalties imposed | Average Penalty if no significant aggravating or mitigating factors (total amount) | Indicative Penalty if significant aggravating features (total amount) | Average Penalty if one or mitigating factors [but no aggravating factors]* (total amount) |
|--------------------------------------|--|---|---|
| 1 | £3000 | £4000 | £2000 |
| 2 | £2750 (£5500) | £3750 (£7500) | £1750 (£3500) |
| 3 | £2500 (£7500) | £3500 (£10500) | £1500 (£4500) |
| 4 | £2250 (£9000) | £3250 (£13000) | £1250 (£5000) |
| 5 | £2000 (£10000) | £3000 (£15000) | £1000 (£5000) |
| 6 or more | No additional penalty (£10000) | No additional penalty (£15000) | No additional penalty (£5000) |

*re-payment of prohibited charge and admission of guilt addressed through discounts to penalty

'Professional' landlord or agent controlling/owning a significant property portfolio and/or having demonstrated experience in the letting/management of property

| Number of breaches/penalties imposed | Average Penalty if no significant aggravating or mitigating factors (total amount) | Indicative Penalty if significant aggravating features (total amount) | Average Penalty if one or mitigating factors [but no aggravating factors]* (total amount) |
|--------------------------------------|--|---|---|
| 1 | £4000 | £5000 | £3000 |
| 2 | £3750 (£7500) | £4750 (£9500) | £2750 (£5500) |
| 3 | £3500 (£10500) | £4500 (£13500) | £2500 (£7500) |
| 4 | £3250 (£13000) | £4250 (£17000) | £2250 (£9000) |
| 5 | £3000 (£15000) | £4000 (£20000) | £2000 (£10000) |
| 6 or more | No additional penalty (£15000) | No additional penalty (£20000) | No additional penalty (£10000) |

*re-payment of prohibited charge and admission of guilt addressed through discounts to penalty

Civil penalties of up to £30000 per breach

'Non-professional' landlord not controlling/owning a significant property portfolio

| Number of breaches/penalties imposed | Average Penalty if no significant aggravating or mitigating factors (total amount) | Indicative Penalty if significant aggravating features (total amount) | Average Penalty if one or mitigating factors [but no aggravating factors]* (total amount) |
|--------------------------------------|--|---|---|
| 1 | £10000 | £12000 | £8000 |
| 2 | £9000 (£18000) | £11000 (£22000) | £7000 (£14000) |

| | | | |
|-----------|--------------------------------|--------------------------------|--------------------------------|
| 3 | £8000 (£24000) | £10000 (£30000) | £6000 (£18000) |
| 4 | £7000 (£28000) | £9000 (£36000) | £5000 (£20000) |
| 5 | £6000 (£30000) | £8000 (£40000) | £4000 (£20000) |
| 6 or more | No additional penalty (£30000) | No additional penalty (£40000) | No additional penalty (£20000) |

*re-payment of prohibited charge and admission of guilt addressed through discounts to penalty

‘Professional’ landlord or agent controlling/owning a significant property portfolio and/or having demonstrated experience in the letting/management of property

| Number of breaches/penalties imposed | Average Indicative Penalty if no significant aggravating or mitigating factors (total amount) | Average Penalty if significant aggravating features (total amount) | Average Penalty if one or mitigating factors [but no aggravating factors]* (total amount) |
|--------------------------------------|---|--|---|
| 1 | £25000 | £30000 | £20000 |
| 2 | £22500 (£45000) | £27500 (£55000) | £17500 (£35000) |
| 3 | £20000 (£60000) | £25000 (£75000) | £15000 (£45000) |
| 4 | £17500 (£70000) | £22250 (£89000) | £12250 (£50000) |
| 5 | £15000 (£75000) | £2000 (£100000) | £10000 (£50000) |
| 6 or more | No additional penalty (£75000) | No additional penalty (£100000) | No additional penalty (£50000) |

*re-payment of prohibited charge and admission of guilt addressed through discounts to penalty

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 letting agent or landlord 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.

As the burden lies with the recipient of any such notice to explain why, exceptionally, the Council should, or should not, depart from this policy and the guidance above, the Council will expect the recipient of a Notice of Intent to explain and provide cogent evidence to support the existence of any such circumstances when he or she makes representations in response to the notice.

After the end of the period for representations the Council will:

- (a) Decide whether to impose a financial penalty on the letting agent or landlord, and
- (b) 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.

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' below]

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 and summarise:

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,
- d) The period for payment of the penalty,
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

Discounts & Reduction of penalty for mitigating factors

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 prompt repayment of prohibited charge to the tenant] before the end of 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 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

A 'non-professional' landlord requires a tenant to make a payment prohibited under the Tenant Fees Act 2019. There had been no breach within the previous 5 years and there are no significant aggravating or mitigating factors. Upon receipt of the 'Notice of Intent' to impose a £3000 financial penalty, the landlord remedies the breach by refunding the tenant the prohibited payment before the end of the period allowed for representations. No other representations [or representations that are upheld] are made to the Council.

The Council issues a 'Final Notice' imposing a financial penalty of £2400 [£3000 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 £1800.