



BABERGH & MID SUFFOLK DISTRICT COUNCILS

PRIVATE SECTOR HOUSING CIVIL PENALTIES POLICY

APPENDIX 2: Civil Penalties Policy and matrices for imposing a civil penalty

1.0 INTRODUCTION

This document sets out the civil penalties policy that the Councils will use to impose civil penalties as an alternative to prosecution in certain cases. It provides guidance and rationale to officers in setting the levels of such penalties, and greater transparency regarding the decision-making process for recipients in particular cases.

2.0 RELEVANT LEGISLATION

The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a Financial Penalty as an alternative to Prosecution for certain Housing Act offences. The maximum Financial Penalty is £30,000 per offence.

The list of relevant offences for which Civil Penalties can be levied by the Council under the Housing Act 2004 are: -

- Failure to comply with an Improvement Notice (Sec. 30)
- Failure to licence a House in Multiple Occupation (HMO) (Section 72)
- Failure to comply with Licensing Conditions (Section 72)
- Failure to comply with an Overcrowding Notice (Section 139)
- Failure to comply with Management Regulations in respect of HMO (Section 234)
- Breaching a Banning Order (Housing and Planning Act 2016)

A Scoring Matrix has been developed with a view to assisting officers to arrive at a justifiable figure.

3.0 APPLYING THE MATRICES

The Financial Penalty should be fair and proportionate, with the main objective of punishment, deterrence and the removal of gain derived through the commission of the offence. It should not be cheaper to offend than to take the appropriate precautions. This guide is intended to assist officers with the use of the Matrices and is not intended to replace Government Guidance on the subject, which is Dept. of

Communities & Local Government (DCLG) 2017 Civil Penalties under the Housing and Planning Act 2016.

In determining the level of penalty, the Council will have regard to local circumstances and relevant government guidance detailing factors to be taken into account. The overriding principle is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation. Each case will be considered on its own merits. The statutory guidance makes it clear that it is for each local authority to develop and document their own policy on issuing civil penalties.

4.0 GUIDE TO APPLYING THE CIVIL PENALTY FEE MATRICES

4.1 Civil Penalty Notice (CPN) Scoring Matrices: Factors to be taken into account include: -

- i. Severity of the offence
- ii. Culpability
- iii. Harm caused to the tenants
- iv. Punishment of the offender
- v. Deter the offender from repeating the offence
- vi. Deter others from committing similar offences
- vii. Remove any financial benefit the offender may have obtained as a result of committing the offence.

4.2 Vulnerable individuals

4.2.1 The statutory guidance states that the harm caused, and the vulnerability of the individual are important factors in determining the level of penalty. The Housing Act 2004 defines a vulnerable individual as one who is at greater harm and therefore the penalty may be greater when vulnerability is an issue.

4.3 The Matrices

In order to comply with statutory guidance, officers will follow a set of principles outlined in the guidance to exercise their functions in respect of civil penalties. Matrices are provided relevant to the appropriate offence to calculate the starting point for the level of civil penalty. Each Matrix is not intended to provide a prescriptive tariff applicable to every case, but to provide guiding principles intended to provide an indicative level of penalty for the offence under consideration.

5.0 FACTORS TO BE CONSIDERED FOR OFFENCES

5.1 Nature and Severity of The Offence

The actual offence that has been committed and its severity should be considered. Some offences will be more serious than others. For example, a single breach of

management regulations will be considered of less severity than failure to licence a House in Multiple Occupation (HMO). Determination of the likely penalty level will be based on the nature of the offence and its severity.

MATRIX A Housing Act Offences- Breaches of Improvement and Overcrowding Notices

5.2 Culpability and Seriousness of Harm

The *culpability* of the offender in relation to the offence and the actual or potential *seriousness of harm* to the occupier as a result of the offence are very important considerations. These are major factors in gauging the level of fine to be imposed.

An assessment has been developed to determine the starting point for the penalty relating to the offence.

This involves 3 steps: -

Step 1 - Determining the Culpability (Table 1 and paragraph for Determination of Culpability).

Step 2 - Determine the seriousness of harm (Table 2 paragraph for Level of Harm).

Step 3 - Use Table 3 to determine the starting point for the offence based on culpability and harm.

5.3 Determination of Culpability

Table 1 below breaks down the landlord's culpability for the offence into four categories and each category has an accompanying description of what would constitute that level of culpability. The behaviour of the landlord should be compared to the table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

Table 1 : Culpability

Very high	Where the offender intentionally breached, or flagrantly disregarded, the law. i.e. actively overcrowding a high-risk property for financial gain.
High	Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken; Serious and or systematic failure by the person or organisation to comply with legal duties. As above but in instances of less risk from the property. Where the offender knew, or ought to have known, their actions were unlawful. Examples- Landlord has a serious market advantage over compliant rivals. Serious level of overcrowding due to deliberate/flagrant breach to profit from behaviour.
Medium	Offence committed through act or omission which a person exercising reasonable care would not commit; Systems were in place to manage risk or comply with legal duties, but these were not sufficiently adhered to or implemented.

	An example of this may be an agent or landlord who has attended Property Management Training or whom an officer has previously supported through visit(s) and advice. It is anticipated that the majority of cases will generally fall into this category. The Council's work as a regulator is undermined by the offender's behaviour. Consumer/tenant mislead.
Low	<p>Offence committed with little fault, for example because: Significant efforts were made to address the risk but were inadequate on this occasion. There was no or little warning of risk/circumstances of offence. Failings were minor and occurred as an isolated incident.</p> <p>An offence committed with little fault, for example, because:</p> <ul style="list-style-type: none"> i. significant efforts were made to address the risk although they may have been inadequate on this occasion. ii. there was no warning or circumstances indicating a risk; iii. failings were minor and occurred as an isolated incident.

Once the level of culpability has been determined (using Table 1 above) in relation to an offence, then the seriousness of potential or actual harm will need to be determined

5.4 Determining Seriousness of Harm

Table 2 below separates the seriousness of harm into three categories and each category has an accompanying description of what would constitute that level of potential or actual harm. The level of harm should be assessed using the table to determine the appropriate level and this exercise will be repeated for each offence that is being considered as the seriousness of harm may vary between offences.

Table 2 – Seriousness of Harm

High	<p>The offence committed is highly likely to have a serious adverse effect(s) on individual(s) and/or result in widespread impact. e.g. consider the vulnerable age group for the associated hazard.</p> <ul style="list-style-type: none"> ● High level of potential harm to the occupant(s) and/or continuous ● High risk of adverse effect on an individual ● Serious levels of overcrowding ● Examples: two or more Category 1 Hazard(s) and/or high Category 2 or multiple hazards at property. <p>Danger of electrocution, carbon monoxide poisoning or serious fire safety risk.</p>
Medium	<p>Adverse effect on individual(s) not amounting to High Harm Level.</p> <ul style="list-style-type: none"> ● Medium risk of harm to the individual(s) ● Low risk of a <i>serious</i> effect on individual(s) ● E.g. Only one Category 1 Hazard or high Category 2 Hazard(s) ● Examples- risk of harm from falls between levels, multiple excess cold deficiencies, high scoring category 2 damp and mould hazard.
Low	<p>Low adverse effect on individual(s)</p> <ul style="list-style-type: none"> ● Little or no risk of an adverse effect or actual or potential harm to individual(s)

	<ul style="list-style-type: none"> • E.g. No Category 1 Hazard • Examples- localised damp and mould growth, category 2 hygiene hazards
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5.5 Determining the starting point for the penalty

Having reference to the severity of the offence, and having determined the culpability and harm, reference should be made to the starting points to reach an appropriate level of Civil Penalty (Table 3). A further adjustment must then be made for any identified aggravating and mitigating features.

Table 3: Penalty Bands

Low Culpability	Starting Point	Penalty Band Range
Low Harm	£1500	£750-£2250
Medium Harm	£3000	£2250-£3750
High Harm	£4500	£3750-£5250
Medium Culpability		
Low Harm	£4500	£3750-£5250
Medium Harm	£7500	£5250-£12000
High Harm	£12000	£9000-£15000
High Culpability		
Low Harm	£7500	£5250-£12000
Medium Harm	£12000	£9000-£15000
High Harm	£16500	£15000-£20000
Very High Culpability		
Low Harm	£12000	£9000-£15000
Medium Harm	£16500	£15000-£20000
High Harm	£25500	£20000-£30000

MATRIX B-HMO Offences

5.6 Determination of Culpability and Severity of offences

Table 4: HMO Offences-Starting Points

Offence	Low Severity	Medium Severity	High Severity
Failure to comply with management regulations/licensing conditions	£500	£1,500	£2,500
Failure to licence	£1,000	£2,000	£5,000

5.6.1 Severity Levels for HMO offences

When deciding the severity level, it is important to take into account the relevant piece of legislation associated with the intended action.

The Severity Levels contain factors relating to both actual harm and risk of harm.

The following is a list of considerations/examples and is not exhaustive.

Low Severity

- Low risk of harm or potential harm and little risk to occupiers or effect on health/safety. No vulnerable persons in occupation.
- Minor breach of Management Regulations e.g. a landlord or agent controlling/managing one or two HMO dwellings, who fails to display a notice containing their contact details and fails to address relatively minor management regulations/disrepair
- Little fault as significant efforts were made to address the risk although they may have been inadequate on this occasion or there was no warning or circumstances indicating a risk and failings were minor and occurred as an isolated incident.
- First time/inexperienced landlord unaware of licensing requirement and had not been previously advised/ prompted by the Council and co-operated immediately.
- First time or inexperienced landlord who is not a member of the Landlord body or working via an agent and HMO only been recently operational. Unaware that property had become an HMO after being single occupation.
- Minor lack of compliance with a licensing condition.

Medium Severity

- Medium risk of harm to the individual(s) and low risk of a serious effect on individual(s) e.g. No more than one significant breach or 2-3 minor breaches of Management Regulations.
- An offence committed through act or omission which a person exercising reasonable care would not commit. The landlord has systems in place to manage risk or comply with their legal duties, but these were insufficient nor

implemented. An example of this may be an agent or landlord who has attended Property Management Training or whom an officer has previously supported through visit(s) and advice.

- Landlord not a first-time landlord but does not have any HMOs within his portfolio. HMO has drifted into the mandatory licensing criteria due to a lack of proactive management.
- Landlord has not been prompted by Council to licence the HMO but is regarded as having sufficient experience of being a landlord to have known of the mandatory licensing criteria.
- Some licensing conditions complied with, but many have not been completed or carried out within required timescale.

High Severity

- High risk of effect on individuals. May be vulnerable persons in residence or anti-social behaviour/harassment.
- Where the landlord intentionally breached, flagrantly disregarded the Law, knew, or ought to have known, their actions were unlawful.
- Actual foresight of, or wilful blindness to, risk of offending, but risk nevertheless taken.
- Responsible person has been notified of the need to licence the HMO or has previously been made aware of the mandatory licensing criteria by the Council.
- Multiple breaches of Management Regulations with actual/potential harm to tenants or single failure to maintain fire standards/alarms in working order or to maintain essential services to an HMO.
- HMO in significant disrepair.
- Landlord provides false or misleading information or failed to provide adequate information that invalidates his licence application. Attempts to mislead or deceive the Council.
- Portfolio HMO landlord that should be aware of legal obligations.
- Fails to carry out works/improvements imposed as a condition of a granted HMO licence.

6.0 BANNING ORDER OFFENCES

This is a very serious offence. For a breach of Banning Order the starting point will be £30,000 subject to mitigation and other considerations. Each case will be determined on its merits. Prosecution will be considered as an alternative.

7.0 MITIGATING AND AGGRAVATING FACTORS

Once the starting point of the offence has been determined from Matrix A or B, the starting point for the level of penalty may be increased or decreased to take account of mitigating and aggravating factors.

7.1 Examples of Mitigating Factors:

- Co-operation with investigation e.g. attends for PACE interview/responds positively to letter of alleged offence.

- Voluntary steps taken to address issues e.g. submits a property licence application
- Willingness to undertake training e.g. for running rented accommodation business
- Willingness to join a recognised landlord accreditation scheme
- Genuine evidence of health reasons preventing reasonable compliance of obligations e.g. mental health issues, unforeseen health issues, emergency health concern.
- No previous relevant convictions
- Vulnerable individual(s) where the vulnerability is linked to the commission of the offence
- Otherwise good character and/or exemplary conduct

7.2 Examples of Aggravating Factors:

- Previous convictions having regard to the relevant offence and time elapsed since the previous offence
- Motivated by financial gain
- Obstruction of the subject investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance; the greater the number, the greater potential aggravating factor
- Record of non-compliance/letting substandard accommodation
- Record of poor management/inadequate management provision
- Lack of tenancy agreement/rent paid in cash and/or multiple breaches of Management Regulations

8.0 REDUCTIONS WITH REGARD TO OFFENDER'S ABILITY TO PAY

The CPN Statutory Guidance requires that: -

"Local Housing Authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty."

Therefore, it is in the interest of the recipient(s) of the proposed CPN to supply all relevant information to the Council, so this is taken into consideration during the issuing of a final Civil Penalty Notice. Examples would be:

- evidence of rental income from the property
- financial assets
- profits
- size of the property portfolio controlled or owned by the landlord/agent.

- Evidence in support of submissions including company accounts, bank statements etc.

9.0 DETERMINING SUBSEQUENT OFFENCES

The legislation and guidance allow the Local Housing Authority to take into account the number of times that someone has committed an offence. Second and third offences carry a much more severe and substantial penalty. Therefore, subsequent and repeated offences will attract a higher CPN Charge; further offences will be charged at double the first offence capped at £30,000.

10.0 SUMMARY OF SENTENCING GUIDELINE PRINCIPLES FOR CPN CHARGE

i. Assess nature of the offence and its severity. Note that different offences will differ in terms of severity.

When considering the seriousness of the offence, the Council shall consider the culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused. A first-time offence shall be taken into account. In looking at culpability, the Council will consider the overarching principles (intention, recklessness, knowledge and negligence).

ii. Once the starting point has been identified, the Council can then increase or reduce this to reflect any aggravating or mitigating factors that impact on the culpability of the offender and/or harm caused by the offence to reach a starting point. The CPN Band Width at the starting point will reflect the description of activity used to justify the starting point. The Council is not precluded from going outside the CPN Band Width Charge (up to allowed maximum) where the facts justify it. Previous convictions which aggravate the seriousness of the offence may take the provisional CPN Charge beyond the Band Width, especially where there are significant other aggravating factors present.

iii. Form a preliminary view of appropriate CPN Charge. When the Officer has reached a provisional CPN Charge based on the assessment of the offence's seriousness, they should take into account matters of offender mitigation.

iv. Consider a reduction for a guilty plea. The punitive element of the proposed CPN Charge may be reduced to recognise an offender's guilty plea. The level of reduction should reflect the stage at which the offender indicated a willingness to admit guilt.

v. Decide CPN Charge and give reasons. Review the total proposed CPN Charge and ensure that it is proportional to the offending behaviour. The proposed CPN Charge must state reasons for the proposed charge. It is particularly important to identify any aggravating or mitigating factors that has resulted in the issuing of the proposed CPN.

STAGES IN CALCULATING A CIVIL PENALTY NOTICE (CPN)

Stage 1.

Consider the nature and severity of the offence.

Stage 2.

Identify applicable matrix and establish culpability and harm (see Tables 1, 2, 3) or 4 for HMOs)

Stage 3.

Choose the appropriate starting point from the relevant table (3 or 4 for HMO offences) for working out the initial CPN charge figure.

Stage 4.

Consider mitigation and aggravating factors and consider applying reduction for early admission of guilt by offender. Also consider reductions with regard to the offender's ability to pay. Then issue proposed CPN with relevant documentation to the recipient.

WORKED EXAMPLE

A landlord has committed an offence by not complying with a Housing Act 2004 Improvement Notice. This offence is considered to be of moderate severity.

Matrix A applies. Upon consideration, it has been established that the responsible landlord had a Low Culpability as significant efforts were made to address the risks, although they have been inadequate on this occasion. However, the harm caused to the individuals falls within the medium risk of harm. This is because some of the hazards were removed as the notice was partly complied with, but a category one (excess cold) and two category 2 hazards are outstanding (damp and mould and entry by intruders). The landlord has shown some willingness to pay the CPN Charge within a reasonable period, typically within 28 days provided that the charge can be justified.

Step 1.

Apply Tables 1 and 2 to justify culpability and harm. Then refer to Table 3 for Penalty Bands. For a Low culpability and medium harm, the initial starting figure will be £3,000. This is within the band £2250-£3750.

Step 2.

Consider any aggravating and mitigating circumstances which may further increase or further reduce the proposed CPN charge. Also consider any further reductions with the offender's ability to pay the CPN. In the example given, after checking the criteria for aggravating and mitigating circumstances, there is no reason to make any further adjustment to the proposed CPN Charge figure of £3,000. The landlord has not given any indication or demonstrated that they are unable to afford the proposed CPN charge. Therefore, the CPN Charge to be issued will be £3,000.