


London Borough of Hammersmith & Fulham CABINET 3 DECEMBER 2018		
CIVIL PENALTIES AS AN ALTERNATIVE TO PROSECUTION FOR HOUSING ACT OFFENCES		
Report of the Cabinet Member for Housing – Councillor Lisa Homan		
Open Report		
Classification - For Decision Key Decision: Yes		
Consultation None		
Wards Affected: All		
Accountable Director: Ann Ramage, Interim Assistant Director for Regulatory Services		
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1. EXECUTIVE SUMMARY

- 1.1 The Housing and Planning Act 2016 (“the 2016 Act”) introduced a range of measures to crack down on rogue landlords and improve the private rented sector. These measures include:
- civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences
 - extension of rent repayment orders to cover illegal eviction, breach of a banning order etc.
 - banning orders for the most serious offenders
 - maintenance of a database of rogue landlords and property agents against whom a banning order has been made.
- 1.2 This report outlines the new enforcement powers introduced by the 2016 Act and sets out proposals for using these powers as part of the Council’s enforcement functions. It also recommends that the Council’s Environmental

Health Enforcement Policy is updated to take account of the enforcement powers introduced by the 2016 Act.

- 1.3 Under the Housing Act 2004 and the Rent Repayment Orders and Financial Penalties (Amounts Recovered) Regulations 2017, amounts recovered by Rent Repayment Orders and financial penalties may be applied to meet the Council's administrative, legal costs and expenses incurred or associated with carrying out its enforcement functions under Part 1-4 of the Housing Act 2004 or Part 2 of the 2016 Act. This includes any investigation or proceedings relating to a contravention of the law relating to housing or landlords and tenants and the promotion of compliance relating to these functions. Any money not used for these purposes must be paid into the Consolidated Fund held by the Government.

2. RECOMMENDATIONS

- 2.1 To approve the use of the powers provided by the Housing and Planning Act 2016 and authorise the Interim Assistant Director for Regulatory Services to use these powers.
- 2.2 To approve the statement of principles policy in relation to civil penalties as an alternative to prosecution, contained in Appendix A, including the charges for Civil Penalty Notices.
- 2.3 To approve that the revenue arising from civil penalties and Rent Repayment Orders will be retained within the Environmental Health Department to meet the legal or administrative costs and expenses incurred in, and associated with, discharging its enforcement functions under Parts 1–4 of the Housing Act 2004 or under Part 2 of the 2016 Act, in relation to the private rented sector.
- 2.4 To approve the amendment to the Council's Environmental Health Enforcement Policy, which will be updated to take account of the enforcement powers introduced by the 2016 Act.

3. REASONS FOR DECISION

- 3.1 The decision is needed to introduce new powers of the Housing Act 2004 as amended by the 2016 Act.
- 3.2 The use of the powers will contribute to the Council's priority 'Taking pride in Hammersmith and Fulham'. They will reinforce the Council's strong enforcement stance against landlords who do not comply with their statutory obligations and enable the Council to penalise the worst landlords by direct financial sanctions. They are in line with the Government's intention to prevent landlords from benefiting from criminal behaviour. They will deliver swifter action against rogue landlords and result in financial penalties being paid directly to the Council, which can then be used to further improve conditions and management in the private rented sector. This will reassure good landlords in the borough and encourage them to invest in their properties and

also attract responsible tenants. The private rented sector is a growing tenure sector and plays a significant role in meeting housing need in the borough.

- 3.3 The Council's Environmental Health Department are responsible for ensuring that housing conditions in the private rented sector are safe and healthy for private tenants. Environmental Health currently use powers in the Housing Act 2004 to prosecute landlords through the courts when they do not comply with the law. This action is taken when offences are committed such as when landlords do not licence houses in multiple occupation, comply with enforcement notices or management standards.
- 3.4 The law has been amended to allow the Council to use additional civil penalty powers as part of a crackdown on rogue landlords. Civil penalties of up to £30,000 can now be used as an alternative to prosecution for certain offences. These powers complement the Council's powers of prosecution. There are also new enhanced powers to recover rent in some cases through Rent Repayment Orders.
- 3.5 This report seeks the introduction of these new powers with a fair charging regime. The penalty imposed will reflect the type and severity of offence, landlord's compliance history and other relevant factors. This will be done on a case by case basis. Action through the courts will be reserved for the most serious offences.
- 3.6 Income received from a civil penalty can be retained by the Council provided that it is used to further its statutory functions in relation to its enforcement activities as described above. It would be unlawful for the income to be used for any other purpose.
- 3.7 Until now the main legal sanction for non-compliance with housing law in the private rented sector has been criminal prosecution through the courts. This is a time consuming and resource-intensive process and results in the perpetrator having a criminal record, even for the less serious offences. The new powers do not remove the option of prosecution but complement it by providing a more streamlined enforcement option achievable in a much shorter timescale, while reserving criminal prosecutions for the most serious contraventions.
- 3.8 Civil penalties cannot be issued unless the evidence has met the criminal standard of proof i.e. 'beyond reasonable doubt', the same level as for criminal prosecutions. In considering the decision to issue a Civil Penalty or not, the Council must also be satisfied that there is sufficient evidence upon which a criminal court could convict and that the action is in the public interest. If a Civil Penalty is decided upon, a prosecution cannot also be sought.
- 3.9 The Housing Act 2004 made provision for Rent Repayment Orders (RRO) to deal with situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, which is an offence. A RRO is an order made by the First-Tier Tribunal requiring a landlord to pay a

specified amount in rent, to the tenant if the tenant paid their own rent or to the Council if the rent was paid through housing benefit or universal credit. The powers have been extended as set out in Appendix B.

- 3.10 The 2016 Act provides that if a Council becomes aware that a landlord has been convicted of any of the relevant offences, it must consider applying for a RRO. Although there is no duty to assist a tenant to apply for an RRO the Council may help a tenant to apply for a RRO, for example, helping the tenant to apply by conducting proceedings or by giving advice.
- 3.11 The 2016 Act introduces provision for the Council to apply for a banning order where a person has been convicted of a banning order offence. A banning order is an order by the First-tier Tribunal that bans a landlord from letting housing and letting agency work, property management work; or doing two or more of those things.
- 3.12 A civil penalty may be imposed for a breach of a banning order. The 2016 Act provides that the Secretary of State must establish and operate a database of rogue landlords and property agents and must ensure that local housing authorities are able to access and update the database for the purpose of carrying out their functions.
- 3.13 One hundred and seventy-two civil penalty notices have been issued across London to date. On average each notice carries a fine of £5,100. A significant proportion of these notices were issued for failing to licence properties and failing to publicise management fees.
- 3.14 A summary of the powers for civil penalties, extension of RROs and Banning Orders is outlined in Appendix B.

4. PROPOSAL AND ISSUES

- 4.1 The Council must have a policy in place for civil penalties and this is detailed in the form of a Statement of Principles (Appendix A), with guidelines in a charging matrix below:

Penalty bands in relation to severity of offence

Band number	Severity of offence	Band width
1	Moderate	£0 - £4,999
2		£5,000 - £9,999
3	Serious	£10,000 - £14,999
4		£15,000 - £19,999
5	Severe	£20,000 - £24,999
6		£25,000 - £30,000

- 4.2 The Matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty, the council must consider:
 - Severity of the offence

- Culpability and track record of the offender
 - The harm caused to the tenant
 - Punishment of the offender
 - Deterring the offender from repeating the offence
 - Deterring others from committing similar offences
 - Removing any financial benefit, the offender may have obtained as a result of committing the offence
- 4.3 Officers will have regard to the matrix and the statutory guidance. This will determine an indicative level of penalty for the offence under consideration. Having determined an indicative level of penalty, it will be adjusted in each individual case to take into account other mitigating or aggravating factors that are relevant. Worked examples are detailed in Appendix A.
- 4.4 There is also a need to develop a procedure which must be in line with Government guidance which covers the servicing of notices, representations, rights of appeal and financial recovery.
- 4.5 The use of RROs is prescribed by law and in statutory guidance¹. These powers will be considered in response to all serious offences where it is in the public interest and where there is sufficient evidence for a successful application to the First Tier Tribunal. The Council needs to agree to adopt these powers.
- 4.6 The Council's Scheme of Delegation will be amended to reflect the adoption of these powers and officer authorisations will be amended accordingly.

5. OPTIONS AND ANALYSIS OF OPTIONS

Decision not to use the new powers

- 5.1 The main decision of this report is whether to agree to use the new powers. If the Council decides not to use the new enforcement powers, this would mean that the only legal sanction for contraventions of housing law by landlords and managing agents would be criminal prosecution through the courts.
- 5.2 Prosecution is resource intensive and time consuming with cases often taking many months to reach a court hearing. Civil Penalties would introduce a less cumbersome form of enforcement, with criminal prosecutions reserved for the most serious offences.
- 5.3 A decision not to use the new enforcement powers would not fully support the success of the existing property licensing schemes operating in the borough and would not amount to the most efficient use of enforcement resources where approximately one in three homes are privately rented.

¹ Rent repayment orders under the Housing and Planning Act 2016, Guidance for Local Housing Authorities: DCLG; April 2017

- 5.4 A decision not to adopt the RRO powers would mean that the Council or tenants would not be able to recover rent paid to landlords when certain offences have been committed. The powers would only be available for homes in multiple occupancy licensing offences and not the wider range of offences now available.
- 5.5 Not using the new powers would reduce the enforcement tools available to the Council to crack down on rogue landlords who knowingly rent out unsafe and substandard accommodation. The private rented sector is a growing tenure sector and plays a significant role in meeting housing need in the borough. Officers therefore need to be enabled to work pro-actively to address the issues found and develop a professional private sector landlord market.

Cost of appeals versus retention of monies

- 5.6 The introduction of civil penalties is likely to provoke a significant number of appeals due to the considerable financial penalties. Additional legal costs will be incurred as part of the Council being the respondent to any appeals but these can be off-set against the income from the civil penalties.
- 5.7 This decision will enable the council to retain the money from any Civil Penalties issued, and ring-fence the revenue for statutory functions in the private rented sector as discussed above. Other than its legal costs, the Council cannot currently retain any fines imposed in court through criminal prosecutions.

Default on civil penalty payments

- 5.8 Landlords or Managing Agents could default on payment of the sums. However, a successful RRO application or civil penalty would cover the costs of debt recovery action in addition to meeting the deterrent, punishment and harm recompense set out in the statement of principles in Appendix A.

6. CONSULTATION

- 6.1 There is no statutory requirement to consult on the use of the new enforcement powers. However the government has widely publicised these powers through social media and contacted landlord associations and accreditation schemes directly informing them of these changes. If members agree to adopt these powers the Council will publicise this on the Councils website and other media channels.

7. EQUALITY IMPLICATIONS

- 7.1 These proposals affect the entire private rented sector in all wards and are aimed at raising standards and improving safety within rented homes. An Equalities Impact Assessment has been conducted and no negative impacts on any groups with protected characteristics have been identified.

7.2 Implications verified by Peter Smith, Head of Policy & Strategy, tel. 020 8753 2206.

8. LEGAL IMPLICATIONS

8.1 This report refers to the statutory guidance as set out in section 126 and schedule 9 of the Housing and Planning Act 2016. The body of the report also accurately reflects statutory requirements for imposing a civil penalty as an alternative to prosecution. The Council's relevant scheme of officer delegations will need to be updated to ensure officers can make use of the powers, if and once, Cabinet approves the recommendations. Any enforcement taken under these new powers must be applied in a reasonable and proportionate manner.

8.2 The Rent Repayment Orders and Financial Penalties (Amounts Recovered (England) Regulations 2017 specify that any monies recovered under these provisions can only be used by the Council to cover the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any enforcement functions in relation to the private rented sector. Any money not used for this purpose must be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.

8.3 Implications verified/completed by: Janette Mullins, Senior Solicitor, tel. 020 8753 2744.

9. FINANCIAL IMPLICATIONS

9.1 The use of new enforcement powers to levy civil financial penalties against landlords as an alternative to criminal prosecution is not expected to require any additional staffing resources over and above the current establishment.

9.2 Where penalties are successfully enforced this income will in the first instance be used to offset the costs associated with the enforcement of these powers and the recovery of the fine. Any surplus generated will be retained by the Council but must be used to further its statutory functions in relation to the private rented sector.

9.3 Implications completed by: Lucy Varenne, Finance Manager, (020 7341 5777). Implications verified: Emily Hill, Assistant Director, Corporate Finance, tel. 020 8753 3145.

10. IMPLICATIONS FOR BUSINESS

10.1 The proposal aims to improve the local private rented sector and its regulation by dealing more effectively with rogue landlords. As the database will assist identifying rogue landlords this will discourage them from operating in this sector. This will result in improved housing standards which will lead to a better regulated and vibrant private rented sector.

- 10.2 This is expected to have direct positive implications for local businesses, namely landlords who run their businesses and manage their properties in accordance with established rules and requirements.
- 10.3 Implications verified/completed by: Albenia Karameros, Economic Development Team, tel. 020 7938 8583.

11 **COMMERCIAL AND PROCUREMENT IMPLICATIONS**

- 11.1 There are no procurement implications associated with the recommendations contained in this report.
- 11.2 Implications completed by: Joanna Angelides, Procurement Consultant, tel. 0208 753 2586 on behalf of Simon Davis, Assistant Director Commercial Management.

12 **IT IMPLICATIONS**

- 12.1. IT Implications: There are no IT implications arising from this decision report.
- 12.2. IM Implications: If H&F will be processing sensitive personal data as a result of this decision, steps will be required to ensure compliance with the General Data Protection Regulation (25 May 2018) - with all potential data protection risks properly assessed and mitigating actions agreed and implemented. The completion of a Privacy Impact Assessment is required, to be signed off by the Information Management Team.
- 12.3. It is assumed the data held about landlords, including fines, will be logged in a local register. The register needs to be included on the council's Information Asset Register to support our GDPR compliance.
- 12.4. Implications completed by: Karen Barry, Strategic Relationship Manager tel. 0208 753 3481.
- 12.5. Implications verified by: Veronica Barella, Chief Information Officer, tel. 020 9753 2927.

13 **RISK MANAGEMENT**

- 13.1. Risk Management implications have been considered and incorporated within the body of the report. Assurance on the proposals will be undertaken as risks will be tracked on an ongoing basis by the service area. Benefits from the proposals are aimed at raising standards and improving safety within rented homes in line with our Corporate Risk, 7 Managing our Statutory Duties and contributing to the Councils Values and Vision including Doing Things with our Residents not too them.
- 13.1 Risk Management implications have been approved. Michael Sloniowski Risk Manager, tel. 020 8753 2587, mobile 07768 252703.

14 OTHER IMPLICATIONS

- 14.1 There are no property implications, business intelligence, health and wellbeing, social value, Section 106 and PREVENT implications.
- 14.2 Implications verified/completed by Anju Sidhu Team Manager, tel. 020 7341 5658.

15 BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None

LIST OF APPENDICES:

Appendix A – Statement of principles

Appendix B - Summary of powers under the Housing and Planning Act 2016

STATEMENT OF PRINCIPLES

Civil Penalties Matrix

Officers will have regard to the matrix set out below, which is to be read in conjunction with the guidance below it. The matrix is not intended to provide a prescriptive tariff applicable in every case but provides guiding principles intended to help determine an indicative level of penalty for the offence under consideration, taking into account the statutory guidance. Having determined an indicative level of penalty, it will be adjusted in each individual case to take into account other relevant, mitigating or aggravating factors pertinent to that case.

Penalty bands in relation to severity of offence

Band number	Severity of offence	Band width
1	Moderate	£0 - £4,999
2		£5,000 - £9,999
3	Serious	£10,000 - £14,999
4		£15,000 - £19,999
5	Severe	£20,000 - £24,999
6		£25,000 - £30,000

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

Before imposing a financial penalty on a person, the Council will give the person notice of the Council's proposal to do so [a 'Notice of intent']

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

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

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

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

Where an offender remedies a breach during the representation period this would not, in itself, be reason for the Council to determine that the imposition of a financial penalty was inappropriate. However, compliance at that stage would be taken into account when determining the amount of the penalty [See 'Discounts' below].

If the Council decides to impose a financial penalty on the person, it will give the person a notice (a "final notice") imposing that penalty.

The final notice will set out—

- a) The amount of the financial penalty,
- b) The reasons for imposing the penalty,
- c) Information about how to pay the penalty,

- d) The period for payment of the penalty,
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice

Discounts

In cases where there have been no relevant or aggravating factors, as outlined in each case above, the Council will retain the discretion to apply a discounted rate to any civil penalty in the following circumstances:

In the event that the offender complied with the identified breach (for example by making an application to license a previously unlicensed address) within the representation period at the 'Notice of Intent' stage, the Council will consider reducing the level of penalty by 20%

Guidance: Relevant considerations as to the level of penalty for each relevant offence

1. Failure to comply with an Improvement Notice

Maximum court fine that can be levied for failure to comply with an Improvement Notice = Unlimited.

An Improvement Notice specifies repairs/improvements that the recipient must carry out in order to address hazards in a property. Category 1 hazards are the most serious, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more category 1 hazards present.

In most cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, failure to comply with an Improvement Notice represents an on-going failure on the part of the landlord to deal with the hazard(s) thereby continuing to expose the tenant(s) to harm.

Failure to comply with an Improvement notice will usually be regarded as a serious matter thereby meriting a Band 3 or 4 penalty (£10,000 - £19,999).

Consideration of landlord's assets and income

Where the landlord has five or less rented units, and there are no aggravating factors in the case, a Band 3 penalty may be considered appropriate.

Where the landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated management failures in the past a Band 4 penalty may be considered appropriate.

Aggravating features/factors specific to non-compliance with an Improvement Notice.

The nature and extent of hazards that are present. Multiple hazards and/or

severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property would justify an increase in the level of the penalty.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

2. Failure to licence a licensable HMO

Maximum Court fine that can be levied for failure to licence an HMO = unlimited

Higher risk HMOs of 3 or more stories, occupied by 5 or more persons forming 2 or more households are required to hold a 'mandatory' property licence issued by the Council. The licensing regime ensures that the HMO has sufficient kitchens, baths/showers and WCs, has adequate fire safety precautions and places a limit on the number of persons permitted to occupy it. The licence holder is required to comply with a set of licence conditions relating to property conditions and property management.

The Council views the offence of failing to licence a mandatory HMO as a significant failing; mandatory licensing was introduced by the Government in order to regulate conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

Failure to licence a Mandatory HMO will usually be regarded as a serious matter thereby meriting a Band 3 or 4 penalty (£10,000 - £19,999). Where there are aggravating factors it may be considered as a severe matter thereby meriting a Band 5 penalty (£20,000 - £24,999).

Consideration of landlord's assets and income

Where the landlord/agent is in control or owns one or two HMOs and there are no aggravating factors in the case, a Band 3 penalty may be considered appropriate.

Where the landlord or agent is in control or owns a significant property portfolio and/or has demonstrated management failures in the past a Band 4 penalty may be considered appropriate. More severe aggravating factors may warrant a Band 5 penalty.

Aggravating factors specific to non-licensing offences

The Council will have regard to the following factors in determining the final level of the penalty:

- The condition of the unlicensed property,
- The nature and extent of any significant hazards that are present,
- Poor management including lacking or inadequate amenities or fire safety precautions,
- Overcrowding,
- Evidence that the landlord/agent was familiar with the requirement to licence.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

Consideration of landlord's assets and income

Where the landlord/agent is in control or owns one or two rented properties and there are no aggravating factors in the case, a Band 2 penalty may be considered appropriate.

Where the landlord or agent is in control or owns a significant property portfolio and/or has demonstrated management failures in the past a Band 3 penalty may be considered appropriate. More severe aggravating factors may warrant a Band 4 penalty.

Aggravating factors specific to non-licensing offences

The Council will have regard to the following factors in determining the final level of the penalty:

- The condition of the unlicensed property,
- The nature and extent of any significant hazards that are present,
- Poor management,
- Overcrowding,
- Evidence that the landlord/agent was familiar with the requirement to licence.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

3. Failure to comply with licensing conditions

Maximum Court fine that can be levied for failure to comply with licensing conditions
= £5000

All licences include a set of conditions imposing a variety of obligations on the licence holder relating to the letting, management and condition of the rented property, including:

- Undertaking Gas Safe and electrical checks,
- Installing and maintaining smoke alarms,
- Providing written tenancy agreements and protecting deposits,
- Notifying the Council in any specified changes in circumstances,
- Carrying out specified measures to prevent or address anti-social behavior,
- Maintaining the property in reasonable repair,
- Ensuring that the gardens are tidy and free from refuse,
- Carrying out works that were a condition of the licence,
- Reducing occupation levels as necessary.

It is important that all licence conditions are complied with but failure to comply with certain licence conditions is likely to have a much higher impact on the safety and comfort of residents than with others.

In determining the level of Civil Penalty, the Council will therefore first consider:

- The number of licence condition breaches; and
- The nature and extent of deficiencies in respect of each condition.

The circumstances of each case will vary widely but officers will have regard to the following factors in determining the level of penalty:

- a. Failure to comply with a condition to provide tenants with landlord's/manager's contact details or for failing to address relatively minor disrepair will each usually be regarded as a moderate matter meriting a Band 1 or 2 penalty (£0 - £9,999).
- b. Failure to comply with a condition to provide adequate fire safety precautions,

to address serious Anti-Social Behaviour issues or to carry out works or improvements, would usually be regarded as a serious matter meriting a Band 3 or 4 penalty (£10,000 – £19,999).

- c. Failure to comply with this category of licence conditions may be viewed more seriously in larger HMOs than in smaller, as the risk posed to occupiers may be significantly higher. The decision on the level of Civil Penalty will significantly influenced by the risk presented.

Consideration of landlord's assets and income

Case "a" above:

For a landlord/agent controlling/owning 1 or 2 properties and with no other relevant or aggravating factors, the offence would usually be regarded as a moderate matter meriting a Band 1 penalty (£0 - £4,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a moderate matter meriting a Band 2 penalty (£5,000 - £9,999).

Case "b" above:

For a landlord/agent controlling/owning 1 or 2 properties and with no other relevant or aggravating factors, the offence would usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a severe matter meriting a Band 5 penalty (£20,000 - £24,999).

Aggravating factors specific to licence condition offences

None – the nature of the licence condition breaches and their impact upon the occupiers will be assessed as outlined in case "a" and case "b" above.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

4. Failure to Comply with an Overcrowding Notice

Maximum Court fine that can be levied for overcrowding offences = Unlimited.

Section 139 of the Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that falls outside of the scope of HMO licensing. The notice specifies, on a room by room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

Overcrowding exposes HMO tenants to unacceptably cramped living conditions, contributes to the spread of certain respiratory diseases, affects child educational development and has a negative impact on social well-being. It can also affect hygiene and sanitation due to inadequate sanitary facilities for those needing them, it can contribute to obesity and poor diet due to inadequate cooking and food preparation facilities for those needing them and have an impact on means of escape from fire.

The Council will view failure to comply with an Overcrowding Notice as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

Consideration of landlord's assets and income

The civil penalty for a landlord controlling one or two HMOs with no other relevant or aggravating factors would usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

The civil penalty for a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, would usually be regarded as a severe matter meriting a Band 5 penalty (£20,000 - £24,999).

Aggravating factors specific to licence condition offences

The severity of overcrowding present; breaches that relate to over-occupation in multiple rooms or extreme over-occupation of an individual room would justify a higher civil penalty.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,

- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

5. Failure to Comply with the Management of Houses in Multiple Occupation [England] Regulations

Maximum Court fine that can be levied for failure to comply with HMO management regulations = £5000

The HMO Management Regulations impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers (regulation 3),
- Taking safety measures, including fire safety measures (regulation 4),
- Maintaining the water supply and drainage (regulation 5),
- Supply, inspection and maintenance of gas and electricity installations (regulation 6),
- Maintaining common parts (regulation 7),
- Maintaining living accommodation (regulation 8),
- Provision of sufficient waste disposal/refuse facilities (regulation 9).

It is important that all the regulations are complied with but failure to comply with certain regulations is likely to have a much higher impact on the safety and comfort of residents than with others.

In determining the level of civil penalty, the Council will therefore first consider:

- The number of management regulation breaches; and
- The nature and extent of deficiencies in respect of each regulation.

The circumstances of each case will vary widely but officers will have regard to the following factors in determining the level of penalty.

- a. Failure to failure to display a notice containing their contact details or for failing to address relatively minor disrepair will each usually be regarded as a moderate matter meriting a Band 1 (£0 - £4,999).
- b. Failure to failure to maintain fire alarms in working order, to maintain essential services to an HMO or to allow an HMO to fall into significant disrepair will each usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

Consideration of landlord's assets and income

Case "a" above:

For a landlord/agent controlling/owning 1 or 2 HMOs and with no other relevant or aggravating factors, the offence would usually be regarded as a moderate matter meriting a Band 1 penalty (£0 - £4,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a moderate matter meriting a Band 2 penalty (£5,000 - £9,999).

Case “b” above:

For a landlord/agent controlling/owning 1 or 2 HMOs and with no other relevant or aggravating factors, the offence would usually be regarded as a serious matter meriting a Band 3 penalty (£10,000 - £14,999).

For a landlord/agent controlling/owning a significant property portfolio, and/or who has demonstrated experience in the letting/management of property and with no other relevant or aggravating factors, these same offences would usually be regarded as a severe matter meriting a Band 5 penalty (£20,000 - £24,999).

Aggravating factors specific to management regulation offences

None – the nature of the management regulations breaches and their impact upon the occupiers will be assessed as outlined in case “a” and case “b” above.

Generic aggravating factors

The Council will also have regard to the following factors in determining the final level of the penalty:

- A previous history of non-compliance,
- Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were ‘spent’], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action,
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s].

6. Failure to comply with a Banning Order

The 2016 Act includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities

- Letting housing
- Engaging in letting agency work
- Engaging in property management work.

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council is satisfied that the offence of breaching a Banning Order has occurred, this would normally be the subject of prosecution proceedings.

Where it is determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level to reflect the severity of the offence.

Summary of powers under the Housing and Planning Act 2016

Civil Penalties

The 2016 Act amended the Housing Act 2004 to give the Council power to impose a civil penalty as an alternative to prosecution for a number of offences under the Housing Act 2004. Those offences are as follows:

- Failure to comply with an Improvement Notice
- Offences in relation to licensing of houses including Part 3 of the Act
- Offences of contravention of an overcrowding notice
- Failure to comply with management regulations in respect of Houses in Multiple Occupation

The maximum penalty that can be set is £30,000 per offence.

Guidance provides that Council should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- Severity of the offence.
- Culpability and track record of the offender
- The harm caused to the tenant.
- Punishment of the offender.
- Deter the offender from repeating the offence.
- Deter others from committing similar offences.
- 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

Rent repayment Orders

The 2016 Act has extended RROs to cover a wider range of offences as follows:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004
- Breach of a Banning Order made under section 21 of the 2016 Act
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

A RRO can be applied for when the landlord has committed a relevant offence. Where an application for a RRO is made and the landlord has not been convicted of

the offence for which the RRO application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

The amount of rent repayment will be assessed by the First Tier Tribunal but is set at a maximum of the rent paid during the 12 months prior to the offence.

The legislation provides that the Council must have regard to guidance given by the Secretary of State and that they are expected to develop their own policy on when to prosecute and when to apply for a RRO and should decide each case independently.

Banning Orders and National Database of Rogue landlords

Breach of a Banning Order is a criminal offence. The 2016 Act (Banning Order Offences) Regulations 2018 outlines Banning Order offences under the Housing Act 2004 which include:

- Failing to comply with an Improvement Notice under section 30;
- Failing to comply with a Prohibition Order under section 32
- Offences in relation to licensing of HMOs under sections 72 and 95;
- Contravention of an overcrowding notice under Section 139;
- Failure to comply with HMO management regulations
- False or misleading information under section 238

Non-statutory guidance has been issued by the Secretary of State in relation to Banning Orders. This lists factors which a Council should take into account when deciding whether to seek a Banning Order. These are as follows:

- The seriousness of the offence;
- Previous convictions/rogue landlord database;
- The harm caused to the tenant;
- Punishment of the offender;
- Deter the offender from repeating the offence;
- Deter others from committing similar offences.