

Nottingham City Council Enforcement Policy in relation to the relevant letting agency legislation



Version Control					
Version	Date	Approved by	Implementation date	Location of changes	Summary of changes
1	17/10/2025	Delegated Decision No. 5330	18/10/2025	First draft	Not relevant

This Policy and Guidance was approved by Delegated Decision Reference Number 5330, which can be viewed on the Council's website via the following web link:
<https://committee.nottinghamcity.gov.uk/ieDecisionDetails.aspx?ID=8715>

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NOTTINGHAM CITY COUNCIL ENFORCEMENT POLICY IN RELATION TO THE RELEVANT LETTING AGENCY LEGISLATION

Nottingham City Council ('the Council') have adopted this policy for undertaking enforcement action under the following legislation ('Letting Agency Legislation'):

- **Tenant Fees Act 2019**
- **Consumer Rights Act 2015**
- **The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013**
- **The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, made under the Housing and Planning Act 2016**

Preamble

This Policy will be considered when deciding when to prosecute and when to issue a financial penalty and when determining the appropriate level of financial penalty in a particular case. The Policy is developed in accordance with the Tenant Fees Act 2019 Statutory Guidance for Enforcement Authorities and the Mandatory client money protection for property agents MHCLG Enforcement Guidance for Local Authorities.

When considering taking enforcement action under the above legislation, the Council shall have regard to its own enforcement policy 'Nottingham City Council Enforcement Policy' available [here](#); which has been developed in line with the principles of the Regulators Code, published by the Department for Business Innovation and Skills, 2014, available [here](#).

In choosing which enforcement action to take, the Council will be guided by the legislation and Statutory Guidance, but will aim to work within the parameters set out within its own enforcement policy to ensure legal compliance, encourage positive behaviour and resolve the problem which is a cause of potential harm to citizens and deter future non-compliance. Furthermore, the enforcement action chosen will be proportionate to the nature of the non-compliance and harm caused.

Decisions about whether enforcement action will be taken and the type of action to be taken, will be made by the appropriate officers of the Council and such decisions will not be influenced by third parties outside the Council. Authorised officers, employed by the council to enforce the legislation, are competent and experienced. All decisions will have regard to this policy and the individual circumstances of each case.

Part 1 - Enforcement Generally

1.1 Introduction

The Policy applies in relation to any decision made by the Council in its capacity as Enforcement Authority and under Sections 6 and 7 of the Tenant Fees Act 2019. Enforcement Authority means either a local weights and measure authority in England ("Trading Standards"), or a district council that is not a local weights and measures authority.

For clarity, "relevant letting agency legislation" means: -

1. The Tenant Fees Act 2019, "the TFA 2019"
2. Chapter 3 of Part 3 of the Consumer Rights Act 2015 as it applies in relation to dwelling houses in England
3. An order under Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013¹; and
4. Regulations under Sections 133 – 135 of the Housing and Planning Act 2016².

1.2 Overview of the relevant letting agency legislation & penalties

This section summarises the provisions of the Tenant Fees Act 2019 (TFA 2019). It is not intended to be a comprehensive description of the Act. It introduces protections for most residential tenants in the private rented sector in England. The TFA 2019:

- Restricts the type, and amount, of payments that landlords and letting agents can require from tenants of most assured shorthold tenancies (ASTs), student accommodation and under licences to occupy.
- Restricts the amount that can be taken as a tenancy deposit.
- Restricts the amount that can be taken as a holding deposit and sets a timetable for dealing with repayment.
- Prohibits landlords and letting agents from requiring tenants to enter a contract with a third party for a service or insurance. There are limited exceptions for utilities and communication services.
- Imposes sanctions for non-compliance.

These provisions came into force on 1 June 2019 and apply immediately to the grant of new tenancies. There was a grace period of one year for existing tenancies.

The TFA 2019 also makes minor amendments to:

- The duties on letting agents to provide information imposed by the Consumer Rights Act 2015.
- The mandatory requirement on property agents to join a client money protection scheme

Payments are prohibited under the TFA 2019 unless they are expressly listed as a "permitted payment" (*section 3(1), TFA 2019*). Landlords and letting agents are prohibited from requiring tenants (and anyone acting on a tenant's behalf or guaranteeing the tenant's rent) to make any payment which is not expressly permitted. Permitted payments are listed in Schedule 1 to the TFA 2019.

Permitted payments - Landlords and letting agents can require tenants to make the following permitted payments (subject to certain conditions and caps):

¹ Pertaining to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

² Pertaining to The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

- Rent.
- Tenancy deposit (capped at five weeks' rent if annual rent is less than £50,000 or six weeks' rent if annual rent is £50,000 or more).
- Holding deposit (capped at one week's rent).
- Payments on certain default events (loss of key or security device, failure to pay rent or breach of the tenancy).
- Fee for the variation, assignment or novation of the tenancy (capped at £50 or reasonable costs).
- Payment on early termination of the tenancy.
- Council tax.
- Utilities (electricity, gas, other fuel, water or sewerage).
- TV licence.
- Payments for landline phone, internet and cable or satellite TV.

Examples of prohibited payments - Landlords and letting agents cannot require tenants to make any payment that is not a permitted payment. Prohibited payments include:

- Tenancy set-up fees.
- Viewing fees.
- Credit-check fees.
- Inventory check fees.
- Check-out fees.
- Fees for professional cleaning services.

The payment restrictions apply to the following types of residential tenancies and licences in England:

- ASTs other than social housing tenancies or long leases. A long lease is essentially a lease that is granted for a term of more than 21 years.
- Student lettings.
- Licences to occupy housing (other than holiday lets, social housing and live-in carers where a charity or community interest company has given advice or assistance to either licensor or carer).

(Sections 1 and 28, TFA 2019.)

The prohibitions apply to arrangements with a tenant, the tenant's guarantor and a person acting on behalf of the tenant. Each of these parties is a "relevant person" for the purposes of the TFA 2019 (*section 1(9), TFA 2019*).

A breach of the legislation will usually be a civil breach with a financial penalty of up to £5,000. However, if a further breach is committed within five years of the imposition of a financial penalty or conviction for a previous breach, this will be a criminal offence. Upon conviction, the penalty is an unlimited fine and a banning order offence under the Housing and Planning Act 2016. Where an offence is committed, enforcement authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, enforcement authorities will have discretion over whether to prosecute or impose a financial penalty. Where a financial penalty is imposed, this does not amount to a criminal conviction. A breach of the requirement to repay the holding deposit is a civil breach and will be subject to a financial penalty of up to £5,000.

1. The Tenant Fees Act 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

- a. In respect of a first breach of section 1 & section 2, or a breach of Schedule 2 of the TFA 2019, a financial penalty not exceeding £5,000.
 - b. Under section 12 of the TFA 2019 a second or subsequent breach of section 1 or section 2 within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is alternative power to prosecute in the Magistrates Court where an unlimited fine may be imposed.
2. The Consumer Rights Act 2015 - In respect of a failure of Letting Agents to publicise their fees as required by section 83(3) of the Consumer Rights Act 2015, a financial penalty not exceeding £5,000.
3. Enterprise and Regulatory Reform Act 2013 - In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 of The Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work) to a financial penalty not exceeding £5,000. (Note that it is not sufficient to simply register for redress – the correct category of membership must be obtained depending on the work carried out.)
4. Housing and Planning Act 2016 - In respect of The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019: -
 - a) a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3, a financial penalty not exceeding £30,000 or
 - b) a failure to display a certificate of membership; or publish a copy of that certificate on the relevant website (where one exists); or produce a copy of the certificate free of charge to any person reasonably requiring it as required; or notify any client in writing within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked, as required by Regulation 4, a financial penalty not exceeding £5,000.

The Council will determine what is the most appropriate and effective penalty and where an offence is committed whether it is appropriate to impose a financial penalty or prosecute, having due regard to the Nottingham City Council Enforcement Policy.

In appropriate circumstances, consideration will be given to less formal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with Nottingham City Council's Enforcement Policy.

1.3 Statutory Guidance

The Ministry of Housing, Communities & Local Government (“MHCLG”) has published guidance for enforcement authorities in respect of the Tenant Fees Act 2019 - [“Tenant Fees Act 2019: Statutory Guidance for enforcement authorities”](#) and in respect of Client Money Protection Requirements – [“Mandatory Client money protection for property agents – enforcement guidance for local authorities”](#)

This is statutory guidance to which enforcement authorities must have regard to when considering to impose a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalty to impose and further recommends that enforcement authorities develop and

document their own Policy on determining the appropriate level of financial penalty in a particular case.

Part 2 - Procedure for enforcing the relevant letting agency legislation

2.1 Evidence gathering

Under the TFA 2019, the same criminal standard of proof is required for a financial penalty as for a prosecution. The Council must be satisfied beyond reasonable doubt that a person has breached section 1 or 2 or Schedule 2 to impose a financial or criminal penalty and if the matter were to be prosecuted, there would be a realistic prospect of conviction. The standard of proof is such because a second or subsequent breach, within five years, is a criminal offence.

Under The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, the Council must also be satisfied beyond reasonable doubt that a person has committed a breach.

Conversely, under the Consumer Rights Act 2015 and The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, the Council must be satisfied on the balance of probabilities that a person has committed a breach.

In determining whether there is sufficient evidence, 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, available [here](#). The Council must also be satisfied that the public interest will be properly served by imposing a financial penalty.

To prove a person has breached the legislation, the Council will gather evidence; this may include:

- Identifying who has committed the breach;
- Consult with the Council's own records and with the lead enforcement authority to establish whether a sanction for a previous breach has been imposed;
- Consult with approved redress schemes and client money protection schemes on whether the agent was ever a member;
- Check any relevant documents, such as a tenancy agreement, contracts between the landlord and agent or company website;
- Obtain any recorded exchange between the parties, such as emails or text messages and bank statements;
- Conduct interviews under caution;
- Seek assistance from an Accredited Financial Investigator (AFI) or Financial Intelligence Officer (FIO) to establish the transfer of money.

Once evidence has been gathered, it will be reviewed by an appropriate senior officer and by the Council's Legal Services.

2.2 Determining whether to prosecute or impose a financial penalty

For breaches of the TFA 2019, the Council must determine whether to pursue a prosecution in the magistrates' court or to impose a financial penalty of up to £30,000 for landlords or agents who commit a further breach within five years of the imposition of a financial penalty or conviction for a previous breach. Individuals convicted of an offence under the Act are liable to an unlimited fine set by the courts. Where a financial penalty of up to £30,000 is imposed as an alternative to prosecution this does not amount to a criminal conviction. The legislation

does not permit enforcement authorities to impose a financial penalty of up to £30,000 and prosecute for the same offence.

The Council will consider the following general principles when deciding whether to prosecute a landlord or agent:

- a) Is there sufficient admissible and reliable evidence that the offence has been committed and is there is a realistic prospect of conviction; and;
- b) Is it in the public interest to do so.

Decisions will be made on a case-by-case basis, in line with this policy, the Council's overarching Enforcement Policy, the Council's Banning Order Policy and the Crown Prosecution Service Code for Crown Prosecutors. Prosecution may be the most appropriate option where a breach is particularly serious or where the landlord or agent has committed similar breaches in the past. However, that does not mean financial penalties of up to £30,000 should not be used in cases where serious breaches have been committed. The Council may decide that a significant financial penalty, rather than prosecution, is the most appropriate and effective sanction in that particular case.

The Council's decision shall be fair and proportionate reflecting the severity of the breach, as well as taking into account the landlord's or agent's previous record of non-compliance. The following factors may be considered when deciding whether to prosecute:

- history of non-compliance
- severity of the breach
- deliberate concealment of activity or evidence
- knowingly or recklessly supplying false or misleading evidence
- intent of the landlord/agent, individually and/or corporate body
- attitude of the landlord/agent
- deterrent effect of a prosecution on the landlord/agent and others
- extent of financial gain as result of the breach.

A record of each decision and the reasons for determining whether to prosecute or impose a financial penalty of up to £30,000 must be made by the Council.

2.3 Determining the level of the financial penalty

In accordance with the provisions of the TFA & CMP statutory guidance, when determining the level of penalty to impose for a breach of relevant letting agency legislation, the Council shall consider the following factors to help ensure that the financial penalty is set at an appropriate level: -

- a. **Severity of the breach** – the more serious the breach, the higher the penalty should be. This should include considering the track record of the landlord or agent and the harm caused to the tenant.
- b. **Punishment of the landlord or agent** – A financial penalty should not be regarded as a lesser or easy option compared to prosecution and it is important that it is set at a high enough level to have a real economic impact on the landlord or agent. It should also act as a deterrent to the landlord or agent from reoffending and deter others from committing similar breaches and should remove any financial benefit obtained because of committing the breach.
- c. **Aggravating and mitigating factors** – the Council shall consider whether there are any aggravating and/or mitigating factors in each case; a non-exhaustive list of factors the Council may consider are detailed in Part 3 of this policy.

d. Fairness and proportionality – the financial penalty shall be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. When assessing fairness and proportionality, the Council will consider the following factors:

- Totality principle - If issuing a financial penalty for more than one breach, or where the landlord or agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches
- Impact of the financial penalty on the landlord or agent's ability to comply with the law and whether it is proportionate to their means (e.g. risk of loss of home)
- Impact of the financial penalty on third parties (e.g. employment of staff or other customers).

Although the Council has a wide discretion in determining the appropriate level of financial penalty in any particular case, regard has been given to the statutory guidance when drafting this policy.

Part 3 - The Council's process for Issuing a financial Penalty

3.1 Determining the category

The Council will determine the breach category using the culpability and category of harm factors below. Where a breach does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. Other discretionary factors may also be applied in order to reflect consistency and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

(i) **Culpability**

Very high: Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile³ and knew their actions were unlawful

High: Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken

Medium: Breach committed through act or omission which a person exercising reasonable care would not commit

Low: Breach committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on the relevant occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

(ii) **Harm**

The following factors relate 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 due to the nature and/or scale of the Landlord's or Agent's business
- High risk of an adverse effect on individual(s) – including where persons are vulnerable⁴

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.
- Tenants and/or legitimate landlords or agents substantially undermined by the conduct.
- The Council's work as a regulator is inhibited
- Tenant or prospective tenant misled

Category 3- Low Likelihood of Harm

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

³ Which may include any significant role in a trade or business representative organisation

⁴ A wide definition of vulnerability will be used. See Appendix 1 for a non-exhaustive list.

Harm is defined widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories.

The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular breach on the victim.

In some cases, no actual harm may have resulted and the enforcement authority will be concerned with assessing the severity of the misconduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

Some breaches cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

3.2 Starting point and category range

Having determined the category that the breach falls into, the Council will refer to the following starting points referred to in the appendices below to reach an appropriate level of civil penalty within the category range. The Council will then consider further adjustment within the category range for aggravating and mitigating features.

The tables in Appendices 3-8 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach: -

- Appendix 3 First breach in respect of a Prohibited Payment
- Appendix 4 Second & subsequent breach in respect of a Prohibited Payment
- Appendix 5 Breach of Publication of Fees requirements
- Appendix 6 Breach in respect of membership of a Redress Scheme
- Appendix 7 Breach in respect of membership of a Client Money Protection Scheme
- Appendix 8 Breach of transparency requirements of membership of a Client Money Protection Scheme (Regulation 4).

Below is a non-exhaustive list of aggravating and mitigating factors that the Council will consider that should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions⁵ 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 which will not exceed the statutory maximum permitted in any case.

Factors increasing seriousness

Aggravating factors:

- Previous breaches of the TFA 2019 or relevant letting agency legislation
- Previous convictions, having regard to:
 - the nature of the offence to which the conviction relates and its relevance to the current breach; and,
 - the time that has elapsed since the conviction.

⁵ See Appendix 2 for a list of relevant convictions

Other aggravating factors may include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider / community impact
- Obstruction of the investigation
- Record of poor compliance
- Refusal of advice or training or to become a member of an accreditation scheme

Factors reducing seriousness or reflecting personal mitigation

- No previous or no relevant/recent breaches
- No previous convictions or no 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 relationship with tenants
- 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 breach
- Serious medical conditions requiring urgent, intensive or long-term treatment and supported by medical evidence

3.3 Assessing the financial circumstances of the Landlord or Agent

The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the breach. The Council must take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

The statutory guidance advises that local authorities can use their powers to, as far as possible, make an assessment of a Landlord or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The Council will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council has obtained, or the Landlord or Agent has supplied, any financial information to the contrary. The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to the Council such data relevant to his/her financial position to facilitate an assessment of what that person 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 person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

3.4 Issue Notice of Intent

Before imposing a financial penalty, the Council must give the landlord or agent notice of their intention to do so ("notice of intent"). This notice must be given within a period of six months, beginning with the first day on which the authority has sufficient evidence that the person has

breached the prohibitions in the Act. If the breach is a continuing breach, the notice must be given while the breach is continuing or within six months of the last day on which the breach occurred.

The notice of intent must set out the date on which the notice of the intent is served, the amount of the penalty, the reasons for imposing the penalty and information about the right to make representations.

3.5 Consideration of representations and review of financial penalty where appropriate

A person who is given a notice of intent has 28 days to make representations. After the end of the period for representations, the Council must decide whether or not to impose a financial penalty and if so, the amount of the penalty.

3.6 The Final Notice

If the Council decides to impose a financial penalty, it must give the person a final notice imposing the penalty ("final notice"). The final notice must require payment of the penalty within 28 days and may require repayment of the prohibited payment, holding deposit or amount paid under a prohibited contract within 7 – 14 days. The final notice must set out certain information, including the date on which the final notice is served, the amount of the penalty, the reasons for imposing it, how and when to pay, the rights of appeal and consequences of failing to comply with the notice.

3.7 Reductions

The Council may at any time withdraw a notice of intent or final notice or reduce the amount specified in a notice of intent or a final notice or amend a notice to remove a requirement to repay a prohibited payment or holding deposit. The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.

The Council will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- The impact of the financial penalty on the Landlord or Agent's ability to comply with the law or make restitution where appropriate
- The impact of the financial penalty on employment of staff, service users, customers and the local economy.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

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

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances, there will be a reduced or no level of discount. This may occur, for example, where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.

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

3.8 Appeals

There is a right to appeal to the First-tier Tribunal against a financial penalty. An appeal against a financial penalty must be brought within 28 days from the day after the final notice was served. A landlord or agent may appeal against the decision to impose a penalty or the amount of the penalty. An appeal is to be a re-hearing of the enforcement authority's decision and may take into account additional evidence of which the enforcement authority was unaware.

If a landlord or agent makes an appeal, the final notice is suspended in relation to the part of the notice which is the subject of the appeal until the appeal is determined or withdrawn.

On appeal, the First-tier Tribunal may confirm, vary or quash the final notice. The maximum amount that the First-tier Tribunal can impose is the same as the maximum amount that the enforcement authority could have imposed.

3.9 Recovering an unpaid financial penalty

If a landlord or agent fails to pay all or part of a financial penalty, the Council may recover the outstanding amount on the order of the county court, as if it were payable under the order of that court and may retain the proceeds of the penalty and use this money for the purposes of any of its enforcement functions in relation to the private rented sector. Any excess must be paid to the Secretary of State.

Appendix 1 – Non-exhaustive list of vulnerable people

- Young adults and children
- Persons vulnerable by virtue of age
- Persons vulnerable by virtue of disability or sensory impairment
- People on a low income
- Persons with a drug or alcohol addiction
- Victims of domestic abuse
- Children in care or otherwise vulnerable by virtue of age
- 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

Appendix 2 – Non-exhaustive list of relevant offences / breaches

Housing law or landlord and tenant related

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
- The Consumer Protection from Unfair Trading Regulations 2008

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 of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a 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
- Criminal damage where the intent was to intimidate or was racially aggravated
- 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 Landlord or Agent's business activities. The nature, quantity, purity and class of drugs should be taken into account. In addition, where an offence of possession with intent to supply is involved, regard should be had to the role and importance of the subject in the supply chain

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 Equality Act 2010. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

Other offences

- Modern Slavery / Human Trafficking Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation.

Appendix 3 – Financial Penalty in the case of a first breach in respect of Prohibited Payments.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 4 – Financial Penalty in the case of a second or subsequent breach in respect of Prohibited Payments within 5 years of a previous breach.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Appendix 5 – Financial Penalty in the case of a breach in respect of Publication of Fees.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 6 – Financial Penalty in the case of a breach in respect of Membership of a Redress Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 7 – Financial Penalty in the case of a breach in respect of a failure to obtain membership of a Client Money Protection Scheme

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Appendix 8 – Financial Penalty in respect of a breach of transparency requirements of membership of a Client Money Protection Scheme (Regulation 4)

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000