

Thurrock Council Private Housing

Statement of principles – Determining the amount of a penalty charge

Purpose of this statement of principles

This statement sets the principles that Thurrock Council will apply in exercising its powers under the Housing and Planning Act 2016 to impose a civil penalty on a landlord/owner.

Legal powers

Section 126 and Schedule 9 of the Housing and Planning Act introduced civil penalties under the Housing and Planning Act 2016 for certain housing offences under the Housing Act 2004.

The housing offences for which a civil penalty can be served for breaching regulation are:

- failure to comply with an improvement notice [Section 30]
- offences in relation to licensing of Houses in Multiple Occupation [Section 72]
- offences in relation to licensing of houses under Part 3 of the Act [Section 95]
- offences of contravention of an overcrowding notice [Section 139]
- failure to comply with management regulations in respect of Houses in Multiple Occupation [Section 234]

Authorised officers will issue a civil penalty where there has been a failure to comply with a notice or management regulation in respect of houses in multiple occupation (HMO).

The council will give the person a notice of its proposal [notice of intent] to impose a financial penalty. The notice of intent will set out:

- the amount of the proposed financial penalty
- the reasons for proposing to impose the penalty and
- information about the right of the landlord to make representations within 28 days from when the notice was given

At the end of the period of representation, the council will decide whether to impose a penalty and the penalty amount.

If the council decides to impose the penalty taking into account mitigating factors, the person will receive a final notice requiring the penalty to be paid within 28 days.

Main principles for issuing a penalty charge

The main principles for issuing a penalty charge are:

- lower the risk to the tenants health and safety and well being
- promote compliance of landlords in the Private Rented Sector
- eliminate any financial gain or benefit from non-compliance with regulation
- educate landlords on the associated risks of non-compliance
- be proportionate to the nature of the breach of legislation and the risk posed
- aim to prevent future non-compliance

Main principles to be taken into account when setting penalty charge levels

The council is satisfied it has evidence of non-compliance and the breach allows for the council to require the owner or landlord to pay a penalty charge.

This will be determined using the following principles:

- severity of the offence
- culpability and record of the offender
- the potential harm caused to the occupiers
- punishment of the offender
- deter the offender from repeating the offence
- deterring other from committing similar offences

Level of penalty charge

The council has the power to impose a civil penalty of up to **£30,000**.

The maximum amount will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence, as well as taking into account the landlords income and previous record of offending.

To determine the level of a civil penalty, officers will have regard to the civil penalty table. This provides guidance to council officers of how to score the landlords culpability and behaviour with the final level adjusted to take into account other relevant or aggravating factors.

The council has the right at any time to withdraw a notice of intent or final notice and reduce the amount specified in a notice of intent or final notice.

Role of the First tier Tribunal

A landlord who is served with a notice may appeal to the tribunal, who will rehear the council's authority decision to impose the civil penalty.

They have the power to confirm, vary [increase or reduce] the size of the civil penalty or cancel the civil penalty.

Recovery of penalty charge

The council can apply to a County Court for a court order to enforce the civil penalty and recover the debt where the landlord has not paid within 28 days of the service the charge notice and:

- the landlord has not made an appeal to the First Tier Tribunal or
- has made an appeal which has since been determined in the council's favour

Sums paid may be used by the council to assist in the enforcement and promotions standards in the private sector housing.

Review of statement of principles and fee charges

This statement will be reviewed annually and published with the fees and charges for private sector housing.

Imposing a civil penalty

The council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be served by imposing a civil penalty.

The following questions should be considered:

- does the council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- has the evidence been reviewed by the appropriate senior officer at the council?
- has the evidence been reviewed by the council's legal services
- are there any reasons why a prosecution may be more appropriate than a civil penalty? – for example, the offence is particularly serious, the landlord has committed similar offences in the past, the landlord has a banning order

Setting fines – principle

Where a landlord has committed multiple offences, and a civil penalty could be imposed for each one, consideration should be given to whether it is just and proportionate to impose a penalty for each offence.

When calculating the penalty amounts for multiple offences, there will be inevitable be a cumulative effect and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences involved.

Determine the civil penalty amount

This process is broken down into 4 main stages:

- Stage 1 determines the penalty band for the offence and the landlord's culpability – each penalty has a starting amount and maximum amount of **£30,000**
- Stage 2 determines how much will be added to the penalty amount as a result of the landlord's income
- Stage 3 reviews the penalty amount is proportionate – the total amount at this stage cannot go above **£30,000**
- Stage 4 considers reductions to the penalty charge

Checklist to be completed when deciding the amount of a financial penalty under the Housing Act 2004

Stage 1 – determining the penalty band

Offence	Penalty
Failure to comply with an improvement notice (Section 30)	£1,500 to £30,000
Offences in relation to licensing of HMOs (Part 2, Section 72)	£2,500 to £30,000
Offences in relation to licensing of houses (Part 3, Section 95)	£2,500 to £30,000
Offences of contravention of an overcrowding notice (Section 139)	£1,000 to £30,000
Failure to comply with HMO management regulations (Section 234)	£1,550 to £30,000

Determining the landlords culpability

Culpability	Description	Check
Very high	Where the offender intentionally breached, or flagrantly disregarded, the law or who has a high public profile and knew their actions were unlawful.	<input type="checkbox"/>
High	Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.	<input type="checkbox"/>
Medium	Offence committed through act or omission which a person exercising reasonable care would not commit eg unaware of the legal requirement or duty.	<input type="checkbox"/>
Low	Offence committed with little fault – for example, because: <ul style="list-style-type: none"> • significant efforts were made to address the risk although they were inadequate on this occasion • there was no warning/circumstance indicating a risk • failings were minor and occurred as an isolated incident 	<input type="checkbox"/>

Please explain your decision

Potential harm

Likelihood	Description	Check
Low	<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)	<input type="checkbox"/>
Medium	<ul style="list-style-type: none">• Adverse effect on individual(s) (not amounting to category 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	<input type="checkbox"/>
High	<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	<input type="checkbox"/>

Please explain your decision

Statutory aggravating factors

Factor	Reasons	Included in decision?
Previous convictions, having regard to: a) the nature of the offence to which the conviction relates and its relevance to the current offence b) the time that has elapsed since the conviction		<input type="checkbox"/>

Other aggravating factors

Factor	Reasons	Included in decision?
Motivated by financial gain		<input type="checkbox"/>
Deliberate concealment of illegal nature of activity		<input type="checkbox"/>
Established evidence of wider/community impact		<input type="checkbox"/>
Obstruction of justice		<input type="checkbox"/>
Record of providing substandard accommodation		<input type="checkbox"/>
Record of poor management or not meeting legal requirements		<input type="checkbox"/>
Refusal of free advice or training		<input type="checkbox"/>
Member of accreditation / rental standard scheme		<input type="checkbox"/>
Other – please give details below:		<input type="checkbox"/>

Starting points and ranges

The behaviour of the landlord determines the appropriate level of culpability.

This exercise is repeated for each offence that is being considered as the landlords culpability may vary between the offences.

Factor	Points			
Culpability	Low <input type="checkbox"/> – 2	Medium <input type="checkbox"/> – 3	High <input type="checkbox"/> – 4	Very high <input type="checkbox"/> – 5
Potential harm	Low <input type="checkbox"/> – 5		Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15
Aggravating factors				
Previous convictions	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Motivated by financial gain	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Deliberate concealment of illegal nature of activity	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Established evidence of wider / community impact	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Obstruction of justice	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Record of providing substandard accommodation	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Record of poor management	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Refusal of free advice / training	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Member of accreditation / rental scheme	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	
Other, as specified	Low <input type="checkbox"/> – 5	Medium <input type="checkbox"/> – 10	High <input type="checkbox"/> – 15	

Score range	Financial penalty
7 to 10	£2,500
11 to 14	£4,000
15 to 18	£6,000
19 to 22	£8,000
23 to 26	£10,000
27 to 30	£12,000
31 to 34	£14,000
35 to 38	£16,000
39 to 42	£18,000
43 to 46	£20,000
46 to 50	£22,000 to £30,000

Management regulation offences

Score range	Financial penalty
7 to 10	£1,500 to £3,000
11 to 14	£3,500 to £5,000
15 to 18	£5,500 to £7,000
19 to 22	£7,500 to £9,000
23 to 26	£9,500 to £11,000
27 to 30	£11,500 to £13,000
31 to 34	£13,500 to £15,000
35 to 38	£15,500 to £17,000
39 to 42	£17,500 to £19,000
43 to 46	£19,500 to £21,000
46 to 50	£21,500 to £30,000

Total score	
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Factors reducing seriousness or reflecting personal mitigation

Factor	Reasons	Included in decision?
No previous convictions or no relevant / recent convictions		<input type="checkbox"/>
Steps voluntarily taken to remedy problem		<input type="checkbox"/>
High level of co-operation with the investigation, beyond what will always be expected		<input type="checkbox"/>
Good record of maintaining property		<input type="checkbox"/>
Self-reporting, co-operation and acceptance of responsibility		<input type="checkbox"/>
Good character and / or exemplary conduct		<input type="checkbox"/>
Mental disorder or learning disability, where linked to the commission of the offence		<input type="checkbox"/>
Serious medical conditions requiring urgent, intensive or long-term treatment		<input type="checkbox"/>
Age and / or lack of maturity where it affects the responsibility of the offender		<input type="checkbox"/>
Sole or primary carer for dependent relatives		<input type="checkbox"/>
Other – please give details below:		<input type="checkbox"/>

There is a 10% reduction for each of the reasons included above.

Total percentage reduction	<input type="text"/>
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Please tick the relevant box based on the considering the personal mitigation factors.

Capability	Starting point	Low range	Middle range	High range
Low	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medium	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
High	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very high	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

This table gives the final range to determine the landlord penalty fine level band taking into account any personal mitigating factors at this stage.

Stage 2 – considering the landlords income

The council will consider all of landlord's income when calculating a civil penalty notice. For property owners, this will be the weekly income, as declared on the tenancy agreement for the property where the offence occurred or the evidence of rental income gathered at the time of the offence occurred.

For property agents, the relevant income will be any fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

In cases where the landlords is not forthcoming with this information or documentation, an estimate of the average weekly income will be used and it will be for the landlord to make representations against the estimated figure if they deem it to be too high.

Stage 3 – penalty charge

To get the amount of the penalty calculation, the figure at stage 1 will determine the penalty award on a penalty scale minus mitigating factors.

Stage 2 will provide the landlord's income to increase or reduce the penalty calculation.

Stage 3 will check whether the proposed level of penalty charge is proportionate, the offender should be deterred from committing further offences and there should be no financial gain committing the offence.

This review will give the final civil penalty amount that will be imposed on the landlord. This means that the amount of the civil penalty imposed should be never less than it would have reasonably cost the landlord to comply in the first place.

Offence	Examples of potential financial benefit
Failure to comply improvement notice	The cost of any works required to comply with the improvement notice but which have not been removed works in default.
Offences in relations to licensing of HMOs	Rental income whilst the HMO was operating unlicensed or where it was occupied more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offences in relation to licensing of houses under part 3 of the Act	Rental income whilst the HMO was operating unlicensed or where it was occupied more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offences of contravention of an overcrowding notice	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMOs	The cost of any works that are required to avoid breaching the regulations.

Where the landlord has obtained financial benefit in the form of rental income. We will consider whether to pursue a Rent Repayment Order.

Stage 4 – reductions

Impact of the financial penalty on the offender's ability to comply with the law or make restitution to the victims

Please explain if there is a reason to reduce the penalty and if so by how much

Final penalty level

Recording the decision

Using stages 1 to 4 above, the financial penalty is

Name	
Officer	
Date	

Name	
Officer	
Date	
Name	
Manager	
Authorisation to send proposed notice out	
Date	