

Slough Borough Council- Housing Regulation

**Revised Housing Regulation Policy and Protocol for issuing Civil Penalties
under the Housing and Planning Act 2016**

Document number	
Version number	Final Version 1
Date approved	
Approved by	
Effective	
Author	Rhian Richards, Housing Regulation Manager

**If you have any further questions about this policy, please contact:
privatesectorhousing1@slough.gov.uk**

Housing Regulation and Trading Standards Policy and Protocol for issuing Civil Penalties under the Housing and Planning Act 2016

1. Introduction

- 1.1.** The Government has made it clear that they wish to support good landlords and agents who provide decent well-maintained homes. However, they also wish to clamp down on those landlords and agents that rent out unsafe and substandard accommodation and to tackle Rogue Landlords, disrupting their activities and their business model.
- 1.2.** The power to impose civil penalties of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004 was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“HPA 16”) which came into force on 1st April 2017.
- 1.3.** The Ministry of Housing Communities and Local Government (“MHCLG”) (now Department of Levelling Up, Housing and Communities) published Statutory Guidance for Local Housing Authorities in implementing the legislation called “Civil Penalties under the Housing and Planning Act 2016”. The Council must have regard to this guidance when issuing civil penalties. The Guidance requires Local Housing Authorities to develop and document their own policy on when to prosecute and when to issue a civil penalty.
- 1.4.** Furthermore, regard has been given to The Ministry of Housing, Communities & Local Government (“MHCLG”) statutory guidance for enforcement authorities in relation to the Tenants fee Act 2019 (April 2019).
- 1.5.** This policy describes how the Council will decide on the most appropriate sanction for relevant offences under the Housing Act 2004 and other legislation which tackles residential letting. It includes a protocol for determining the level of financial penalty to be imposed, as well as a summary of the procedure to be followed when issuing a financial penalty. This policy was original devised in November 2017 and reviewed in June 2022
- 1.6.** This protocol was devised with reference to the following documents:
- i. Department for Communities and Local Government (DCLG) (April 2017) ‘Civil Penalties under the Housing and Planning Act 2016- Guidance for Local Authorities’
 - ii. Sentencing Council (2015) Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences- Definitive Guidelines
 - iii. Sentencing Council (2014) Environmental Offences- Definitive Guidelines

2. Housing Offences Covered by Civil Penalties

2.1. A civil penalty is a financial penalty or ‘fine’, which is imposed by a local housing authority as an alternative to prosecution for specific housing offences under the Housing Act 2004; a breach of a banning order under the HPA 2016; or offences or breaches under the Tenant Fees Act 2019 and other relevant letting agency legislation. It is not applicable to a breach of a Prohibition Order under the Housing Act 2004.

2.2. Where there is evidence of an offence or breach, the Council will consider whether it is appropriate to issue a civil penalty as an alternative to prosecution through the Courts. The following offences under the Housing Act 2004, Tenants Fees Act 2019 and relevant letting agency legislation can be considered for a civil penalty:

- I. Failure to Comply with an Improvement Notice under section 30 of the Housing Act 2004.
- II. Offences relating to licensing of Houses in Multiple Occupation (“HMO”) under section 72 of the Housing Act 2004:
 - 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.
- III. Offences in relation to licensing of houses under Part 3 of the Act (Selective Licensing):
 - 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.
- IV. Offence of contravention of an overcrowding notice under section 139 of the Housing Act 2004.
- V. Failure to comply with management regulations in respect of HMOs under section 234 of the Housing Act 2004.
- VI. Breach of a banning order section 21 of the HPA 2016.

- VII. The council may also apply a financial penalty in response to breaches of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- VIII. Failure of Letting Agents to publicise their relevant fees as required by s83 of the CRA 2015
- IX. Failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 of The Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work).
- X. Failure by a Property Agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3 of The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
- XI. Failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
- XII. Failure to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
- XIII. Breach of Sections 1 and 2 of the Tenants Fee Act 2019 in respect of the requirement to make Prohibited payments. A second or subsequent breach under s12 of the TFA 2019 within 5 years of the previous breach
- XIV. Breach of Schedule 11 of The Tenants fee Act 2019 in respect of the requirement to repay the Holding Deposit.

3. General approach to issuing civil penalties for Housing Act Offences, Tenants Fee Act, and breaches of other relevant legislation

3.1. All of the Teams’ enforcement activity will be consistent with the general principles of regulation and enforcement outlined in the Regulators’ Code

<https://www.gov.uk/government/publications/regulators-code> and reiterated in the Council's general corporate Enforcement Policy and the Council's Housing Regulation Enforcement Policy.

- 3.2.** A civil penalty can only be used as an alternative to prosecution. They are intended to be used against individuals or organisations in breach of the one or more of sections of the Housing Act 2004 and the HPA 2016 listed above in paragraph 2.2. The Council is not permitted to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the Council cannot issue a civil penalty in respect of that same offence. Equally, if a civil penalty has been issued for an offence, the individual cannot then be convicted for that same conduct.
- 3.3.** The Council can issue civil penalties as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. A person commits an offence if they fail to comply with a regulation (s.234(3) of the Housing Act 2004). Therefore, each failure to comply with the regulations amounts to a separate offence whereby a civil penalty can be issued.
- 3.4.** However, in respect of improvement notices, only one civil penalty can be issued per notice. It is not possible to issue separate civil penalties for each hazard specified on an improvement notice. Furthermore, only one civil penalty can be issued for a single offence regardless of if the landlord persistently fails to carry out the work specified in the improvement notice.
- 3.5.** Where the same offence has been committed by the landlord and letting/managing agent, a civil penalty can be issued against both as an alternative to prosecution. The financial sum of the penalty may differ depending on the circumstances of the case.
- 3.6.** Both the letting agent and landlord can be prosecuted for failing to obtain a licence for a licensable property. A civil penalty can also be issued against both as an alternative to prosecution. The financial sum of the penalty may differ depending on the individual circumstances of the case.
- 4. Determining whether to take action when offence or breach is committed**

- 4.1.** The criminal standard of proof is applicable to issuing a civil penalty. Therefore, before deciding to issue a civil penalty, the Council must be satisfied that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

4.2. The Council must be able to show beyond reasonable doubt that the offence has been committed. Equally where a civil penalty has been issued and is subject to an appeal in the First-tier Tribunal, in order for the appeal to be dismissed, the Council must show beyond reasonable doubt that the offence had been committed.

4.3. In determining whether there is a realistic prospect of conviction the Council will have regard to the Crown Prosecution Service's 'Code for Crown Prosecutors'. This is a two-stage test: (i) evidential and (ii) public interest. It must be applied to each case being considered for both prosecution and civil penalty. The Council will apply the test to all cases where offences are alleged to have been committed.

i. The evidential test

The Council must be satisfied that there is sufficient evidence to support a realistic prospect of conviction. Furthermore, the Council must consider what the defence may be and the impact it may have on the prospects of conviction.

When deciding if there is sufficient evidence you must ask yourself the following:

a. Can the evidence be used in Court?

Are there any questions about the admissibility of the evidence? Having regard to how the evidence was gathered and by whom the Council must consider whether the evidence could be successfully challenged and therefore excluded if the case was prosecuted.

b. Is the evidence reliable and credible?

Consider whether there is any reason to question the reliability of the evidence. This includes whether it is accurate and honest. Are there any reasons to doubt the credibility of the evidence? For example, is there any reason not to believe the evidence to be true.

c. Are there any other issues that may affect the adequacy of evidence?

The Council must, at this stage and throughout the case, consider whether there is any information that may affect the quality of the evidence.

The evaluation of the evidence requires an objective, impartial and reasonable assessment of all available evidence taking into consideration all the above.

ii. The public interest test

Where there is sufficient evidence to justify issuing a civil penalty or prosecution, the Council must also consider whether it is in the public

interest to do so. This involves an examination of the seriousness of the offences, the level of culpability of the offender, the impact of the offence on victims and the community, the age of the offender and whether a prosecution is a proportionate response. When deciding whether the civil penalty or prosecution is in the public interest the Council must consider the following:

- a. How serious is the offence committed?
The Council must determine the landlord and/or managing/letting agent's culpability and the harm caused by considering c and b below. This includes looking at who is responsible for the offence.
- b. How culpable is the landlord/managing/letting agent?
Responsibility for the offence is likely to be determined by:
 - i. The landlord and/or managing/letting agents' level of involvement.
 - ii. The extent of premeditation and/or planning of the offence.
 - iii. How much the landlord and/or managing/letting agents have benefitted from the conduct.
 - iv. Previous convictions and/or out of court disposals and any other relevant offending.
 - v. Whether the offending is likely to continue, repeated or escalated.

Whether the landlord and/or managing/letting agent was compelled, coerced or exploited will impact their level of culpability. Furthermore, the Council should have regard to the landlord's and/or managing/letting agent's significant mental or physical ill health or disability both now and at the time of the offence. In certain circumstances this will mean that prosecution or civil penalty is required. Nevertheless, the Council should consider the seriousness of the offence and whether the landlord and/or managing/letting agents are likely to reoffend together with the need to safeguard the public. The greater the landlord and/or managing/letting agent's culpability the more likely a civil penalty will be issued, or prosecution commenced.

- c. What are the circumstances of, and harm caused?
The circumstances of the occupants are highly relevant. Where occupants are vulnerable or perceived to be vulnerable the more likely it is that a civil penalty should be issued, or prosecution commenced. This includes circumstances where there is a position of trust or authority between the landlord and/or managing/letting agents and the occupants.

- d. What is the impact on the community?
The greater the impact of the offence on the community, the more likely the landlord and/or managing/letting agents should face a civil penalty or prosecution.
- e. Do sources of information require protection?
Where public immunity does not apply, consideration should be given where details may need to be made public that could be detrimental to sources of information, ongoing investigations or national security. Such cases must be kept under continued review.
- f. Is prosecution/civil penalty a proportionate response?
The Council should consider whether prosecution or civil penalty is proportionate to the outcome, i.e., the cost of such action. Although it is a relevant factor it should not be the sole basis for deciding on the public interest element. The Council must have regard to a. to e. above.

4.4. The case officer will present an investigation file for each case to the relevant team manager and group manager for review. The case will not be considered for *either* prosecution or a civil penalty unless the relevant manager and group manager are satisfied that both stages of the Code for Crown Prosecutors, have been satisfactorily met. A case which does not satisfy the evidential test must not proceed, regardless of its seriousness or sensitivity.

5. Deciding on the appropriate sanction

- 5.1.** If the Council believes that it has a reasonable prospect of securing a conviction in a particular case, it will always consider a civil penalty in the first instance.
- 5.2.** In general, prosecution will be the most appropriate course of action for particularly serious cases or where the landlord and/or managing/letting agent has committed similar offences in the past. This approach sends out a strong message that the Council will take a robust approach in dealing with rogue landlords; and publicising convictions acts as a deterrent to other potential offenders.
- 5.3.** However, a civil penalty of up to £30,000 can be imposed where a landlord and/or managing/letting agent has committed a serious offence and the Council believes that a substantial financial penalty instead of prosecution is the most effective sanction for a particular case. The appropriate sanctions are

determined on an individual case by case basis and in accordance with this policy.

5.4. In deciding whether prosecution or a civil penalty is an appropriate sanction the Council will consider the following and document their decision:

- I. The seriousness of the offence or the severity of the breach- will the Council consider applying for a banning order?
- II. The track record of the offender- Has the offender committed similar offences in the past?
- III. Will a financial penalty remove any financial gain achieved from the commission of the offence?
- IV. Would a financial penalty be an adequate deterrent to future offending?
- V. Would prosecution be a fair and proportionate response?

6. Determining the level of financial penalty

6.1. Where the Council has decided to issue a civil penalty as an alternative to prosecution, the Council has the power to issue a financial penalty of up to £30,000. This maximum penalty should be reserved for the worst offenders. There is no statutory minimum. The amount imposed should be reflective of the seriousness of the offence as well as the landlord and/or managing/letting agent's history of offending. To ensure that the penalty is fixed at an appropriate level, the Council should consider the following factors:

- I. **The Severity of the offence**
The more serious the offence, the higher the penalty should be.
- II. **The landlord/managing/letting agents' culpability and track record**
Where the offender has a history of failing to comply with their obligations and/or they knew, or ought to have known, that they were in breach of their legal obligations and/or their actions were deliberate, a higher penalty will be appropriate. Landlords are running a business, therefore there is an expectation that they are aware of their legal responsibilities.
- III. **The harm caused to the tenant**
This is an important consideration when determining the amount of the penalty. The greater the harm or the potential for harm (as may be as perceived by the tenant), the higher the financial penalty.
- IV. **Punishment of the offender**
A civil penalty should not be regarded as a more lenient punishment in comparison to prosecution. The penalty should be proportionate and

reflective of both the severity of the offence and previous offending of the landlord and/or managing/letting agent. However, it is important that the penalty is high enough to ensure that it has actual economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

V. Deterring the offender from repeating the offence or breach

Ultimately the aim of civil penalties is to prevent any further offending and ensure the landlord and/or managing/letting agent complies with all their legal responsibilities in future. The level of the penalty should be significant so that it is likely to deter the offender from repeating the offence.

VI. Deterring others from committing similar offences or breaches

The issuing of civil penalties is not published in the public domain. However, it is highly likely, through informal channels, that other landlords in the local area will become aware of the penalty. Deterrence is effective when offenders realise that (i) local housing authorities are proactive and consistent in issuing civil penalties where the need arises and (ii) that the financial level of the penalty is appropriate to both punish the offender and deter repeat offending.

VII. Removing any financial benefit to the offender

The offender should not financially benefit from committing an offence. It should not be cheaper for a landlord to offend than to ensure a property is managed and well maintained properly.

6.2. The Council will also need to consider and assess the financial resources of the offender, including their assets and income. The above list is not exhaustive. Care must be taken not to penalise the landlord/managing/letting agent twice for offences arising from the same conduct.

6.3. Appendix 1 sets out in detail what must be considered when determining the level of civil penalty that should be imposed. This should ensure that as far as practicable, the Council's approach to the use of civil penalties is consistent and transparent.

7. Procedure for issuing civil penalties

7.1. The procedure for issuing civil penalties is prescribed by Schedule 13A of the Housing Act 2004 and Schedule 9 to the Housing and Planning Act 2016. The Council's procedure will mirror this process.

- 7.2.** Before imposing a civil penalty, the Local Authority must issue a Notice of Intent. This is notice of the authority's proposal to impose a civil penalty. This must be issued before the end of 6 months beginning with the first day on which the Council has sufficient evidence of the conduct of the offence *Schedule 13A, 2004 Act, paragraph 2(1)*.
- 7.3.** If the conduct is continuing on that day, then the Notice of Intent can be issued on any day the conduct is continuing or within the period of 6 months, beginning on the last day on which the conduct occurs.
- 7.4.** The Notice of Intent must state the following:
- I. The amount of the proposed financial penalty.
 - II. The reasons for proposing to impose the financial penalty; and
 - III. Information about the right to make representations within 28 days beginning with the day after the notice was given.
 - IV. The date on which the notice in intent is issued
- 7.5.** The Notice of intent must provide sufficient detail of the reasons why it is proposing a financial penalty so that the recipient clearly understands what conduct or omission amounts to the offence or breach. The Council will set out a concise statement of the facts of the offence and will not simply direct the recipient to a link to this online policy explaining the penalty amount. The notice will clearly explain the reasons for the financial penalty and why the Council deems it appropriate in the circumstances.
- 7.6.** A person who is given a notice of intent may make written representations to the appropriate team manager about the proposal to impose the financial penalty. These representations must be made within the 28-day period as detailed above. The recipient of the Notice of Intent will be advised that any representations they make should be accompanied by supporting evidence, including information on their financial circumstances.
- 7.7.** Once the period for representations expires, the relevant manager must, in consultation with the Group Manager and where appropriate legal services, decide whether to impose a financial penalty and if so, the level of the penalty.
- 7.8.** If it is decided to impose the penalty, the Council must issue a Final Notice. The final Notice must state:
- 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 failing to comply with the notice.
- g. The final notice must state that the penalty is to be paid within 28 days of the notice, beginning with the day after notice was given. In the case of Tenants Fee Act breaches require repayment of the prohibited payment, holding deposit or amount paid under a prohibited contract within 7 – 14 days.

7.9. The Council may, at any time, withdraw the Notice of Intent or Final Notice, or reduce the amount stated in said notice by giving notice to the person to whom the original notice was given. The council may in the case of the Tenants Fee Act 2019 amend a notice to remove a requirement to repay a prohibited payment or holding deposit. The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.

8. Appeals

- 8.1.** Any person issued with a final notice can appeal to the First Tier Tribunal (FFT), within 28 days of the date the notice was issued, against the decision to impose the penalty or the amount of the penalty. Where a recipient appeals, the final notice is suspended until the appeal is determined or withdrawn and no payment is required during this period.
- 8.2.** An appeal is a re-hearing of the Council's decision and may have regard to matters of which the Council was not aware. The starting point for the FFT is this policy and it should consider any arguments as to why it should depart from this policy. The onus is on the appellant to persuade the FFT to depart from this policy. In considering whether to depart from this policy, the FFT must look at the objectives and consider whether they would still be met if it departs from the policy. It must also consider the requirement for consistency between offenders, the fundamental purpose for having a policy (*Waltham Forest LBC v Marshall and Ustek [2020] UKUT 35(LC).*) The FFT must afford considerable weight to the Council's decision.
- 8.3.** On appeal, the First-Tier Tribunal can increase or decrease the size of the penalty, cancel or confirm the final notice. However, it cannot increase the final notice to impose a penalty of more than the maximum, £30,000.
- 8.4.** The First Tier Tribunal can dismiss an appeal if satisfied that the appeal has no prospect of success, is vexatious, an abuse of process or is frivolous.

9. Enforcement

- 9.1.** Where the recipient fails to pay the civil penalty or any part of it, the Council can enforce it in the County Court. The penalty, or such part that is unpaid, can be

recovered as if it were payable under a Court order (*Schedule 13A, 2004 Act, paragraph 11*).

- 9.2. To do so, a certificate, signed by the Council's Chief Finance officer, stating that the amount due has not been received by a date specified in the certificate, will be accepted by the Court as conclusive evidence of failure to pay, unless proved otherwise (*Schedule 13A, 2004 Act, paragraph 11*).
- 9.3. The Council may use the financial penalty recovered under a civil penalty to meet its costs and expenses, either administrative or legal, incurred in or associated with carrying out its enforcement function in the private rented sector. Any amount not utilised for this purpose must be paid into the Consolidated Fund (*Regulation 4, Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017*).
- 9.4. The Statutory Guidance issued by the Department of Communities and Local Government (now the Department of Levelling Up Housing and Communities) states that, if necessary, the Local Authority should use County Court Bailiffs to enforce the order. The Housing Regulation and Trading Standards Teams will liaise with HB Public Law before commencing any claim through the County Court.

10. Other consequences of receiving a Civil Penalty

- 10.1. The Council can consider any civil penalties issued when considering whether a person is fit and proper to hold an HMO Licence or any other Licence issued under the Housing Act 2004.
- 10.2. Where a landlord receives two or more civil penalties within a 12-month period, the Council can submit that person's details on a rogue landlord and property agent database. Whilst this is not a compulsory requirement, the Council is strongly encouraged to do so to make other local authorities aware that formal action has previously been taken against a landlord.

Appendix 1

Determining the starting point for a civil penalty

The Council will determine the level of penalty to be imposed based on 4 stages. The Council will document its decisions at each stage of the protocol.

The Council will also use this protocol to determine the level of financial penalty to be applied in response to breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

No Financial Penalty shall be determined or issued until it has been reviewed and agreed in writing by the Housing Regulation Manager or in the case of Tenant Fees Act and relevant letting agency legislation, the Trading Standards Manager.

Stage 1 – Determining the offence category

This stage of the process will determine the starting point for the penalty based on the culpability of the offender and the harm or potential harm associated with the offences. The Council has created three offender categories for which the penalty starting points differ, reflecting the different circumstances of small, and large-scale operators.

Culpability

The Council has identified 3 levels of culpability. When deciding the level of culpability of the offender, the Council will have regard to the following:

Culpability Level	Description
High (deliberate)- where the offender has intentionally breached or flagrantly disregarded the law	For example, where warnings have been issued but no action has been taken; where the offender has deliberately concealed or attempted to conceal their offending; where the offences have been committed over a prolonged period; where the offender has failed persistently to cooperate with Council; where there has been wilful blindness to the risk, or where offender was aware of the risk but risk none the less taken.
Medium (negligent)- Where an offence has been committed through an act or omission which a person exercising reasonable care would not commit.	For example, in cases where an offender could reasonably have been expected to be aware of their legal obligations; where offenders have failed to implement a system for managing their properties; where warnings have been issued or advice given but no action taken; where the offender has only partially complied with their legal requirements or there was an unacceptable delay in compliance.
Low (little Fault) - Offence has been committed but with little fault;	For example, when the offending was an isolated incident, and the offender has no history of non-compliance; where efforts were made to address risks but efforts were inadequate on this occasion; where the offender has subsequently taken steps to address breach and prevent further breaches; Where occupants substantially contributed to the breach; where the offender has cooperated with the Council throughout the investigation.

Harm

When deciding the level of harm whether actual or potential, resulting from the commission of the offence the Council will have regard to the following:

Harm Level	Description
Level 1 (High Harm)	Serious adverse effect (potential or actual) on individuals or the wider community. Risk of serious injury or fatality, risk of long term significant adverse impact on health and wellbeing. Actual or potential for harm to particularly vulnerable groups.
Level 2 (Moderate Harm)	Significant adverse effect (actual or potential) which does not amount to Category 1 harm. Relatively low risk of very serious harm or fatality
Level 3 (Low Harm)	Where there is an adverse effect (actual or potential) but low risk of long term or serious harm.

The relationship between the level of culpability and harm will then be used to determine which civil penalty band the offence falls into:

	High Culpability	Medium Culpability	Low Culpability
High Harm	6	5	4
Moderate Harm	5	4	3
Low Harm	3	2	1

To assist the Council in meeting the requirement to consider the financial means of the offender three 'offender categories' have been identified. The first category, offender category 1 will include offenders operating 1 or 2 properties. The second offender category, will include those operating three, four or five properties and category 3 offenders will include portfolio operators responsible for 6 or more properties.

6 penalty bands have been created for each offender category. The middle of the band range will be chosen as a starting point for determining the Civil Penalty. This will then be adjusted according to factors included in **Stage 2 to 4** of the protocol.

Fine Bands for Offender Category 1 (responsible for 1 or 2 properties)

Band	Civil Penalty Range (£)	Starting point (£)
1	1-500	250
2	501 to 1000	750
3	1001-4000	2500
4	4001-8000	6000
5	8001-12000	10000
6	12001-18000	16000

Fine Bands for Offender Category 2 (responsible for 2, 3, 4 or 5 properties)

Band	Civil Penalty Range (£)	Starting point (£)
1	1-1000	500
2	1001-2000	1500
3	2001-5000	3750
4	5001-10000	7500
5	10001-15000	12500
6	15000-20000	17500

Fine Bands for Offender Category 3 (responsible for 6 or more properties)

Band	Civil Penalty Range (£)	Starting point (£)
1	1-500	250
2	501 to 1000	750
3	1001-4000	2500
4	4001-8000	6000
5	8001-12000	10000
6	12001-18000	16000

Stage 2 – Assets and Income

The Statutory guidance published by MHCLG (now DLUHC) states that the penalty should not be regarded as an easy or lesser option compared to prosecution and must therefore be set at a high enough level to ensure it has an economic impact on the offender while being proportionate to the severity of the offence.

The Council will use all its current powers to establish as far as reasonably practicable, the offender's financial means. The Council's investigations will not be limited to the offender's income from rental properties but will examine all the offender's income and assets.

The Council may adjust the penalty upwards, to reflect the value of the offender's assets and any financial gain the offender may have derived from their offending

The Council may also adjust the penalty downwards, but this will not automatically be the case simply because an offender has, or claims to have a low income. If the offender wishes to make a representation in this regard it will be for them to disclose to the Council information relevant to their financial position.

Stage 3 – Aggravating and Mitigating factors

The Council will consider a range of mitigating and aggravating factors in determining the level of penalty to be imposed. Other than in exceptional circumstances any upward or downward adjustment will not exceed a third of the value of the fine determined by the first two stages of this protocol.

The following factors will be considered in determining the level of penalty. Please note this is not an exhaustive list:

Mitigating factors:

- High level of cooperation with the investigation beyond that which will always be expected
- Acceptance of responsibility
- Measures put in place to reduce the risk of a further breach
- Serious medical condition requiring urgent, intensive or long-term treatment
- Sole carer for dependent relatives
- Readiness to attend training or become accredited
- Good record of relationship with tenant

Aggravating factors:

- Previous convictions or breaches /fines for relevant offences or breaches
- Poor record of compliance
- Refusal to provide tenants with tenancy agreement or proof of rental payment
- Motivated by financial gain
- Breach of any court order
- Actual harm caused to occupants
- Tenant is vulnerable
- Evidence of intimidation or harassment of tenants
- Wider community impact e.g., anti-social behaviour or nuisance arising from failures in management
- Obstruction of investigation or deliberately providing false information
- Refusal of advice or training

Stage 4- Proportionality and ‘the totality principle’

The Council will ‘step back’ and review the determined penalty to ensure that it fulfils the objectives of the sanction and adequately considers all the factors listed in Statutory Guidance (listed on page 3 and 4 of this policy).

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of

punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

In cases where multiple offences have been committed the Council will apply the 'totality principle'. The council will determine a penalty for each offence based on the above stages but impose a single combined penalty. Further adjustments to the fine may be made at this stage to consider the 'totality principle' and to ensure that the fine is proportionate to the offending. The Council may also consider the costs incurred by them in investigating the offence and imposing the sanction.

The Council will also consider the potential impact of the financial penalty on the offender's ability to fulfil their legal obligations and the potential impact on any third parties, for example employees or other customers.

If the combined total of all the penalties significantly exceeds £30,000 then the decision to issue a Civil Penalty will be reviewed. However, a review at this stage will not necessarily result in the withdrawal of the decision to issue a CPN in favour of a prosecution. The Council may proceed with their decision to issue a CPN if it is satisfied that doing so is fair and proportionate and will achieve the objectives of the sanction.