



ISLINGTON

Housing Act 2004

Financial Penalty Charging Policy

August 2018

Background

The Housing and Planning Act 2016 amended the Housing Act 2004 to permit local authorities the power to impose a Financial Penalty, up to £30,000, as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an improvement notice [section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under part 2 [Section 72]
- Offences in relation to the Selective Licensing of 'houses' under part 3 [section 95]
- Failure to comply with an Overcrowding Notice [section 139]
- Failure to comply with a regulation in respect of an HMO [section 234]

In addition, section 23 of the Housing and Planning Act 2016 provides that a Financial penalty may be imposed in respect of a breach of a Banning Order.

The decision to issue a financial penalty will be made on a case by case basis and this policy outlines the Council's approach to determining the level of Financial Penalty that is consistent with the statutory guidance issued under Schedule 9 of the Housing & Planning Act 2016.

Factors Affecting Level of Financial Penalty Imposed on Landlords and Agents

In determining the level of financial penalty consideration will be given to the following factors:

1. **Severity of the offence:** *The more serious the offence, the higher the penalty*
2. **Culpability and track record of the offender:** *A higher penalty will be levied 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.*
3. **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 financial penalty.*
4. **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, the penalty will be set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.*
5. **Deter the offender from repeating the offence:** *The objective 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 will be set at a high enough level such that it is likely to deter*

the offender from repeating the offence.

6. ***Deter others from committing similar offences.*** *While the fact that someone has received a financial penalty may 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 the council is proactive in levying financial penalties where the need to do so exists and that the level of financial penalty will be set at a high enough level to both punish the offender and deter repeat offending.*
7. ***Remove any financial benefit the offender may have obtained as a result of committing the offence:*** *the financial penalty will be set at such a level 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.*

Financial Penalty Charging Matrix

The charging matrix below indicates the minimum financial penalty under various offence categories. The final level of the financial penalty will be adjusted in case to reflect the factors listed in 1-7 above.

Band Number	Severity of Offence	Financial Penalty £
1	Moderate	Up to £4,999
2	Moderate	5,000-9,999
3	Serious	10,000-14,999
4	Serious	15,000- 19,000
5	Severe	20,000-24,999
6	Severe	25,000-30,000

Guidelines for Determining Financial Penalty

These guidelines indicate the minimum financial penalty the council is likely to impose for each of the offences under the Housing Act 2004 that may attract a financial penalty as an alternative to prosecution for offences. Any deviation from the levels set out below, due to mitigating circumstances, will be referred to the Head of Service or Service Director for decision on a case by case basis.

Failure to comply with an Improvement Notice

Maximum Court fine that can be levied for failure to comply with an Improvement Notice – Unlimited

The Council views the offence of failing to comply with the requirements of an Improvement Notice

as a significant issue, exposing the tenants of a dwelling to one or more significant hazards.

The minimum financial penalty for the offence of failing to comply with the requirements of an improvement notices is

- Serious band 3 (£10,000) for landlords controlling 5 or less dwellings
- Severe band 5 (£20,000) for landlord or agent controlling a significant property portfolio

Failure to Licence offences

Maximum Court fine that can be levied for failure to licence an HMO or Part 3 House – Unlimited

The Council views the offence of failing to licence an HMO as a significant failing.

The minimum financial penalty for the offence of failing to licence an HMO is

- Serious band 3 (£10,000) for landlords controlling 5 or less dwellings
- Severe band 5 (£20,000) for landlord or agent controlling a significant property portfolio

The minimum financial penalty for the offence of failing to licence a rented home under a Selective Property Licensing Scheme is

- Moderate band 2 (£5000) for landlords controlling 5 or less dwellings
- Severe band 4 (£15,000) for landlord or agent controlling a significant property portfolio

Breach of licence conditions

Maximum Court fine that can be levied for failure to comply with a licence condition -£5000

In determining the level of a Financial penalty, the Council will consider;

- a) The number and nature of the licence condition breaches; and
- b) The nature and extent of deficiencies within each specified licence condition

The circumstances of breach of licence condition offences have the potential to vary widely from case to case but, as a guide the minimum financial penalty is likely to be:

- Moderate band 1 (£1,000) for landlords controlling five or less dwellings or 1 or 2 mandatory HMOs, with no other relevant factors for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair
- Moderate band 2 (£5,000) where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property
- Serious band 3 (£10,000) for landlords controlling five or less dwellings or 1 or 2 mandatory

HMOs, with no other relevant factors for a failure to provide or maintain smoke alarms in working order, failure to address serious ASB issues or the failure to carry out works/improvements imposed as a condition

- Severe band 5 (£20,000) for the same offences above by a landlord or agent controlling a significant property portfolio.

Failure to Comply with an Overcrowding Notice

Maximum Court fine that can be levied for failure to comply with an Overcrowding Notice – Unlimited

The minimum financial penalty for the offence of failing to comply with the requirements of an improvement notices is

- Serious band 3 (£10,000) for landlords controlling 5 or less dwellings or 1 or 2 mandatory HMOs
- Severe band 5 (£20,000) for landlord or agent controlling a significant property portfolio

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 each individual regulation -unlimited

In determining the level of a financial penalty, the Council will therefore initially consider;

- a) The number and nature of the management regulation breaches; and
- b) The nature and extent of deficiencies within each regulation

The offences have the potential to vary widely from case to case but, as a guide the minimum financial penalty is likely to be:

- Moderate band 1 (£1,000) for landlords controlling five or less dwellings or 1 or 2 mandatory HMOs, with no other relevant factors for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair
- Moderate band 2 (£5,000) where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property
- Serious band 3 (£10,000) for landlords controlling five or less dwellings or 1 or 2 mandatory HMOs, with no other relevant factors for a failure to provide or maintain smoke alarms in working order, to maintain essential services to an HMO or to allow an HMO to fall into significant disrepair
- Severe band 5 (£20,000) for the same offences above by a landlord or agent controlling a

significant property portfolio.

Failure to Comply with a Banning Order

Maximum Court fine that can be levied for failure to comply with a Banning Order – Unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks

Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a financial penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

Early Payment Discounts

The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:

- In the event that the offender complied with the identified breach [for example by making an application to licence a previously unlicensed address] within the representation period at the 'Notice of Intent' stage, the Council would reduce the level of any imposed financial penalty by 20%;
- *A discount of 20% of the original calculated financial penalty should the penalty be paid within a specified time period [normally 28 days]. This discount would be in addition to any reduction applied as a result of compliance at the Notice of Intent stage.*

Illustrative example

- 1) *The landlord of an HMO property fails to obtain a mandatory licence. They only operate one HMO and there are no other relevant factors or aggravating features. The offence is regarded as a serious matter and attracts a Financial penalty of £5,000. Upon receipt of the 'Notice of Intent' to impose a £5,000 financial penalty, the landlord makes a complete application for the HMO licence within the period allowed for representations. No other representations [or representations that are up-held] are made to the Council.*
- 2) *The Council issues a 'Final Notice' imposing a financial penalty of £4,000 [£5,000 with a 20% discount having been deducted due to compliance during the representation period]. In the event the landlord pays within 28 days of the date of the Final Notice a further 20% discount is given so that the landlord makes a discounted payment of £3,000.*