

Enforcement Policy Appendix 1

Financial Penalty Policy

Introduction

This policy for determining the level of Financial Penalties under the Housing and Planning Act 2016 follows the DCLG Guidance '[Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities](#)' published in April 2017. The policy may be used to determine the Financial Penalty for certain specified offences under the Housing Act 2004 as referred to in the B&NES Housing Services Enforcement and Licensing Policy. The legal basis for the power to impose a financial penalty is section 126 and Schedule 9 of the Housing and Planning Act 2016.

The same criminal standard of proof is required for a financial penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

The maximum penalty is £30,000 but the amount is determined by the local authority in each case having regard to the above statutory guidance. It is expected that the maximum amount is reserved for the very worst offenders. 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.

An offence with results in a high risk of harm, such as the lack of adequate fire precautions, or resulted in a higher degree of harm will increase the severity of the offence. Likewise an offence which is the result of a failure to act following a formal requirement to do so, such as failure to comply with an improvement notice, will increase the severity of the offence.

A higher level of culpability or responsibility of the offender for the offence will also increase the severity of the offence.

The aim of this policy is that the level of financial penalty reflects the severity of the offence with a greater severity resulting in a higher penalty.

Aggravating factors, mitigating factors and the value of the assets of the offender are also taken into account to determine the value of the financial penalty.

Statutory Guidance

The Government Guidance referred to previously states that local housing authorities should consider the following factors to help ensure that the financial penalty is set at an appropriate level:

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

Assessment process

A judgement is made on the level of culpability and harm and used to identify a range for the financial penalty. Aggravating and mitigating factors are then applied to calculate an initial value of financial penalty. The initial value is then adjusted in the light of the offender's assets and the statutory guidance to achieve the financial penalty. The definitions below are used to carry out this process.

In formulating this assessment process, the principles of the [‘Sentencing Council: Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences - Definitive Guidelines’](#) have been used to help develop the culpability, harm and fine levels. Specific reference was made to the ‘Breach of food safety and food hygiene regulations’ for micro businesses as this provided the most comparative guidelines.

Key factors	Definition
1. Culpability	<p>Very high Deliberate breach of or flagrant disregard for the law</p> <p>High Offender fell far short of the appropriate standard; for example, by:</p> <ul style="list-style-type: none"> • failing to put in place measures that are recognised standards; • ignoring concerns raised by officers, tenants, employees or others • allowing breaches to subsist over a long period of time <p>Serious and/or systemic failure to address the risks</p> <p>Medium Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories</p> <p>Systems were in place but these were not sufficiently adhered to or implemented</p> <p>Low Offender did not fall far short of the appropriate standard; for example, because:</p> <ul style="list-style-type: none"> • significant efforts were made to meet housing legislation although they were inadequate on this occasion • there was no warning/circumstance indicating a risk to safety and breach of legislation <p>Failings were minor and occurred as an isolated incident</p>
2. Harm	<p>High</p> <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s), other relevant parties and/or community • High risk of an adverse effect on individual(s) including vulnerable groups/ community <p>Medium</p>

	<ul style="list-style-type: none"> • Adverse effect on individual(s)/community • Risk of an adverse effect on individual(s)/community • Tenants misled regarding compliance <p>Low</p> <ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s)/ community • Some actual but small adverse effect on individual(s)/community
3. Aggravating factors	<p>Include but not limited to:</p> <ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Evidence of wider/community impact • Breach of any court order • Obstruction of justice • Poor track record of compliance with legal obligations • Refusal of free advice or training • Poor condition of the property
4. Mitigating factors	<p>Include but not limited to:</p> <ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Steps taken voluntarily to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good history of compliance / no history of non-compliance • Self-reporting, co-operation and acceptance of responsibility
5. Asset check	<p>Use of existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive to determining an appropriate penalty.</p>
6. Multiple offences	<p><u>Totality Principle</u></p> <p>When issuing a financial penalty for more than one offence, consideration will be taken whether the total penalties are just and proportionate to the offending behaviour.</p> <p>The Council should add up the penalties and consider if they are just and proportionate. If the total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. This will be carried out in accordance with the Offences Taken into Consideration and Totality Definitive Guideline.</p>

Financial Penalty Levels Table

Harm and culpability assessment	Starting point	Range		Mitigating/Aggravating factors
		low (min)	high (max.)	plus/minus
Very high culpability				
High harm	£15,000	£6,000	£30,000	£1,000
Medium harm	£6,500	£2,700	£13,500	£1,000
Low harm	£3,000	£1,200	£6,000	£1,000
High culpability				
High harm	£6,500	£2,700	£13,500	£500
Medium harm	£3,000	£1,200	£6,000	£500
Low harm	£1,200	£500	£2,500	£500
Medium culpability				
High harm	£3,000	£1,200	£6,000	£250
Medium harm	£1,200	£500	£2,500	£250
Low harm	£600	£250	£1,200	£250
Low culpability				
High harm	£600	£250	£1,200	£50
Medium harm	£200	£100	£500	£50
Low harm	£100	£50	£250	£50

Financial Penalty Assessment Record

Date:	
Officer:	
Property address:	
Offender:	
Name:	
Address (registered address):	
Date of offence:	

Offence Circumstances Summary:

1. Culpability

Low Medium High Very high

Detailed explanation:

2. Level of harm (potential or actual)

Low Medium High

Detailed explanation:

Culpability/harm assessment: (See fine levels table below)	Financial penalty range (see assessment matrix)						
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border-right: 1px solid black; text-align: center;">Min</td> <td style="width: 40%; border-right: 1px solid black; text-align: center;">Starting point</td> <td style="width: 35%; text-align: center;">Max</td> </tr> <tr> <td style="border-right: 1px solid black; text-align: center;">£</td> <td style="border-right: 1px solid black; text-align: center;">£</td> <td style="text-align: center;">£</td> </tr> </table>	Min	Starting point	Max	£	£	£
Min	Starting point	Max					
£	£	£					

3. Aggravating factors (move up within band to increase charge)

+ £ _____

Number of factors - Why?

Not to exceed maximum amount.

4. Mitigating factors (move down within band to reduce charge)

- £ _____

Number of factors - Why?

Not to go below minimum amount.

Final penalty

Starting point	£
Aggravating	+ £
Mitigating	- £
Penalty level	£

5. Income Asset Check (assume can pay the max unless evidence otherwise)

Factors to consider

Explanation:

Revised penalty £ _____

Serve notice of intention to charge.

Date served:

Representation received

Date:

Details:

Further revision of charge following consideration of aggravating and mitigating factors and assets representation

Why?

Final penalty charge amount

£ _____

Serve final charge notice

Date served:

Record debt

DRAFT