



Safer Housing Enforcement Policies

Financial Penalties Policy

Version Control					
Version	Date	Approved by:	Implementation date:	Location of Changes	Summary of Changes
1	16.08.2017	Delegated Decision No. 2919	16.08.2017	First Draft	Not relevant.
2	17.12.2020	Delegated Decision No. 4075	17.12.2020	Document re-structured	<ul style="list-style-type: none"> • Clarifications to process used for calculation of Financial Penalties – Chapter 1 • Systematic review of policy
2.1	02.02.2022	Delegated Decision No. 4075	02.02.2022	Correction to penalty band mid-point	<ul style="list-style-type: none"> • Typo on page 15. For penalty band 2, it states the mid-point is £2075 but it should be £2100
2.2	31.01.2023	Delegated Decision No. 4075	31.01.2023	Page 3 paragraph 1.2 and page 5 paragraph 7.1	<ul style="list-style-type: none"> • Removal of reference to Housing Enforcement Policy as this guidance is redundant. Link to the Council Enforcement Policy included on page 5.
3.0	July 2025			Throughout the document	<ul style="list-style-type: none"> • Culpability and Harm considerations have been reviewed and consolidated into one step to determine the penalty amount • Various tables have been updated and moved • Culpability and Harm considerations has been separated into relevant offence • Aggravating and mitigating factors reviewed • Early payment discount • Increase in penalty bands and starting point

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Chapter 1 – Financial Penalties

Part A - Introduction

1. Introduction

- 1.1 This document contains both policy and guidance: Parts A and B are Policy and should be read as such, but all other sections are guidance only. Parts A and B are in accordance with Section 3.1 of the 'Guidance for Local Authorities' published by the Department for Communities and Local Government, April 2018("the DCLG Guidance").
- 1.2 This document is intended to work in accordance with the 'Nottingham City Council – Enforcement Policy', as published by Nottingham City Council.
- 1.3 In this document, the Housing Act 2004 will be referred to as "the 2004 Act" and the Housing and Planning Act 2016 will be referred to as "the 2016 Act". The term "Landlord" will be used to refer to the "owner", "person having control", "person managing" or "licence holder", as defined under the 2004 Act. The term "the Council" will be used to refer to Nottingham City Council in its capacity as a Local Housing Authority.

2. What is a financial Penalty?

- 2.1 A financial Penalty of up to £30,000 can be imposed on a Landlord, as an alternative to prosecution for defined offences under the 2004 Act. The amount of penalty is determined by the Council in each case: Part C sets out how the Council will determine the appropriate level of financial Penalty. In determining an appropriate level of penalty, local housing authorities should have regard to the DCLG Guidance reference in paragraph 3.5, which sets out the factors to consider when deciding on the appropriate level of penalty.
- 2.2 The Council considers that the most likely recipients of financial penalty notices will be those persons who are involved in owning or managing private rented properties. However, the Council does have the power to impose them on tenants of Houses in Multiple Occupation, for offences under section 234 of the Housing Act 2004 and will consider doing so where it is deemed appropriate.

3. What offences can financial penalties be imposed for?

- 3.1 A financial penalty can be considered as an alternative to prosecution for any of the following offences under the 2004 Act:
 - Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of HMOs (section 72);
 - Offences in relation to licensing of houses (selective licensing) (section 95);
 - Contravention of an overcrowding notice (section 139);
 - Failure to comply with management regulations in respect of HMOs (section 234).

- Failure to comply with duties of private landlords in relation to electrical installations in accordance with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- 3.2 A financial penalty can also be used as an alternative to prosecution for breaching a banning order that has been made by the First-tier (Property) Tribunal under section 16 of the 2016 Act.
- 4. What is the legal basis for imposing a financial Penalty?**
- 4.1 Section 126 and Schedule 9 of the 2016 Act enables the Council to impose a financial penalty as an alternative to prosecution for specific offences under Section 294A of the 2004 Act.
- 5. What is the burden of proof for a financial Penalty?**
- 5.1 The same criminal standard of proof is required for a financial penalty as for a criminal prosecution. This means that before a financial penalty can be imposed, the Council must be satisfied beyond reasonable doubt that the Landlord committed the offence(s) and that if the matter were to be prosecuted in the Courts, there would be a realistic prospect of conviction.
- 5.2 In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to the 'Nottingham City Council - Enforcement Policy' and the 'Crown Prosecution Service Code for Crown Prosecutors', published by the Director of Public Prosecutions. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including whether the evidence is admissible, reliable and credible and the impact of any defence.
- 5.3 In order to achieve a conviction at Court, the Council would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a financial penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the Council would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

The link below takes you to further details on the Evidential Stage of the Full Code Test for criminal prosecutions as set out in the Guide for Crown Prosecutors.

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

- 6. What must be done before a financial Penalty can be considered?**
- 6.1 The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the Landlord and that the public interest will be properly served by imposing a financial 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 financial penalty on the Landlord in respect of the offence?

The weblink below takes you to further details on the Public Interest Stage of the Full Code Test for criminal prosecutions.

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

7. When will the Council consider financial Penalties as an enforcement option?

- 7.1 The Council will consider financial penalties for all Landlords that are in breach of one or more of the sections of the 2004 Act that are listed in section 249A or for breach of a banning order under the 2016 Act. Enforcement action will be considered on a case-by-case basis in line with the Nottingham City Council - Enforcement Policy.

<https://www.nottinghamcity.gov.uk/information-for-business/business-information-and-support/better-business-regulation/>

8. The ‘Totality Principle’

- 8.1 Where a Landlord has committed multiple offences, and a financial penalty could be imposed for each one, the Council shall consider the totality of the breaches and pursue financial penalties which are just and proportionate to the level of offending behaviour.
- 8.2 When calculating the penalty amounts for multiple offences, there will inevitably be a cumulative effect, and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences involved. The Council should apply the Totality Principle as set out in the following paragraphs.
- 8.3 A Landlord may also have committed multiple similar offences or offences which arose from the same incident. In these cases, consideration should be given to whether it would be more appropriate to only impose penalties for the more serious offences being considered and to prevent any double-counting.
- 8.4 Having regard to the above considerations, the Council will form a view about whether a financial Penalty should be imposed for each offence and, if not, which offences should be pursued. Where a single more serious offence can be considered to encompass several other less serious offences and it is decided that it is not proportionate or appropriate to impose a penalty for each offence, the more serious offence is the one that should be considered for the financial Penalty.

- 8.5 Deciding not to impose a financial Penalty for some of the offences does not mean that other enforcement options, such as a prosecution or offering a simple caution or issuing a formal warning, cannot be pursued for those offences.
- 8.6 Multiple offences will also indicate a higher culpability for those same offences, as it shows that they are part of a pattern of behaviour and not simply an isolated incident. Even where some offences do not have a financial Penalty imposed for them, they can and should still be considered as part of any assessment of culpability for the other offences that do result in a financial Penalty being imposed.
- 8.7 Individual financial penalties can be imposed for each breach of the HMO management regulations, under section 234 of the Housing Act 2004. However, where multiple breaches fall under the same regulation, consideration should be given to whether a single penalty should be imposed for each regulation that is breached, rather than for breach of each sub-section of the regulations. In such cases, the most serious breach, in terms of the culpability of the offender and the harm or foreseeable harm to the tenants, should form the basis for the financial penalty.
- 8.8 This approach will only be considered where one breach of a regulation can be considered to encompass the other breaches in severity and harm. Where this is not the case, such as multiple serious breaches of the same regulation, separate financial penalties can be imposed for each breach.

Part B - Imposing a Financial Penalty – Legal Process

1. Where is the process for financial Penalties set out?

- 1.1 Schedule 13A of the 2004 Act sets out the process which must be followed when imposing a financial penalty.

2. Notice of Intent

- 2.1 Before imposing a financial penalty on a Landlord, the Council must serve a 'Notice of Intent' on the Landlord in question. This Notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This Notice must contain the following information:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose a financial penalty, and;
- information about the Landlord's right to make representations to the Council.

3. Representations

- 3.1 Any Landlord who is in receipt of a Notice of Intent has the right to make representations against that Notice within 28 days of the date on which the Notice was given. Representations can be against any part of the proposed course of action. All representations from Landlords will be considered by an appropriate senior colleague.
- 3.2 Where a Landlord challenges any aspect of the financial penalty, it will be for the Landlord to provide appropriate and satisfactory documentary evidence as necessary (e.g. tenancy agreements, bank statements etc.) to support their submission. Failure to provide such evidence may mean that the Council will not be able consider any representation made.
- 3.3 Written responses will be provided to all representations made by the recipients of a Notice of Intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case-by-case basis and responded to where the Council considers it necessary.

4. Final Notice

- 4.1 Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a financial penalty and the final amount of the financial penalty. The final amount of a financial penalty can be a lower amount than was proposed in the Notice of Intent but it cannot be a greater amount.

4.2 The imposing of a financial penalty involves serving a Final Notice and this notice must contain the following information:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty;
- information about rights of appeal, and;
- the consequences of failure to comply with the notice.

4.3 The period of payment for the financial penalty must be 28 days beginning with the day after that on which the notice was given.

5. Withdrawing or Amending Notices

5.1 At any time, the Council may withdraw a Notice of Intent or a Final Notice or reduce the amount of a financial penalty. This is done by giving notice, in writing, to the person on whom the notice was served.

5.2 Where a financial penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the Landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case-by-case basis.

6. Appeals to the Tribunal

6.1 If a financial penalty is imposed on a Landlord, that Landlord can appeal to the First-tier Tribunal (“the Tribunal”) against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the financial penalty imposed by the Council, or to cancel the financial Penalty. Where an appeal has been made, this suspends the financial penalty until the appeal is determined or withdrawn.

7. Payment of a financial Penalty

7.1 A financial penalty must be paid within 28 days, beginning with the day after that on which the final notice was given (“the 28 day payment period”), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice.

8. Reductions for early payment of a financial Penalty

8.1 The Council will offer a reduction of one third of the total amount of the penalty where payment of the reduced amount is made in full within 28 days of the date of the Final Notice. If the reduced penalty is not paid within 28 days of the date on the Final Notice, the full penalty amount must be paid.

9. Other consequences of having a financial Penalty imposed

- 9.1 Where a Landlord has two financial penalties imposed on them in a 12 month period, each for a banning order offence, the Council will consider making an application for their details to be included on the Database of Rogue Landlords and Property Agents. Applications will be submitted in line with the Council's Rogue Landlord Database Policy.
- 9.2 "Banning order offence" means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the 2016 Act.

10. Recovering an unpaid financial Penalty

- 10.1 It is the policy of the Council to consider all legal options available for the collection of unpaid financial penalties and to pursue unpaid penalties in all cases through the county courts. Some of the options available to the Council through the county courts are as follows:
- A Warrant of Control for amounts up to £5000;
 - A Third Party Debt Order;
 - A Charging Order, and;
 - Bankruptcy or insolvency.
- 10.2 A certificate, signed by the Chief Finance Officer for the Council 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.
- 10.3 Where a Charging Order has been made, and the amount of the order is over £1000, 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.
- 10.4 Where the Financial Penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgements, Orders and Fines, once accepted by the County Court. Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

11. Income from financial Penalties

- 11.1 Any income obtained from financial penalties can be retained by the Council provided that it is used to further the Council's enforcement functions in relation to their enforcement activities covering the private rented sector, as specified

by the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

1. Overview

- 1.1 The Council has the power to impose a financial penalty of up to £30,000 and this section sets out how the Council will determine the appropriate level of financial penalty in each particular case. The amount levied in each case should reflect the severity of the offence and take into account the Landlord's income and track record.

Generally, the Council expects the maximum amount to be reserved for the very worst offenders. The following factors to help ensure that the financial penalty is set at an appropriate level will be considered:

- (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 demonstrate 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 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.
- 1.2 The calculation of the financial penalty is undertaken in two stages using a calculator tool. The first stage is the assessment of the seriousness of the offence: this is where the culpability of the Landlord is assessed as well as the level of harm caused by the offending or the foreseeable harm. This is used to determine the penalty band. There is a separate penalty band for each relevant offence. Each penalty band has a starting amount, as well as an upper and lower limit. The initial assessment of harm and culpability should take no account of plea and previous convictions/history of the Landlord.
- 1.3 The second stage considers whether there are factors that may make the offence more serious (aggravating factors) or which may reduce seriousness or reflect personal mitigation (mitigating factors) and/or financial benefit and whether the penalty should be increased or decreased.
- 1.4 This calculation process is broken down and assessed in 6 steps:
- Step 1: Assessment of the Seriousness of the Offence
 - Step 2: Penalty Band
 - Step 3: Offence mitigation and/or aggravating features
 - Step 4: Calculating financial benefit
 - Step 5: Combining figures to get total penalty amount
 - Step 6: Considering Landlord representations
- 1.5 The total amount of financial penalty should not exceed the maximum amount for the particular penalty band; however, the Council reserves the right to exercise their discretion to exceed the maximum amount in the most serious cases. In such circumstances, justification will be provided.
- 2. Determining the seriousness of the offence (culpability and harm) and the penalty band**
- 2.1 The penalty band is determined by means of an assessment of the Landlord's culpability for the offence and the seriousness of harm which the offence caused, was intended to cause or might foreseeably have caused to tenants. Landlords are expected to be aware of their legal obligations. There are four steps to this process and each step is set out below.

Step 1: Assessment of Seriousness of the Offence

A. Culpability

- 2.2 Culpability is assessed with reference to the Landlords role, level of intention and/or premeditation and the extent and sophistication of planning. Tables 1-3 set out the three levels of culpability that will be considered for each type of offence. Each level has accompanying examples of the behaviours, specific to the type of offence that could constitute that particular level. The list of examples is not exhaustive. This exercise will be repeated for each offence that is being considered as the Landlord's culpability may vary between offences.
- 2.3 When assessing culpability, consider all relevant evidence gathered as part of the investigation into the offence.
- 2.4 Using the factors set out in relevant tables (1a, 2a or 3a), consider each category of culpability in the table and identify the one that the Landlord's behaviour falls within; where a Landlord's behaviour could meet more than one of the categories, choose the most appropriate one.
- 2.5 For offences where there is no requirement for the Landlord to have a level of intention, recklessness, negligence, dishonesty, understanding or foresight of the offence to be made out, the range of culpability may be inferred from the circumstances of the offence.
- 2.6 Section 2.7 provides further guidance on when it is appropriate to consider past enforcement action taken against the Landlord.
- 2.7 Where there are multiple offences and multiple hazards being considered whether or not formal enforcement action will be taken for each offence or hazard and they show a pattern of behaviour; this should form part of any assessment of culpability. A single offence or less-serious hazard could be the result of an oversight or lapse in otherwise satisfactory management standards, but multiple offences or hazards indicate a broader failure of management and a greater culpability for any offences committed. Where the number of breaches or hazards is high and/or serious in nature, it is likely that they represent a deliberate neglect of duty on the part of the manager and any assessment of culpability should take account of the 'deliberate' nature of the act.

B. Level of Harm

- 2.8 Tables 1b, 2b and 3b separates the level of harm and has an accompanying description to illustrate what would constitute that level of harm risked.
- 2.9 The harm which the offence caused, was intended to cause or might foreseeably have caused should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence.

- 2.10 When using the table to determine the appropriate level of harm, consideration should be given to the worst foreseeable outcomes. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for even greater foreseeable harm.

Table 1a – Failure to Licence under Section 72 or Section 95 of the Housing Act 2004

High level of culpability	<p>Factors that may lead to this conclusion:</p> <ul style="list-style-type: none"> • Portfolio Landlord (Own or manage 3 or more rental properties) • Professional letting / management agent as defined in Redress scheme legislation • Serious and/or systematic failure to comply with their legal duties – may have multiple unlicensed properties / properties with poor standards • Has an awareness of the requirement to licence – licensed the property previously or is the licence holder of other properties • Acted or failed to act regardless of the foreseeable risk. • Ignored warnings the Council issued regarding the failure to licence • Continuing to operate unlicensed property over a long period of time
Medium level of culpability	<p>Failed to take steps to guard against the act or omission</p> <p>Efforts were made to comply, for example application submitted with missing information.</p> <p>Although a licence application has now been submitted, this was prompted after receiving warnings and/ or evidence being collected.</p> <p>The Property remained unlicensed for a prolonged period of time.</p>
Low level of culpability	<p>Act or omission with none of the above features</p> <p>Trust was placed in another party to licence the Property, and they failed to do so, and due diligence was exercised</p>

Table 1b – Impact of the offence (Harm)
Failure to Licence under Section 72 or Section 95 of the Housing Act 2004

Level A	<p>Two or more Level A criteria met:</p> <ul style="list-style-type: none"> • Multiple occupants present forming more than one household (e.g. mandatory HMO or block licence) • Property unlicensed for long period of time, being more than one year • Failure to undertake reported repairs that pose a serious risk to health of the occupants • Failure to self-regulate/manage conditions at the property • Substantiated threats of illegal eviction • Retaliatory Eviction • Officers have been misled as part of their investigation • Wider Property portfolio of the holder remains unlicensed
Level B	<p>One Level A criteria met and One Level B or Two or more Level B criteria:</p> <ul style="list-style-type: none"> • 3 or more unrelated occupants • Evidence of property poorly managed leading to significant health impacts of the occupants including Statutory nuisance which is likely to be injurious to the health of the occupants. • Visual impact of the property affecting the wider community
Level C	<p>One or more Level C criteria and no Level A criteria:</p> <ul style="list-style-type: none"> • No known risks present • Property occupied by one household • No evidence of property being poorly managed

Table 2a – Failure to Comply with a notice under Part 1 of the Housing Act 2004 / Contravention of an overcrowding notice under Section 138 of the Housing Act 2004

High level of culpability	<p>Factors that may lead to this conclusion:</p> <p>Portfolio Landlord (Own or manage 3 or more rental properties)</p> <p>Professional letting / management agent as defined in Redress scheme legislation</p> <p>Serious and/or systematic failure to comply with their legal duties</p> <p>Has failed to make any attempts to carry out the works required on the Notice</p> <p>Acted or failed to act regardless of the foreseeable risk</p> <p>Ignored warnings raised by the Council or by tenants regarding hazards outstanding</p> <p>Continuing to allow hazards or over-occupation to exist over an extended period of time</p> <p>Work required to comply with notice still outstanding</p>
Medium level of culpability	<p>Failed to take steps to guard against the act or omission</p> <p>Efforts were made to comply, for example works attempted but not to a satisfactory standard</p> <p>Some works completed, but not all works were completed, as required</p> <p>Works carried out once Notice of Intent to serve a financial penalty was served</p>
Low level of culpability	<p>Most of the works have been completed but a small number of items remain outstanding (including no category 1 hazards)</p> <p>Protected characteristic or illness that directly affected their ability to carry out the works to reduce the hazard(s).</p> <p>Trust was placed in another party to licence the Property, and they failed to do so, and due diligence was exercised</p> <p>Works completed after compliance date on Improvement Notice had expired</p>

Table 2b – Impact of the offence (Harm)

**Failure to Comply with a notice under Part 1 of the Housing Act 2004 /
Contravention of an overcrowding notice under Section 138 of the Housing Act
2004**

Level A	3 or more of the following criteria: <ul style="list-style-type: none">• Vulnerable group present in the property• Multiple cat 1 hazards present• Multiple Category 2 (band D) hazards• Hazard allowed to persist for long period• physical, psychological and/or financial impact on occupants• Hazards exist due to neglect and/or failure to meet duties• Hazard affects 5 or more occupants in 2 or more households or hazards affecting blocks
Level B	1-2 of the Level A criteria and the rest Level C
Level C	One or more of the following criteria and no Level A criteria: <ul style="list-style-type: none">• Vulnerable group not present• Single Category 1 hazard and no other hazards• Single Category 2 (band D) hazard only• Multiple Category 2 (bands E-J) hazards• Hazards exist by design of the property

Table 3a – Failure to comply with the management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004) / Breach of licence conditions

<p>High level of culpability</p>	<p>Factors that may lead to this conclusion:</p> <p>Portfolio Landlord (Own or manage 3 or more rental properties)</p> <p>Professional letting / management agent as defined in Redress scheme legislation</p> <p>Serious and/or systematic failure to comply with their legal duties – multiple breaches of the Regulations/ licence conditions</p> <p>Has failed to make attempts to comply with the Regulations/ licence conditions</p> <p>Acted or failed to act regardless of the foreseeable risk</p> <p>Ignored warnings raised by the Council or by tenants regarding conditions, standards or legal duties</p> <p>Continued to allow breaches to continue over an extended period of time</p> <p>Action required to comply with the regulations still outstanding</p>
<p>Medium level of culpability</p>	<p>Failed to take steps to guard against the act or omission.</p> <p>Efforts were made to comply, for example works or improvements attempted but not to a satisfactory standard</p> <p>Some legal duties complied with but some still outstanding</p>
<p>Low level of culpability</p>	<p>Failure to comply was an isolated incident and could be considered an oversight</p> <p>Most of the requirements were met but a small number of items still outstanding</p> <p>Trust was placed in another party to carry out the works and they failed to do so, but it was necessary for the Licence Holder to ensure that licence conditions were complied with</p> <p>Legal duties were complied with after being warned</p>

Table 3b – Failure to comply with the management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004) / Breach of licence conditions

Level A	<ul style="list-style-type: none"> • Breach constitutes a serious physical and or psychological risk of harm which has been allowed to persist for long period • Physical, psychological and/or financial impact on occupants • Breach exists due to neglect and/or failure to meet duties • Breach has widespread impact
Level B	<ul style="list-style-type: none"> • Breach constitutes a physical/psychological risk of harm • Occupant / tenant misled
Level C	<ul style="list-style-type: none"> • Breach relates to an administrative matter • No risk of physical/psychological harm • Impacts on visual amenity

Step 2: Penalty Band

- 2.11 Using the already determined level of culpability and the seriousness of harm risked, find the appropriate penalty level (1 – 5) in Table 3.

Table 3 – Penalty Levels

	High	Medium	Low
Level A	5	4	3
Level B	4	3	2
Level C	3	2	1

- 2.12 Compare the penalty level from Table 3 to Table 4 (below) and this will give the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation.

Step 3: Aggravating and Mitigating Factors

- 2.13 Once the starting point has been determined, the Council will take into account factors that may make the offence more serious (aggravating factors) and factors that may reduce seriousness or reflect personal mitigation (mitigating factors) and the penalty will be adjusted accordingly. The maximum adjustment that may be applied shall be capped at whatever the minimum or the maximum

specified for the penalty band for the offence. However, the Council is not precluded from going outside of the range where the facts justify it.

Table 4 – Penalty Bands

Penalty Level	Penalty Band	Starting Point
1	£1,000- £6,000	£3,500
2	£6,000- £12,000	£9,000
3	£12,000- £18,000	£15,000
4	£18,000- £24,000	£21,000
5	£24,000 - £30,000	£27,000

- 2.14 An amount, that is proportionate to the penalty band and details of the offence, will be added or deducted for aggravating and mitigation factors respectively. These amounts will always consider the details of the offence and the offender but not consider factors that have already been considered as part of the assessment of culpability.
- 2.15 Evidence that a landlord has complied with other legal duties such as carrying out gas safety checks, obtaining an EICR and an EPC for the property will not be considered to be mitigation for other offences committed as it is expected that landlords should make themselves aware of their legal duties and ensure compliance.
- 2.16 Table 5 contains a non-exhaustive list of aggravating and mitigating factors because there are other circumstances that may give rise to aggravating and mitigation being applied.

Table 5 – Aggravating and Mitigating Factors

Aggravating factors:	Mitigating factors:
<ul style="list-style-type: none"> • Previous convictions for Housing Act or similar offence(s) • Motivated by financial gain – i.e., they received income or avoided expenditure that they otherwise would not have if they complied. • lack of co-operation with the investigation, including but not limited to: <ul style="list-style-type: none"> ○ preventing or restricting access to the property; ○ failure to respond to correspondence and/or legal notices • Coercion or encouragement of others to obstruct the investigation 	<ul style="list-style-type: none"> • No history of enforcement and/or previous convictions for relevant housing offences • Evidence of addressing issues at the earliest opportunity after being made aware. • Evidence of proactive steps to undertaken training and improve knowledge including joining of industry body • Evidence of health reasons or vulnerability preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns either affecting the proposed recipient of the financial penalty or, evidence of the impact on close family member.

- History of letting substandard accommodation i.e., formal or informal action being taken for issues under Part 1 of the Act.
- Breaches of Management Regulations Observed (over and above the one taken action for)
- Poor Management Practices:
 - Lack of training
 - Failure to comply with recognised regulations and industry standards (inventory; TDP; Redress scheme, No EPC and no exemption applies)
 - External condition of property
- Property in poor condition
 - Imminent Risk Category 1 – resulting from the actions or inactions
 - Category 1 Hazards
 - Multiple Cat 2 Hazards
 - Poor EPC – below Government Minimum Standard
- Failure to issue a tenancy agreement
- Rent paid in cash without appropriate cash handling procedures
- Threatening behaviour/harassment to the tenant/Council Officers
- Illegal Eviction from part or all of the property. This includes:
 - Threats
 - Steps taken towards illegal eviction i.e. denial of services
- Two or more reports of anti-social behaviour and/or formal notices have been served
- Property remains unlicensed.

- Legal duties complied with after the Notice of Intent was served.
- Protected characteristics or illness that directly affected their ability to comply with the regulations/licence condition or make the relevant licence application.

Also absence of hazards, no ASB etc. again are not mitigation, as these are basic requirements expected of all Landlords.

Step 4: Financial Benefit

- 3.1 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.
- 3.2 The council will look to increase the penalty amount where it is just and appropriate to do so on a sliding scale and within the penalty band. An example of this would be to include the payment that has been avoided to apply for a licence under Part 2 or 3 of the 2004 Act. However, if the Landlord has submitted a duly made application at the time of imposing the Financial Penalty, they have removed this benefit that they had previously obtained.

- 3.3 The Council will not normally consider a Landlord's assets but does reserve the right to consider assets in any cases where the Council considers it reasonable and proportionate to do so. Each of these cases will be dealt with and considered, depending on their individual circumstances.

Over-occupying a licensed property

- 3.4 As with an unlicensed property, the licence holder for a licensed property is potentially obtaining financial benefit from an offence if they let the property to more persons than are permitted by the licence. The rental income from each person over and above the number permitted by the licence could be financial benefit from the offence and could be added to the penalty amount.
- 3.5 An example of this would be a property with a licence that permits four occupants but where the licence holder has allowed a fifth person to occupy the property. The rental income from the fifth person could be considered financial benefit from the offence.

Breaching a condition on a housing licence

- 3.6 Whether or not a Landlord obtains any financial benefit from breaching a condition on a licence will largely depend on the nature of the condition itself.
- 3.7 If a condition required works to be carried out at a property, and the works had not been completed at the time of imposing the Financial Penalty, the cost of completing those works might be considered financial benefit that the Landlord has obtained from the offence. Effectively, the Landlord may have saved the money that it would have cost them to comply with the condition and this amount might be appropriate to add to the Financial Penalty.
- 3.8 Where a condition prohibits use of part of a property, the financial benefit from breaching the condition could be any money, such as rental income, that the Landlord obtained from not complying with the prohibition. This will most commonly be rental income from prohibited bedrooms that are let out in breach of the prohibition.
- 3.9 It is important to note that if an occupant uses a prohibited bedroom but does have an alternative and suitable bedroom that they could have used instead, their rental income is unlikely to be considered as financial benefit. The Landlord is still committing an offence and a Financial Penalty may still be appropriate, but the assessment of financial benefit will be different because they could have received the same income without committing the offence.

Failing to comply with an Improvement Notice

- 3.10 The financial benefit from failing to comply with an Improvement Notice could be the money saved by not carrying out the works required on the notice. However, where works in default are subsequently carried out, the Landlord will be charged for these works and this will remove any financial benefit that the Landlord might have obtained from the offence. As such, an amount to remove any financial benefit from the offence should only be considered where no works in default are being carried out and the Landlord has not subsequently completed the works after the deadline has passed.

Failing to comply with an Overcrowding Notice

- 3.11 If a Landlord continues to allow a property to be occupied by persons in excess of those stated on an overcrowding notice, any rental income from the extra persons could be considered financial benefit from the offence. This is similar to the financial benefit obtained from operating an unlicensed property or exceeding the maximum permitted occupancy on a licence for an HMO or house.
- 3.12 It is important to check whether the additional persons do result in additional rental income for the Landlord as the rent may be paid for the property as a fixed amount with the number of occupants not being relevant to the amount. In such a case, the Landlord would receive the same rent whether or not they were in breach of the Overcrowding Notice and so the rental income would not normally be considered financial benefit from the offence.

Breaching the HMO management regulations

- 3.13 Similar to failing to comply with an Improvement Notice, the financial benefit from breaching the HMO management regulations could be the money saved by not carrying out the works required to not be in breach of the regulations in the first place. For some of the HMO management regulations, the cost of complying with them will be negligible or nothing and so it will not be uncommon for the Council to consider there to be no financial benefit to breaching some HMO management regulations.

Breaching a Banning Order under the Housing and Planning Act 2016

- 3.14 Landlords who are subject to a banning order are banned from the letting, letting agency work or the managing of rented properties in England, with the exception of any such activities that the First-tier Tribunal has expressly permitted. As such, any income obtained from these activities in relation to properties in England is likely to be financial benefit from the offence and serious consideration should be given to adding this to the penalty amount.

Financial benefit and multiple offences

- 3.15 Sometimes, the same financial benefit will apply to multiple offences. For example, if a property is licenced for four persons and a fifth bedroom is prohibited, the licence holder would be committing two separate offences by putting a fifth person in the prohibited bedroom. However, the financial benefit for both offences could be the rental income from additional person occupying the property. If separate Financial Penalties were to be served for each of the offences, it would not be correct or appropriate to add the financial benefit in full to both penalties. Instead, the appropriate amount should either be added to one of the Financial Penalties or divided between the two, as necessary.

Deductions from the amount of financial benefit

- 3.16 When considering the financial benefit that a Landlord obtained from an offence, the Council will normally use the gross amount and will not speculate about any deductions from this amount that the Landlord may have had to make. At the time of calculating the Financial Penalty, the Council is highly unlikely to be in possession of any evidence of legitimate deductions and in the absence of such evidence, the gross amount should be used for the penalty calculation.
- 3.17 If at the time of doing the calculation, the Council is in possession of clear and reliable evidence of deductions from the amount of financial benefit, only those which did not themselves provide a benefit to the Landlord are likely to be considered. Deductions that are unlikely to be considered, as they still represent a benefit to the Landlord, include: mortgage payments, management fees, maintenance and repair costs, and any other costs for which a service was received, or which constitute an investment in the Landlord's businesses, properties or other assets.

Financial Benefit and Rent Repayment Orders

- 3.18 Where the financial benefit from an offence is the rental income, the Council may recover it as part of a Financial Penalty and pursue a Rent Repayment Order for the same money. However, where the rental income is derived from Housing Benefit or from the Housing element of Universal Credit, whether directly or indirectly, the Council will normally seek to remove all of this purely through an application for a Rent Repayment Order. However, consideration will be given to which power is most appropriate for the Council to use on a case-by-case basis.

Step 5 - Combining figures to get total penalty amount

- 3.19 After determining that a Financial Penalty is appropriate and having calculated the level of the Penalty in accordance with this guidance, the Council will review

the total amount to ensure that it is proportionate to the offending behaviour and properly balanced.

Step 6 - Considering Landlord Representations

Council withdrawal or amending of the notice?

- 3.20 The Council may at any time withdraw a Notice of Intent or Final Notice or it may reduce the amount specified in a Notice of Intent or Final Notice.
- 3.21 Where a recipient of a financial penalty submits representations which may suggest that further mitigation should be applied or that the penalty should be withdrawn, these should be supported with appropriate evidence.
- 3.22 If the Council decides to impose the financial penalty, it must give the person a notice ('Final Notice') requiring the penalty is paid within 28 days. The Final Notice must be in accordance with the requirements of Schedule 13A of the Act.