

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.

The council reserves the right to review this document from time to time in accordance with legislative and tribunal updates and recommendations.

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]
- failure to comply with electrical safety standards in the Private Rented Sector (England) Regulations 2020 (Regulation 3)

Authorised officers will issue a civil penalty where any of these regulations are found to have been breached.

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
- 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, the person will receive a final notice requiring that the penalty be paid within 28 days.

Main principles for issuing a penalty charge

The main principles for issuing a penalty charge are to:

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

This will be determined using the following principles:

- severity of the offence
- culpability and record of the offender
- the harm caused to the tenant
- punishment of the offender
- deterring the offender from repeating the offence
- deterring others from committing similar offences

Level of penalty charge

The council has the power to impose a civil penalty charge 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 landlord's previous record of offending.

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 either:

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

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

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 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? – if the offence is particularly serious and the landlord has committed similar offences in the past, a banning order should be considered

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 an inevitable cumulative effect. Care should be taken to ensure the total amount being imposed is just and proportionate to the offences involved.

Ultimately the level of penalty will be such that the offender does not benefit as a result of committing an offence.

Determine the civil penalty amount

This process is broken down into 6 main stages:

- Stage 1 determines the penalty band for the offence and the landlord's culpability – each penalty has a starting amount and a maximum amount of **£30,000**
- Stage 2 determines whether there are any mitigating factors to reduce the penalty
- Stage 3 ensures there is no financial benefit by committing the offence
- Stage 4 provides how much will be added to the penalty amount for certain offences as a result of the landlord's income
- Stage 5 reviews the penalty amount to ensure it is proportionate – the total amount at this stage cannot go above **£30,000**
- Stage 6 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)	£1,500 to £30,000
Failure to comply with electrical safety standards in the Private Rented Sector (England) Regulations 2020 (Regulation 3)	£1,500 to £30,000

Determining the landlords culpability

Culpability	Description	Check
Low	The offence was 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 or circumstance indicating a risk failings were minor and occurred as an isolated incident 	<input type="checkbox"/>
Medium	The offence was committed through an act or omission that a person exercising reasonable care would not commit.	<input type="checkbox"/>
High	Actual foresight of, or wilful blindness to, the risk of offending but the risk was nevertheless taken.	<input type="checkbox"/>
Very high	The offender intentionally breached or flagrantly disregarded the law, or has a high public profile and knew their actions were unlawful.	<input type="checkbox"/>

Please explain your decision

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

Determine level of offence

	Low culpability	Medium culpability	High culpability	Very high culpability
Low harm	A	A	B	B
Medium harm	A	B	C	C
High harm	B	C	D	D

The band will determine the starting point for the offence before aggravating factors are taken into consideration.

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 (20%)		<input type="checkbox"/>

Other aggravating factors

Factor	Reasons	Included in decision?
Motivated by financial gain (10%)		<input type="checkbox"/>
Deliberate concealment of illegal nature of activity (10%)		<input type="checkbox"/>
Established evidence of wider/community impact (10%)		<input type="checkbox"/>
Obstruction of justice (10%)		<input type="checkbox"/>
Established historical record of providing substandard accommodation or poor management in the past 12 months (10%)		<input type="checkbox"/>
Refusal of free advice or training (10%)		<input type="checkbox"/>
Large portfolio holder (10 or more) or managing agent (20%)		<input type="checkbox"/>

The aggravating factors are assigned weighting for the offence in the band. Usually the CPN will not exceed the top of the band. In exceptional circumstances, however, this may push the CPN into a higher band – for example, if all aggravating factors are included in the decision.

Aggravating factors	No	Yes
Previous convictions	0	20%
Motivated by financial gain	0	10%
Deliberate concealment of illegal nature of activity	0	10%
Established evidence of wider/community impact	0	10%
Obstruction of justice	0	10%
Record of providing substandard accommodation/poor management	0	10%
Refusal of free advice or training	0	10%
Large portfolio holder or managing agent	0	20%
Other (specify) –		

Total score	%
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Offence relating to licensing of HMOs and houses			
Band	Lower limit	Upper limit	CPN after aggravating factors
A	£2,500	£4,000	
B	£4,000	£8,000	
C	£8,000	£15,000	
D	£15,000	£30,000	

Offence relating to management regulations, electrical safety and Part 1 Housing Act 2004			
Band	Lower limit	Upper limit	CPN after aggravating factors
A	£1,500	£3,000	
B	£3,000	£7,000	
C	£7,000	£13,000	
D	£13,000	£30,000	

These figures take into consideration administration costs including investigative costs and preparing case bundles and the Civil Penalty Notice.

Stage 2 – mitigation factors

The council will take into consideration personal mitigation measures. Full disclosure will be required, however, including evidence of any personal claims.

Factors reducing seriousness or reflecting personal mitigation

Factor	Reasons	Included in decision?
No previous convictions or no relevant / recent convictions (10% discount)		<input type="checkbox"/>
Steps voluntarily taken to remedy problem, including complying with terms of Notice of Intent or putting things right (15% discount)		<input type="checkbox"/>
Self-reporting, co-operation and acceptance of responsibility (10% discount)		<input type="checkbox"/>
Documented evidence of medical issues such as, but not limited to: <ul style="list-style-type: none"> • mental disorder or learning disability, where linked to the commission of the offence • serious medical conditions requiring urgent, intensive or long-term treatment • age and/or lack of maturity where it affects the responsibility of the offender • sole or primary carer for dependent relatives (15% discount)		<input type="checkbox"/>

Offence band	
Aggravating factors	
Mitigation factors	
Stage 2 CPN total	

Stage 3 – financial benefit

Each case will be determined on its own merits. Examples of potential financial benefits are shown in the table below.

The council will need to prove the amount of financial benefit the offender has obtained. If the offender does not provide sufficient information, however, an estimate of the benefit can be made.

Once determined, this amount will be added to the penalty so as to remove any financial benefit gained through offending. It will be added at this stage, irrespective of whether the issues have been rectified.

Offence	Examples of potential financial benefit
Failure to comply improvement notice or electrical safety regulations	The cost of any works required for compliance but which have not been completed.
Offences in relation to licensing of HMOs – proceed to Stage 4	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the additional rental income from letting the property as an HMO requiring a licence as opposed to a non-licensable property; 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 – proceed to Stage 4	Rental income whilst the property was operating unlicensed or where it was occupied by 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 was 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.

Cost of works	
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Stage 4 – considering the landlord's income – for licensing offences only

The rental income is calculated as the benefit obtained by committing the offence – for example, breaching the maximum permitted number that the licence permits, or operating the property without a licence where this would normally be required.

The council will consider all the landlord's income throughout the duration of the offence 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.

The council can make a full financial assessment of a landlord's assets and any income they receive, not just from rental income, when calculating an appropriate financial penalty. The council will consider carrying out a full financial investigation where it considers it is reasonable and proportionate to do so in the circumstances. Full financial investigations will normally only be considered for the more serious cases.

Full disclosure and evidence of financial information will be required in order that an accurate portrayal can be considered. This can include:

- work undertaken for the repair and maintenance of the property
- utilities such as electricity, gas and water
- services such as broadband, cleaning and gardening
- landlord training
- management fees

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

The following will be added to the penalty depending on the offence band.

Band	Percentage of relevant weekly income to be added to penalty
A	25%
B	50%
C	100%
D	250%

Total income to be added	
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Stage 5 – review of the penalty

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

Stage 2 will adjust the level penalty taking into consideration any mitigation factors.

Stage 3 will check the landlord has not gained any financial benefit from committing the offence.

Stage 4 will provide the landlord's income to increase or reduce the penalty calculation, where applicable.

Stage 5 will check:

- whether the proposed level of penalty charge is proportionate
- the offender should be deterred from committing further offences
- 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 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.

Stage 5 comments	
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Stage 6 – reductions

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

In accordance with the Sentencing Council's 'Reduction in sentence for a guilty plea' guideline, the maximum level of reduction in a penalty for an admission of guilt will be one third. This takes into account a percentage reduction already issued in the mitigation section of Stage 2. In some cases, however, there will be a lesser reduction or no reduction – for example, where there is a pattern of criminal behaviour.

Other examples may include length of offence.

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

Use stages 1 to 6 above, to calculate the financial penalty.

Stage 1	
Stage 2	
Stage 3	
Stage 4	
Stage 5	
Stage 6	
Final penalty level	

CPN calculation

Officer

Officer name	
Officer title	
Signature date	
Signature	

Manager

Manager name	
Manager title	
Signature date	
Signature	
Authorisation to send proposed notice out	
Authorisation date	

Review of notice of intent to serve a CPN following representations received

Officer

Officer name	
Officer title	
Signature date	
Signature	

Manager

Manager name	
Manager title	
Signature date	
Signature	
Authorisation to send final CPN	
Authorisation date	

Representations received

Summary of representations received	
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