

APPENDIX 1 - Framework for Financial Penalties under the Housing Act 2004 as amended by the Housing and Planning Act 2016 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

1.0 Introduction - Civil Penalties

- 1.1 In accordance with Section 249A and Schedule 13A of the Housing Act 2004 (as amended) and statutory guidance¹; the council is required to have a policy for determining when to prosecute and when to issue a civil financial penalty including the appropriate level of financial penalty as well as determining which option it wishes to pursue on a case by case basis. The Council must have regard to the Statutory Guidance in the exercise of its functions in respect of financial penalties.
- 1.2 Paragraph 3.5 of the statutory guidance states that ‘The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord’s previous record of offending’ and includes several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case.
- 1.3 This policy sets out the principles that the Council will apply in exercising its powers under the Housing Act 2004 (as amended) to impose a financial penalty on a relevant landlord or agent who fails to comply or breaches one or more of the housing offences specified in the Housing Act 2004 (as amended).
- 1.4 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 come into force on 1 June 2020. The Regulations allow the Council to issue financial penalties against landlords who fail to undertake the necessary inspections and repairs in relation to the electrical safety standards in private rented accommodation. It is for the Council to determine the size of the financial penalty imposed and the penalty must not exceed £30,000. More than one penalty can be imposed in the event of a continuing failure. Any financial penalty is in addition to the costs that the Council is entitled to recover in relation to the remedial action it has carried out.

2.0 The Framework (How financial penalties will be decided and issued)

- 2.1 To determine the appropriate sanction; whether to serve a financial penalty or to prosecute will depend on the type and severity of the offence. In the first instance, the Council will consider financial penalties for all landlords that are in breach of one or more of the housing offences.

¹ [Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities](#)

- 2.2 A financial penalty of up to £30,000 may be imposed where a serious offence has been committed and the Council believes that the most disruptive sanction to impose on a landlord or managing agent is a financial penalty rather than prosecution. Generally, the maximum financial penalties will be reserved for the very worst offenders and the actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of offending.
- 2.3 Prosecution may be considered to be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that financial penalties should not be used in cases where serious offences have been committed.
- 2.4 The procedure for imposing a financial penalty is set out in Schedule 13A of the Housing Act 2004. Where the council decides to impose a financial penalty, the Council must serve a notice of its proposal to impose a financial penalty – called a 'notice of intent'. The notice of intent must 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.

The council must serve the 'notice of intent' (to serve a financial penalty) on the landlord, no later than 6 months after the council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

- 2.5 A person who is given a 'notice of intent' may make written representations to the Council about the intention to impose a financial penalty within 28 days from when the notice was given.
- 2.6 After the end of the period for representations, the council officer will decide whether to impose a penalty (and take account of any representations received) and, if so, the amount of the penalty. If the council decides to impose a financial penalty, it must give the person a notice requiring that the penalty is paid within 28 days – a 'final notice'. The final notice will set out:
- the amount of the financial penalty
 - the reasons for imposing the penalty
 - information about how to pay the penalty
 - the period for payment
 - information about the rights of appeal and,
 - consequences of failure to comply with the penalty.

- 2.7 A person who receives a 'final notice' may appeal to the First-Tier Tribunal against the decision to impose a penalty and the amount of the penalty.

2.8 As part of Enfield's internal procedures, officers considering issuing a 'Notice of Intent' will discuss it with their line a manager. If a representation is made in relation to a 'Notice of Intent' that was issued, the representation will be considered by a Head of Service before a decision is made whether to issue a 'Final Notice', and if so, what the level of the penalty will be. This is to assist with consistency of decision making.

3.0 **Determining a Financial Penalty Charge**

- 3.1 The Council's principle aim is to ensure that the costs of enforcement are borne by the offender so the costs associated with investigating, determining and applying a financial penalty will be reflected in the level of financial penalty that is imposed.
- 3.2 Section 249A (4) of the Housing Act 2004 (as amended), states the amount of a financial penalty is to be determined by the Local Housing Authority. Table A indicates the factors the council must have regard when setting the level of financial penalty.
- 3.3 In determining the level of financial penalty, the Council will take into account costs of investigating the offence(s), preparing the case to serve a financial penalty notice. Costs associated with an appeal and to defend a decision at the First Tier Tribunal will be sought from the Tribunal if the appeal is unsuccessful and is dismissed.
- 3.4 It is anticipated the investigative costs incurred for failure to comply with an Improvement Notice will be lower compared to other offences. This is because the Council will already have charged preliminary costs when serving the Improvement Notice. The additional costs will cover the work involved in confirming that the landlord has failed to comply with the Improvement Notice, such as obtaining tenants' statements; and other costs reflecting the complexity of an investigation, such as the numbers of witnesses interviewed, obtaining warrants to enter properties, may also increase the level of financial penalty in this regard.
- 3.5 If an investigation leads to more than one financial penalty being imposed, the total investigatory costs will be averaged and equally added to each civil penalty. Otherwise, there will be one set of investigatory charges for each investigation undertaken by the Council.
- 3.6 The Financial Penalty Charge Matrix shown in Table B provides a scoring mechanism for each of the factors the council must have regard when setting the level of financial penalty. The matrix is intended to provide an indicative minimum 'tariff' under the various offence categories, with the final level of the financial penalty adjusted in each case, generally within the relevant band, to take into account aggravating and mitigating factors.
- 3.6 The total score then becomes the baseline to determine a financial penalty. This baseline can then be adjusted in each case to take into account the severity of the offence and other aggravating factors. Any aggravating factors will increase the amount of the financial penalty charge to be imposed and, equally any mitigating factors will reduce the amount.

3.7 If there is a good and justified reason for the officer to deviate from the framework in this appendix when setting the financial penalty, this will be documented.

4.0 **Landlords' ability to pay**

4.1 In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

4.2 It is for the offender to disclose to the Council such data relevant to his financial position as will enable the Council to assess what they can reasonably afford to pay. In this case, a full financial investigation of the landlord will be carried out and all sources of income will be considered and is not limited to the assets or income received from the rental of the property in question.

4.3 Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.

5.0 **The five Stages in 'Determining the Level of Financial Penalty Charge'.**

Stage One: Banding the offence.

5.1 Officers make an initial assessment for each of the five factors set out in the Financial Penalty Charge Matrix in Table B. This will provide a baseline penalty charge amount to be determined.

Stage Two: Amending the penalty band based on aggravating factors.

5.2 Assessment of any aggravating factors, such as the landlord's track record, and the severity of any offences, will incur an increase in the level of penalty charge up to a maximum of 30% and can be made to the baseline penalty charge amount.

5.3 Officers review this baseline amount based on the principle that the financial penalty imposed should never be less than what it would have cost the landlord to comply in the first place, in order to incentivise compliance. In instances where the initial assessment does not exceed the cost of compliance, the cost of compliance becomes the new starting point. For example, if it would have cost the landlord £2,000 to comply with the Improvement Notice, but the initial assessment was assessed at £1,500, the baseline for the financial penalty would start £2,000.

Stage Three: Amending the penalty band based on mitigating factors.

- 5.4 Any mitigating factors, such as a landlord's cooperation, taking immediate and voluntarily steps to remedy problem and a good record of maintaining property may decrease the penalty charge by a maximum of 30% of the total penalty charge.

Stage Four: A Penalty Review - To review the penalty to ensure it is proportionate and reflects the landlord's ability to pay.

- 5.5 A review of the 'totality' of the penalty charge to be levied is made to ensure it is proportionate to the offending behaviour and reflects the landlord's income and ability to pay. It will be assumed the offender will be able to pay up to the maximum unless they can demonstrate otherwise, in which case a full financial investigation of the landlord will be carried out and all sources of income will be considered.

Stage Five: Totality Principle.

- 5.6 A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour.

6.0 Appeals

- 6.1 A person who has been issued with a 'Final Notice' imposing a financial penalty has a right of appeal to the First Tier Tribunal and this will involve a re-hearing of the Council's decision to impose the financial penalty. The Tribunal has the power to confirm, vary or cancel the financial penalty that the Council has issued
- 6.2 The penalty charge notice cannot be enforced until the Appeal has been heard and disposed of.

7 Prompt payment discount for paying Financial Penalty within 28 days

- 7.1 In order to encourage the prompt payment of financial penalties, the Council will offer a 20% discount to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. The 2 amounts will be included in the Final Notice.

8.0 Recovery of a Penalty Charge

- 8.1 The Council may recover the penalty charge as set out in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 Regulations, and payable on the order of a Court.

- 8.2 Recovery proceedings may not be started before the end of the period by which a landlord may give written notice for the council to review the penalty charge notice and where a landlord subsequently appeals to the First Tier Property Tribunal against the Council's decision on review.
- 8.3 The Council will robustly seek to recover its legal costs in the event that it is required to defend its decision at a Tribunal. Where a financial penalty notice is not upheld on appeal, we will seek to recover our costs of defending the appeal.
- 8.4 A rent repayment order can be made against a landlord who has received a financial penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 8.5 The Council must consider a rent repayment order after a person is the subject of a successful financial penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 8.6 Other options available to the Council for the collection of unpaid financial penalties through the County Court include:
- A Warrant of Control for amounts up to £5000;
 - A Third Party Debt Order;
 - A Charging Order, and;
 - Bankruptcy or insolvency
- 8.7 A Certificate, signed by the Council's Chief Finance Officer and stating that the amount due has not been received by the date of the Certificate, will be accepted by the Courts as conclusive evidence of the payment due.
- 8.8 Where a Charging Order has been made, and the amount of the Order is more than £1,000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.

9. Other consequences of the imposition of a Financial Penalty

- 9.1 Where a financial penalty has been imposed on a landlord or agent, this will form part of the Council's consideration when it reviews the HMO or selective licence applications relating to properties in which that person has had some involvement.
- 9.2 Although the imposition of a financial penalty will not automatically preclude the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant a licence.

- 9.3 Where a landlord has two financial penalties imposed on them within a period of 12 months and each relates to a Banning Order offence for the purposes of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the Council will seek to register the landlord's details on the Database of Rogue Landlords and Property Agents.
- 9.4 Where the financial penalty is appealed and Tribunal confirms or varies the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. Inclusion on the Register may make it more difficult for the Landlord to obtain financial credit.

10. Review

- 10.1 The purpose of enforcement and the use of financial penalties is to secure compliance and in particular to improve housing conditions and standards in the private rented sector resulting in better outcomes for residents. The financial penalty framework will be reviewed after 12 months from introduction with a view to assessing its success in meeting these purposes, and that the level of penalties imposed is having a deterrent effect on offending.

Table A: Factors the Council must have regard when setting the level of financial penalty

Severity of the offence	The more serious the offence, the higher the penalty should be.
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.
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 civil penalty.
The punishment of the offender	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 demonstrate the consequences of not complying with their responsibilities.
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.
Prevention of others from committing similar offences	While the fact that someone has received a civil 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 civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter similar offending by others.
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.

Table B: Financial Penalty Charge Matrix

Factors	Score = 5	Score = 10	Score = 15	Score = 20	Total
Culpability	Offence committed through act or omission which a person exercising reasonable care would not commit	Offence committed because landlord fell short of actions needed	Actual foresight of, or wilful blindness to risk of offending, but risk nevertheless taken. Some pre-meditation	Where the offender intentionally breached, or flagrantly disregarded, the law or who knew their actions were unlawful. Pre-meditation.	
Harm caused to the tenant (potential or actual)	Very little or no harm caused.	Moderate level of health/harm risk(s) likely or caused to occupant. No vulnerable occupants in residence.	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants	Serious adverse effect(s) on individual(s) and/or having a widespread impact. Multiple vulnerable occupants	
Offence History and offence severity	No previous enforcement history. First low level offence.	Previous enforcement history. Offence has moderate severity	Multiple offender. Ongoing offence of moderate to large severity or a single instance of a very severe offence.	Serial offender. Multiple enforcement history. Continuing serious offence	
Deterrence & Prevention	High confidence that a financial penalty will deter repeat offending. Offender has cooperated with enforcement officers.	Moderate confidence that a financial penalty will deter repeat offending.	Low confidence that a financial penalty will deter repeat offending. (e.g. no contact from offender).	Very little confidence that a financial penalty will deter repeat offending. (eg no contact or not willing to comply/accept responsibility)	
Removal of financial Incentive and assessment of assets	No significant assets. Very little financial profit made by offender (eg Single portfolio landlord). Does not apply to agents	Little asset value. Little financial profit made by offender (Small portfolio landlord between 2-3 properties). Does not	Medium asset value. Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium profit made by	Large asset value. Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large profit made by offender	

		apply to agents	offender		
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	Add/Subtract 10%	Add/Subtract 15%	Add/Subtract 25%	Add/Subtract 30%	
Aggravating factors	Very minor aggravating factor	A couple of minor aggravating factors	One major minor aggravating factor	More than one aggravating factors	
Mitigating factors	Very minor mitigating factor	A couple of minor mitigating factors	One major minor mitigating factor	More than one mitigating factors	

	Score
Level of culpability	
Harm caused to the tenant	
Offence History and severity of offence	
Deterrence & Prevention	
Removal of financial incentive	

Score Ranging Fee	
5 - 25	£500
26 - 30	£1,000
31 - 40	£1,500
41 - 50	£2,500
51 - 60	£5,000
61 - 70	£10,000
71 - 80	£15,000
81 - 90	£20,000

		91 - 100 £30,000
	Total Score	
	Amount £	
Investigative Charges		
Aggravating factors	Increased by maximum £5k	
Mitigating factors	Decreased by maximum £5k	
Income / Asset check	Offender assumed able to pay up to the maximum unless they can demonstrate otherwise.	
	Final Amount £	

Table C: Examples of aggravating and mitigating factors

Further adjustment can be made to the level of penalty charge for aggravating factors.

Offence	Aggravating factors increasing seriousness of offence to justify increase in level of financial penalty
Failure to comply with an Improvement Notice	<ul style="list-style-type: none"> • The nature and extent of hazards that are present. • Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant/s in the property would justify an increase in the level of the civil penalty • Record of providing substandard accommodation
Failure to licence a Mandatory HMO (s72)	<ul style="list-style-type: none"> • The condition of the unlicensed HMO. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty.

	<ul style="list-style-type: none"> • A mandatory HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty • Any demonstrated evidence that the landlord/agent was familiar with their need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises • Deliberate concealment of illegal nature of activity • Motivated by financial gain
Failure to Comply with an Overcrowding Notice	<ul style="list-style-type: none"> • The level of overcrowding present – breaches that related to over-occupation of multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty • A previous history of non-compliance would justify an increased civil penalty • Record of poor management or not meeting legal requirements.
Failure to Comply with The Management of Houses in Multiple Occupation (England) Regulations	<ul style="list-style-type: none"> • The number and nature of the management regulation breaches • The nature and extent of deficiencies within each regulation
Failure to Comply with a Banning Order	<ul style="list-style-type: none"> • reserved for what are recognised as being the most serious housing related offences.

Further adjustment can be made to the level of penalty charge for mitigating factors.

Examples of mitigating factors:

Further adjustment can be made to the level of penalty charge for mitigating factors.

When determining the level of the civil penalty, the Council will consider any mitigating factors during the assessment process. Examples may include the following:

- The offender acts voluntarily to remedy the problem
- The offender co-operates fully with the investigation
- The offenders had a good track record of maintaining property and complying with legislation and statutory standards prior to the offence(s)

- The offender self-reports (for failing to license their HMO, for example), co-operates with the Council and accepts responsibility for the offence
- The offender has a serious medical condition(s) that requires urgent, intensive or long-term treatment and this is linked to the offence that has been committed.
- Any other mitigating factors that the offender wants the Council to take into account

The Council expects the offender to provide supporting evidence of mitigating factors they wish to be considered.