

Southampton City Council Enforcement Private Rented Sector



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| Enforcement Private Rented Sector | | | |
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DRAFT

1. Scope and Definitions

- 1.1 The Southampton City Council Enforcement Private Rented Sector Policy is intended to provide guidance for officers, businesses and members of the public on the principle and processes which will apply when enforcement action is considered or taken. The Southampton City Council Enforcement Private Rented Sector Policy should be read in conjunction with The Southampton City Council Enforcement Policy.
- 1.2 The Southampton City Council Enforcement Policy is a general policy which outlines the principles of enforcement that the council will follow and apply.
- 1.3 This policy indicates the different enforcement options that the council may follow and apply in the private rented sector, and how decisions are made on enforcement; it also explains the role and authorisation of officers who have enforcement responsibilities.
- 1.4 This policy sets out high level principles of enforcement procedures in private rented sector and, where applicable, is supported by The Southampton City Council Enforcement Policy.
- 1.5 Southampton City Council is committed to carrying out its duties in a fair and consistent manner and ensuring that enforcement action is proportional to the seriousness of failure to comply with statutory requirements.

2. Legislative Context and Other Related Documents

- 2.1 This policy is linked to a number of a different pieces of legislation and guidance. The council will adhere to all relevant legislation and guidance including:
 - Human Rights Act 1998
 - Data Protection Act 2018
 - Legislative and Regulatory Reform Act 2006
 - Equality Act 2010
 - Code for Crown Prosecutors 2013
 - The Anti-social Behavior, Crime and Policing Act 2014
 - Regulators' Code 2014
 - Housing Act 2004
 - Building Act 1984
 - Caravan Sites and Control of Development Act 1960
 - Caravan Sites Act 1968
 - Energy Act 2013
 - Enterprise and Regulatory Reform Act 2013
 - Environmental Protection Act 1990
 - Housing Act 1985,

- 1996 and 2004
- Housing and Planning Act 2016
- Local Government (Miscellaneous Provisions) Act 1982
- Leicestershire Act 1985
- Mobile Homes Act 1983 and 2013
- Prevention of Damage by Pests Act 1949
- Public Health Acts 1875 – 1932, 1936, 1961, 1984

3. Our Objectives

- To strive to ensure that tenants of a private landlord or a Registered Social Landlord (RSL) live in homes free of significant risks to their health and safety.
- To strive to ensure that all Houses in Multiple Occupation (HMO's) and Selective Licensed properties are safe, licensed where required and all licensing conditions are met.
- To work with owners of Empty Homes to ensure they are not left empty where there is blight and a need for housing.
- To work with owners and occupiers of privately owned property and land so that it does not present a statutory nuisance to other land owners, or does not directly or indirectly present an unacceptable risk to public health, safety or the environment.
- We meet our statutory duties as a local housing authority.

4. Decision Making

4.1 Enforcement action will be based on risk and we must also have full regard to any statutory duty.

4.2 Assessment of risk will be based on current legislation and specific guidance.

4.3 Enforcement Officers are required to make judgments and will decide on appropriate action after considering the criteria within this Policy and relevant written procedures.

4.4 A Senior Officer will give prior approval to all formal action falling outside the scope of this policy.

4.5 Where the investigating enforcement officer believes that legal action maybe required, evidence will be collected and the case will be reviewed by the service manager before it proceeds.

5. Enforcement Principles

5.1 The council's enforcement policies will have regard to the Regulators' Code (2014). Enforcement activity undertaken by Southampton City Council should be:

- **Proportionate** – our enforcement activities should reflect the level of risk to the public and enforcement action taken should correspond to the seriousness of the offence.
- **Accountable** – our activities should be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- **Consistent** – our advice to those we regulate should be reliable and we will respect advice provided by other regulators. The council should seek to ensure fair and level enforcement, however the council recognises that consistency is not the same as uniformity. Officers should exercise their professional judgment and discretion according to the circumstances of each individual case.
- **Transparent** – those we regulate should be able to understand what is expected of them and what they can anticipate in return; regulations and enforcement procedures should be as clear and simple as possible.

6. Enforcement Procedure

6.1 The decision to pursue enforcement action will depend on the severity of the noncompliance. Factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals;
- Evidence that suggests that there was pre-meditation in the commission of an offence;
- The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice, order or policy;
- There is a recorded history of previous warnings or the commission of similar offences; and
- Aggravated circumstances such as obstruction of an officer or aggressive/violent behaviour.

7. Housing, Health and Safety Rating System (HHSRS)

7.1 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s).

7.2 There are two categories of possible hazards:

- **Category 1 Hazards** represent a serious danger to health and the council has a duty to take appropriate action to deal with these.

- **Category 2 Hazards** represent a lesser danger and, although it has no duty to take action, the council will exercise its power to reduce category 2 hazards through appropriate action.

7.3 A range of enforcement powers is available under the Act to remove or reduce any hazards identified to an acceptable level.

8. Powers of Entry

8.1 Where appropriate and proportionate authorised officers can use the powers of entry set out in part 1 of the Housing Act 2004 and other relevant legislation for example where they have reasonable belief an offence has been committed and they need to gather evidence.

8.2 In general the powers will allow an officer at any reasonable time to;

- Enter a property to carry out an inspection and gather evidence
- Take someone with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Leave recording equipment for later collection
- Take samples of articles or substances; and in some cases to carry out works.

8.3 In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days.

8.4 Notice that that powers of entry need to be carried out will normally be in writing but can in some circumstances be given verbally, depending on the relevant statutory provision.

8.5 The powers of entry can be enforced with a warrant. The Police may if necessary accompany officers where that is appropriate.

8.6 It is an offence to obstruct an officer in the course of their duty if they are attempting to gain entry whilst executing a warrant.

8.7 Officers exercising their power of entry will carry identification and details of their authorisation to carry out their action.

9. Enforcement Options

9.1 The council seek to comply with regulatory legislation through the use of the following courses of action:

- Use of informal action, written guidance, advice and notices
- By refusal, revocation or the attachment of conditions to a licence
- By issuing fixed penalty notices
- By using civil legislation where appropriate
- By the use of various management orders

- By the use of statutory notices and orders
- By issuing simple cautions
- By carrying out work in default
- By prosecution
- By the use of civil penalties
- By using anti-social behaviour powers
- By compulsory purchase or enforced sale

9.2 The council in deciding upon enforcement options will also have due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

10. Enforcement Decision Table

10.1 The following table contains some examples of situations where different types of action may be taken. Decisions are made on a case by case basis.

| Action | GENERAL CIRCUMSTANCES |
|--|---|
| No Action | <p>Where formal action may not be appropriate.</p> <p>Where the individual/organisation is likely to comply</p> <p>In such cases, customers may be directed to other sources of advice and support.</p> |
| Informal Action and Advice includes verbal advice and advisory letters | <p>Where it may be appropriate to deal with the issues through informal action and advice and the individual/organisation is likely to comply</p> <p>In such cases, the Council will work collaboratively with responsible landlords to address and resolve any problems.</p> |
| Service of Notice requiring repairs or specific legal requirements | <ul style="list-style-type: none"> • Where a person refuses or fails to carry out works through the pre-formal HHSRS process; • Where there is a lack of confidence or there is a positive intelligence that the responsible individual or company will not respond to a pre-formal approach; • Where there is a risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc.); |

| | |
|--|--|
| | <ul style="list-style-type: none"> • Where standards are extremely poor and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; • Where the person has a history of non-compliance with the Council and/or other relevant regulators; • Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management); • Where it is necessary to safeguard and protect the occupiers' future health and safety; and/or • Where it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate. |
| <p>Powers to require information and/or documents</p> | <p>Where it is necessary for documents and information to be provided to enable officers to carry out their powers and duties.</p> <p>We there is reasonable belief that an offence has been committed and it is believed that the documents are required in order to gather evidence of the offence.</p> |
| <p>Emergency Remedial Action / Emergency Prohibition Order</p> | <p>Where there is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises.</p> |
| <p>Revocation of HMO Licenses and Approvals</p> | <p>Where the Manager is not a "fit and proper person"; and/or</p> <p>Where there are serious breaches of the licensing conditions and/or serious management offences.</p> |
| <p>Simple Caution</p> | <p>Where an offence is less serious and the person who has committed the offence has admitted their guilt & agreed to accept a caution.</p> <p>In such cases, a Simple Caution may be offered in line with home office guidance.</p> |
| <p>Prosecution</p> | <p>Where the authority consider the offence is not suitable to be dealt with by with by way</p> |

| | |
|--|---|
| | of a Civil Penalty or a Civil Penalty is not available for the type of offence. |
|--|---|

11. Informal Action

11.1 Informal action includes:

- Offering advice
- Giving verbal and written warnings
- Negotiating agreements between complaints and other residents or businesses
- The negotiation of specific conditions with licences, and
- The use of informal notices

11.2 It is generally considered appropriate to take informal action in one or more of the following circumstances:

- The act omission is not serious enough to warrant formal action.
- From the business'/member of public's past history it can be reasonably expected that informal action will achieve compliance with the law.
- The consequence of non-compliance will not pose a significant risk.

12. Civil Penalty Notices

12.1 Under the Housing and Planning Act 2016 a local authority has the power to impose a civil penalty of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004.

12.2 The following offences under the Housing Act 2004 can be considered for a civil penalty;

- Failure to comply with an Improvement Notice (Section 30).
- Offences relating to Licensing of HMOs (Section 72).
 - Section 72 (1) being in control or managing an HMO which is required to be licensed but is not so licensed.
 - Section 72 (2) being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence.
 - Section 72 (3) being a licence holder who fails to comply with any condition of a licence.
- Offences in relation to licensing under Part 3 of the Housing Act 2004 (Section 95).
 - Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed.
 - Section 95 (2) being a licence holder who fails to comply with any condition of a licence.

- Offence of contravention of an overcrowding notice (Section 139).
 - Failure to comply with management regulations in respect of an HMO (Section 234).
- 12.3 Each local Authority must implement its own civil penalties scheme and determine its own level of civil penalties. Please see appendix 1 for the Civil penalties charges.
- 12.4 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.
- 12.4 The Council will, where it deems necessary and proportionate make use of the powers to issue civil penalty notices for applicable offences .
- 12.5 The procedure for issuing civil penalties is prescribed by schedule 13A of the Housing Act 2004 and schedule 1 of the Housing and Planning Act 2016.
- 12.6 The decision to issue a civil penalty notice will be made by the service manager for HMO licensing after consultation with legal services on a case by case basis..
- 12.7 A local housing authority is required to issue a 'notice of intent' to issue a financial penalty. Under this notice a landlord has 28 days with which to make representations to the local housing authority.
At the end of this period, should the local housing authority still propose to issue the financial penalty, they must serve a 'final notice' imposing the penalty.
On receipt of a final notice imposing a financial penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.

13. Civil Legislation

- 13.1 Where appropriate, the Southampton City Council will use civil legislation in the fulfilment of its duties. For example, an injunction may be sought to prevent a business from continuing to breach the law and it is felt the criminal sanctions will not prevent further breaches.

14. Management Orders

- 14.1 The Council will consider applying for an Interim Management Order /Special Interim Management Order and final Management Order on a case by case basis and in compliance with part 4 of the Housing Act 2004.

15. Statutory Notices

- 15.1 Statutory notices/orders legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety.
- 15.2 Notices and Orders will normally be served where:

- Informal action has not achieved the desired effect,
- There is a lack of confidence that the individual/company will respond to an informal approach,
- There is a history of non-compliance with informal action,
- Standards are generally poor with little management awareness of statutory requirements,
- The consequences of non-compliance could be potentially serious to the health and safety of the public.
- Where the breach of legislation is so serious, deterrence and punishment may be required to prevent future occurrences.

15.3 Time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served.

15.4 In some circumstances, requests for extension of time can be made. These should be in writing, prior to the expiry date, explaining the reason for the request.

15.5 Statutory notices may also be served in conjunction with prosecutions.

15.6 Having regard to statutory powers, and where the law allows, a charge will apply to statutory notices and orders.

15.7 Where a notice is not complied with by the expiry date, a prosecution or further enforcement action may be considered appropriate.

15.8 Statutory notices and orders are important legal documents. Once served, failure to take follow-up enforcement action has serious implications having regard to the contents of this Policy. Failure to comply with a statutory notice or order will normally result in seeking authority to either issue a civil penalty or to prosecute, and/or the carrying out of works in default

16. Simple Cautions

16.1 Where there is evidence of a criminal offence but the public interest does not require a prosecution, a simple caution can be used.

16.2 Simple cautions are mainly used for cases involving first time, low-level offences where a simple caution can meet the public interest.

16.3 Decisions to issue simple cautions will be made in accordance with the Director of Public Prosecutions' Guidance on Charging issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984 and following "The simple cautions for Adult Offenders Guidance" issued on 13th April 2015.

16.3 Before a simple caution can be given, it is important to try to establish:

- The views of the victim about the offence,

- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances,
- Whether the offender has made any form of reparation or paid compensation.

16.4 A simple caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy will be held by the council as the official record.

16.5 Failure to accept a simple caution leaves the authority with an option to instigate legal proceedings instead.

16.6 Simple caution can be cited in court if the same person or organisation, commits further housing act offences within three years of the original offence.

16.7 Simple Cautions will not be used as a substitute for prosecutions which would otherwise be defective.

17. Work In Default

17.1 Failure to comply with a notice may result in the council arranging for the necessary works to comply with the notice to be carried out, this is known as work in default.

17.2 The costs to the owner will usually be more than if the owner carries out the works themselves as they will be charged for the council's time, carrying out schedules of work and any other reasonable costs incurred by the council.

17.3 The council will actively pursue debts incurred.

17.4 Enforced sale of empty properties will be considered where appropriate in line with The Law of Property Act 1925 where a debt has been incurred for example following works undertaken to an empty home in the owners default and in compliance with the Council's Enforced Sale Procedure.

17.5 Until cleared all debts will be registered with the local Land Charges Registry as a financial charge.

17.6 Once registered the charge will accrue compound interest.

17.7 It should be noted that, in the case of action under section 76 of the Building Act 1984, and emergency remedial action under Section 40 of the Housing Act 2004, there is no power of prosecution, and the Council is only able to arrange for the required works to be carried out.

18. Prosecutions

18.1 Prosecution will normally occur where one or more of the following circumstances apply:

- It is warranted by virtue of the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender
- There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence.
- There has been a reckless disregard for the safety and health of people, or where a particular contravention has caused serious public alarm.
- There has been failure to comply with a legal notice or repetition of a breach that was subject to a formal caution, or failure to pay a fixed penalty notice with the permitted payment period;
- There is a blatant disregard for the law;
- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- Officers have been intentionally obstructed in the lawful course of their duties.
- Where council staff are assaulted we will seek prosecution of the offenders.

18.2 In all cases, alleged offenders will be invited to send written comments or explanations for consideration.

19. Rent Repayment Orders

19.1 This is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

19.2 The Housing Act 2004 allows for rent repayment orders to be issued where landlord of a property had failed to obtain a licence for a property that was required to be licensed.

19.3 The Housing and Planning Act 2016 extended rent repayment orders to cover the below:

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

19.4 Rent repayment orders can be granted to either the tenant or the council.

19.5 If the tenant paid the rent themselves, then the rent must be repaid to the tenant. If the rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority.

- 19.6 If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.
- 19.7 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 19.8 The council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 19.9 The council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves taking into account and DPA/GDPR implications

20. Licensing of Properties

- 20.1 Please see the SCC Policy The licensing of Houses in Multiple Occupation (HMOs).

21. Enforced Sales

- 21.1 The council approved the Enforced Sale Procedure (ESP) in August 2005. The Council will use the ESP where appropriate and proportionate, primarily to deal with problematic empty properties, where despite the Council's reasonable efforts to engage with the owner of the property the hazards and poor state and condition of the property remain.
- 21.2 The council will consider invoking the ESP on a case by case basis. Generally the ESP would not be used unless there is a relevant debt of over £1,000

Upon disposal of the property the council will recover all of its debts, fees and costs from the sale proceeds. Any balance from the proceeds of sale will be paid to the owner (where there whereabouts are known).

22. Empty Dwelling Management Orders

- 22.1 In respect of a wholly unoccupied property and in accordance with the Housing Act 2004, the council may make an interim empty dwelling management order (IEDMO).
- 22.2 The council must make the application for the IEDMO to the First-tier property tribunal.

- 22.3 Once an IEDMO is in force the council must take such steps as they consider appropriate for the purpose of securing that the dwelling becomes and continues to be occupied.
- 22.4 If after serving an interim empty dwelling management order the council considers that there are no steps it can appropriately take under the order to ensure that the property becomes occupied, it will either make a final empty property management order, or revoke the order without taking any further action.
- 22.5 In making the decision to issue a final EDMO the council must take into account the interests of the community and the effects on the proprietor and any other interested parties. The council may also pay compensation to any affected third party.
- 22.6 Once the EDMO is in force the council will take appropriate steps for securing that the dwelling is occupied and that the property is managed in accordance with the scheme contained within the order.
- 22.7 The council will revoke the EDMO if it determines that there are no steps it can take or it determines that keeping the order in force is unnecessary.

23. Banning Orders

- 23.1 In the case of the most serious offenders or rogue landlords, the council can in accordance with the powers contained within the Housing and Planning Act 2016 apply to the first-tier tribunal for a banning order.
- 23.2 A banning order can be issued by the first-tier tribunal that prevents a landlord from the following;
- Letting housing in England
 - Engaging in English letting agency work
 - Engaging in English property management work or
 - Holding a HMO licence
- 23.3 The offences for which a banning order can be applied are listed in the Housing and Planning Act 2016 (Banning Order Offences) Regulations (2017) see-
<http://www.legislation.gov.uk/ukdsi/2017/978011162224/contents>
- 23.4 The council will consider applying for a banning order for the most serious offenders and in doing so will consider the following;
- The seriousness of the offence
 - Any previous convictions or listing on the national rogue landlord database
 - The harm to the tenant caused by the offence
 - The punishment is proportionate to the offence
 - That it provides a sufficient deterrent to prevent a repeat of the offence and
 - Deters others from committing similar offences.
- 23.5 The length of any banning order will be determined by the first-tier tribunal with a minimum of 12 months being imposed. There is no statutory maximum limit. The

Council can provide recommendations for the length of the banning order on application but must detail their reasons for the recommendation.

23.6 The procedure for issuing a banning order is prescribed within the Housing and Planning Act 2016. See –

<http://www.legislation.gov.uk/ukpga/2016/22/part/2/chapter/2/enacted>

23.7 It is a criminal offence to breach a banning order and the council will take appropriate action to secure any convictions for breaches of any orders imposed.

24. The Rogue Landlords Database

24.1 The Secretary of State has established a national database of rogue landlords and property agents.

24.2 The council has authority to maintain and update the content.

24.3 The council will make an entry on the database in respect of a person in the following circumstances;

- A banning order has been made against them
- They have received two or more financial penalties in respect of banning order offences within the last twelve months.

24.4 The council will issue the person with a decision notice before any entry is made.

24.5 The person has a right of appeal to the First-tier tribunal.

24.6 The following information in respect of the person will be recorded on the database;

- The name and address of the person
- The period for which the entry is to be maintained
- The details of their property ownership and property management
- Details of any convictions for banning order offences
- Any Banning Orders still in force
- Any financial penalties received

24.7 The entry on the database will be removed in the case of any conviction being overturned.

24.8 The person has a right to request their removal from the database. This must be in writing to the Council. The council will consider such requests on a case by case basis.

24.9 Where the council refuses the request to remove the person from the database the person has a right of appeal to the First-tier tribunal.

25. Publicity and Sharing of Evidence

25.1 The council will endeavour to secure media representation at hearings in the Courts when we are seeking prosecution of offenders with the aim of drawing their attention to the court case.

25.2 The council will publicise any conviction, which could serve to draw attention to the need to comply with the law or, deter anyone tempted to act in a similar manner.

25.3 Details of such cases will also be published on our website.

25.4 The council will share intelligence and evidence, secured in the ordinary course of our business, with other statutory enforcement bodies and relevant partners in accordance with our duties under Crime and Disorder Act 1988, section 17.

26. Governance

26.1 Authorisation of Officers

26.1.1 Officers are only authorised to enforce regulations in accordance with the council's Scheme of Delegation.

26.1.2 Officers must be competent by appropriate training, qualification and/or experience will be authorised to take enforcement action relevant to that training, qualification and/or experience. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties.

26.2 Appeals and Complaints

26.2.1 Appeals in relation to enforcement action should be via the statutory process outlined in the relevant legislation.

26.2.2 Complaints about the conduct of officers should be made via the council's corporate complaints procedure.

26.3 Policy Review Process

26.3.1 This policy will be reviewed when there is any significant change in legislation or other circumstances that affect its effectiveness and validity.

Appendix 1 - Civil penalties – determining fee levels

A civil penalty is a financial penalty imposed by a local authority on an individual or organisation. The power to impose a civil penalty of up to £30,000 as an alternative to prosecution for certain Housing Act 2004 and Banning Order offences has been introduced by the Housing and Planning Act 2016.

The maximum penalty is £30,000, however each local authority must implement its own policy and fee level in accordance with the guidance issued by the Ministry of Housing, Communities & Local Government, see -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

In accordance with this guidance the Council has devised its own fee levels and incorporated the use of civil penalties within the Private Sector Enforcement Policy 2019. In setting fee levels the Council has considered the following;

- 1. The Severity of the offence.**
- 2. The Culpability and track record of the offender.**
- 3. The harm caused to the tenant.**
- 4. The appropriate punishment of the offender.**
- 5. To deter the offender from repeating the offence & deter others from committing similar offences.**
- 6. To remove any financial benefit the offender may have obtained as a result of committing the offence.**

The Council will use its existing powers to, as far as possible, make an assessment of a landlord's assets and any income they receive (not just rental income) when determining an appropriate penalty.

Determining the civil penalty fees

The Council has developed a matrix to calculate the level of fine imposed. The fees are based on;

1. The culpability of the offender &
2. The potential level of harm posed by the offence

The Council has set 12 penalty bands which cover fine levels from a minimum of £25 to a maximum of £30,000.

Step 1

This step assesses the landlord's culpability as well as the potential harm the offence could have caused to tenants or visitors to the property. There are four levels of culpability to consider and each one has an associated set of characteristics which can be used to determine the most appropriate level. Table 1 below sets out the criteria for assessing the culpability of the landlord:

Table 1 – Level of culpability

| | |
|---------------------------------|--|
| Very high (deliberate) | <ul style="list-style-type: none"> • Flagrant disregard for the law or deliberate breach • Has large rented property portfolio and knew their actions were unlawful <p><i>Example offences: Failure to comply with emergency remedial notice or prohibition order</i></p> |
| High (reckless) | <ul style="list-style-type: none"> • Offender failed to put in place measures that are recognised legal requirements. • Offender ignored warnings from the Council or tenants. • Offender failed to improve conditions even after being alerted to the risks. • Offender allowed the breaches to continue over a long period of time. • Serious and/or systemic failure to address risks. <p><i>Example offence: Failure to comply with HMO Management Regulations.</i></p> |
| Medium (negligent) | <ul style="list-style-type: none"> • Systems put in place to manage risk but not sufficiently adhered to or implemented <p><i>Example offence: Partial compliance with an Improvement Notice</i></p> |
| Low (little or no fault) | <ul style="list-style-type: none"> • Failings were minor & non-compliance was an isolated incident • Significant attempts taken to comply but not sufficient on this occasion • There was no warning/circumstance indicating a risk <p><i>Example offence: Overcrowding or breach resulting from behaviour of occupants</i></p> |

The seriousness of the harm the offence had caused, or could foreseeably cause, by the offence(s) must be assessed. When deciding the level of harm whether, actual or potential, resulting from the commission of the offence the Council will have regard to Table 2 below.

Table 2 – Level of Harm

| | |
|------------------------------|---|
| Level 1 – High risk | <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact • High risk of an adverse effect on individual(s) – including where persons are vulnerable |
| Level 2 – Medium risk | <ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Level 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect • The Council and/or legitimate landlords or agents substantially undermined by offender’s activities • The Council’s work as a regulator to address risks to health is inhibited • Consumer/tenant misled |
| Level 3 – Low risk | <ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s) • Public misled but little or no risk of actual adverse effect on individual(s) |

Step 2 – Determining the starting point and category range

Once the levels of culpability and harm have been assessed the matrix set out in Table 3 will be used to assess the correct penalty level followed by Table 4 to provide the banding for the penalty category. In order to determine an appropriate level of civil penalty within the category range a starting point is listed. Further adjustment within the category range will then be considered for aggravating and/or mitigating factors.

Table 3—Penalty levels

| | | Culpability | | | |
|------|---------|-------------|------|--------|-----|
| | | V High | High | Medium | Low |
| Harm | Level 1 | 12 | 9 | 6 | 3 |
| | Level 2 | 11 | 8 | 5 | 2 |
| | Level 3 | 10 | 7 | 4 | 1 |

Table 4 – Penalty bands

| Category | Civil Penalty Range (£) | Starting point (£) |
|----------|-------------------------|--------------------|
| 1 | 25 - 175 | 50 |
| 2 | 50 - 350 | 125 |
| 3 | 125 - 750 | 300 |
| 4 | 175 - 750 | 350 |
| 5 | 350 - 2000 | 1000 |
| 6 | 750 - 4500 | 2500 |
| 7 | 500 - 2250 | 1000 |
| 8 | 1000 - 5500 | 3000 |
| 9 | 2500 - 12500 | 6250 |
| 10 | 1250 - 4500 | 2500 |
| 11 | 2500 - 12500 | 6250 |
| 12 | 6250 - 30000 | 15000 |

Example – High level of culpability but low level of harm would score 7 with a penalty range of £500-£2250 and a starting point of £1000. Mitigating and aggravating factors will then be considered to determine if the amount should be lower or higher than £1000.

Step 3

The Council will consider mitigating and aggravating factors when determining the fine within the penalty range. Table 5 below lists examples.

Table 5 – Aggravating and mitigating factors

| Mitigating Factors |
|--|
| <ul style="list-style-type: none"> • No history of previous offences • Steps taken to voluntarily remedy problem e.g. submits a licence application • High level of co-operation with the investigation e.g. turns up for the PACE interview • Good record of maintaining property |

| |
|---|
| <ul style="list-style-type: none"> • Acceptance of responsibility e.g. accepts guilt for the offence(s) at an early stage in the investigation • Health reasons preventing reasonable compliance i.e. mental health, unforeseen health issues, emergency health concerns & serious medical conditions requiring urgent, intensive or long term treatment • Sole or primary carer for dependant relative that prevented reasonable compliance • Willingness to undertake training and monitoring • Willingness to join recognised landlord accreditation scheme • Vulnerable individual(s) where their vulnerability is linked to the commission of the offence • Good character and/or exemplary conduct |
| Aggravating Factors |
| <ul style="list-style-type: none"> • Previous relevant convictions, having regard to the nature of the offence and relevance to the current offence and the time that has elapsed since the conviction • Motivated by financial gain i.e. cost cutting at the expense of safety • Deliberate concealment of illegal nature of activity • Poor history of compliance • Falsification of documentation or licenses • Deliberate failure to obtain or comply with relevant licensing requirements to avoid scrutiny by enforcing authorities • Targeting vulnerable victims • Obstruction of the investigation • Number of items of non-compliance i.e. the greater the number the greater the potential aggravating factor • Systemic management failure e.g. Lack of tenancy agreement/rent paid in cash • Record of letting substandard accommodation • Record of poor management/inadequate management provision |

Step 5 – Recording the decision

The decision to issue a civil penalty will be made by the Service Manager for HMO Licensing. The decision will be recorded giving reasons for determining the amount of financial penalty that will be imposed.