

Civil Penalties under the Housing and Planning Act 2016

Introduction

The purpose of this policy is to guide North Somerset Council “the council” in determining the level of financial penalty under the Housing and Planning Act 2016 (“the 2016 Act”) to be imposed, and has been produced using the MHCLG statutory guidance “Civil Penalties under the Housing and Planning Act 2016 - guidance for local authorities”.

Relevant Legislation

The Housing and Planning Act 2016 amends the Housing Act 2004 (“the 2004 Act”) to allow financial penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

The council can impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (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).

Section 126 and Schedule 9 of the 2016 Act give the council the power to impose a civil penalty against landlords and/or managing agents who are in breach of one or more of the relevant sections of the 2004 Act.


Schedule 13A of the 2004 Act prescribes the procedures the council must follow before imposing a civil penalty, for imposing the penalty, the appeal process and for recovery of the penalty.

The same standard of proof is required for a civil penalty as for a prosecution, so North Somerset Council would need to prove beyond reasonable doubt that an offence has been committed.

Statutory Guidance

The MHCLG guidance states the maximum possible fine is £30,000 for each breach and the council should have consideration of certain factors when deciding on the level of civil penalty such as:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a financial penalty.
- d) **Punishment of the offender.** A financial penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences.** While the fact that someone has received a financial penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a financial penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying financial penalties where the need to do so exists and (b) that the level of financial penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should



not be cheaper to offend than to ensure a property is well maintained and properly managed.


Basis of this policy

In accordance with the section 249A (4) of the 2004 Act the amount of a financial penalty is to be determined by the council. Although the statutory guidance recommends factors the council should take into account when deciding on the level of penalty, it does not go into any level of detail in this regard.

The council therefore has wide discretion in determining the appropriate level of civil penalty in a particular case; the process the council will follow is at Annex 1.

In the absence of any specific guidance or principles issued by the Sentencing Council for England and Wales relating to the Housing and Planning Act; this policy has been drafted on the principles set out in the "[Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline](#)" which is the most relevant. It sets out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence. The range of financial penalties in this guidance uses similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice; established to promote greater transparency and consistency in sentencing.



Annex 1 – North Somerset Council process for determining the level of penalty to set – using principles of the ‘Sentencing Council: Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences – Definitive Guidelines’

STEP ONE – Determining the offence category

The council will determine the offence category using only the **culpability** and **harm** factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

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

High

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Medium

Offence committed through act or omission which a person exercising reasonable care would not commit

Low

Offence committed with little fault, for example, because:

- 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

Harm

Below are factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does:

Category 1 – High Likelihood of Harm

- 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

Category 2 – Medium Likelihood of Harm

- 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

Category 3- Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

We will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm.'


STEP TWO - Starting point and category range

Having determined the **category**, the council will refer to the following **starting points** to reach an appropriate level of civil penalty within the category range. The council will consider further adjustment within the category range for aggravating and mitigating features.

Obtaining financial information

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

In setting a financial penalty, the council may conclude that the offender is able to pay any financial penalty imposed unless the council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the council such data relevant to his financial position to enable the council to assess what an offender can reasonably afford to pay. Where the council is not satisfied that it has been given sufficient reliable information, the council will be



entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case ***which may include the inference that the offender can pay any financial penalty.***

Starting points and ranges

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability.

	Starting point	Range Low (min)–High (max)	
<i>Low culpability</i>			
Low harm	£50	£25	£175
Medium harm	£125	£50	£350
High harm	£300	£125	£750
<i>Medium culpability</i>			
Low harm	£350	£175	£750
Medium harm	£1,000	£350	£2,000
High harm	£2,500	£750	£4,500
<i>High culpability</i>			
Low harm	£1,000	£500	£2,500
Medium harm	£3,000	£1,000	£5,500
High harm	£6,250	£2,500	£12,500
<i>Very high culpability</i>			
Low harm	£2,500	£1,250	£4,500
Medium harm	£6,250	£2,500	£12,500
High harm	£15,000	£6,250	£30,000


Context

Below is a list of some, but not all of the elements that provide the context of the offence and factors relating to the offender. Identification of one or a combination of these or other relevant factors will result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Aggravating factors

Included but not limited to:

- Previous convictions, having regard to (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and (b) the time that has elapsed since the conviction

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- Motivated by financial gain
 - Deliberate concealment of illegal nature of activity
 - Evidence of wider/community impact
 - Breach of any court order
 - Obstruction of justice
 - Poor track record of compliance with legal obligations
 - Refusal of free advice or training
 - Poor condition of the property

Mitigating factors

Included but not limited to:


- No previous convictions or relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property
- Good history of compliance/no history of non-compliance
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- 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

STEP THREE – Review scale of the financial penalty

To ensure the proposed level of financial penalty is proportionate to the overall means of the offender, the council may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range in the table above.

Full regard will be given to the totality principle at step seven where multiple offences are involved.

General principles to be followed in setting a penalty



The council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the council will take into account the financial circumstances of the offender, where provided.

The level of financial penalty will reflect the extent to which the offender fell below the required standard. **The financial penalty will 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.

The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences and that funds from the financial penalties should fund private rented sector teams in the Council. Staffing costs associated with this function will be included within the financial penalty.

This figure will be calculated on a case by case basis according to the length of time taken to process the civil penalty. This will ensure the penalty reflects the true cost of the activities carried out by the council in carrying out these functions. The hourly rate published in the council's fees and charges policy will be used to calculate the amount.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP FOUR – Reductions

The council will have regard to any wider impacts of the penalty within the organisation or on innocent third parties; such as (but not limited to):

- impact of the penalty on offender's ability to comply with the law or make restitution to victims;
- impact of the penalty on employment of staff, service users, customers and local economy (but not shareholders or directors).

STEP FIVE – Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt.

When deciding on any reduction in a financial penalty, consideration will be given to:

- the stage in the investigation or thereafter when the offender admitted guilt
- the circumstances in which they admitted guilt
- the degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

STEP SIX – Additional actions

In all cases the council will consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.

STEP SEVEN – Totality principle

When issuing a financial penalty for more than one offence, consideration will be given to whether the total penalties are just and proportionate to the offending behaviour.

The Council will add up the penalties and consider if they are just and proportionate. If the total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. This will be carried out in accordance with the [Offences Taken into Consideration and Totality Definitive Guideline](#).

STEP EIGHT – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of the financial penalty that will be imposed.

Process for imposing a civil penalty and the right to make representations

Before imposing a financial penalty on a person, the council will give the person notice of the authority's proposal to do so a 'Notice of intent'.

A person who is given a notice of intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within a 28 day period, this period starting the day after the date on which the Notice of intent was given.

In the event of two or more persons receiving separate Notices of Intent for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.

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

- (a) decide whether to impose a financial penalty on the person, and
- (b) if it decides to impose a financial penalty, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the council will consider any representations received.

In the event that the council has given Notice of Intent to impose a financial penalty to two or more persons for the same offence, the council's decision with regard to the imposition of any final penalty will be based upon the circumstances of each individual case and upon any received representations. In this regard, the payment or intended payment of a penalty by one recipient will not, in itself, be reason for the council to determine that it should not impose a penalty on a second or further person.

Furthermore, an offender's compliance with the identified breach during the representation period would not, in itself, be reason for the council to determine that the imposition of a financial penalty was inappropriate.

The council will generally apply the following discounted rate to any imposed financial penalties in the following circumstance:

- ***In the event that the offender complied with the identified breach (for example by making an application to licence a previously unlicensed address) within the representation period at the 'Notice of Intent' stage, the Council may reduce the level of any imposed civil penalty by up to 20%;***

Annex 2 – Non exhaustive list of relevant offences

Housing law or landlord and tenant

Offences under:

- The Public Health Acts of 1936 and 1961

- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004

Offences involving fraud

Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as the company director

Offences involving violence

A conviction for the offence of:

- Murder
- Manslaughter Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Racially aggravated criminal damage
- Common assault

- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

Offences involving drugs

Consideration should be given to the nature of the offence and what bearing it could have on the management of a private rented property. The nature, quantity and class of drugs should be taken into account.

Offences involving sexual offences

An offence contained in schedule 3 of the Sexual Offences Act 2003.

Unlawful discrimination

Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

Annex 3 – Non exhaustive list of vulnerable groups

- Young adults and children
- Disabled persons
- People of a low income
- Persons with a Drug or alcohol addictions
- Victims of domestic abuse
- Looked after children
- People with complex health conditions
- People exploited where English is not their first language
- Victims of Trafficking or sexual exploitation Refugees Asylum seekers
- People at risk of harassment or eviction
- People at risk of homelessness
- The vulnerable group identified most at risk of a hazard under the Housing Health and Safety Rating System

