

HOUSING RENEWAL ENFORCEMENT POLICY (REVISION 2.0 – NOVEMBER 2019)

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1. Introduction

- 1.1 The Housing Renewal Team of Hastings Borough Council aims to support the local economy and promote continuing growth whilst making sure there is a balanced housing market that provides for a range of individual needs and income levels. The Council is committed to fair and effective enforcement, which protects both the economic interest and health and safety of the public, businesses and the environment.
- 1.2 The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way to ensure compliance is achieved for the benefit of all.
- 1.3 This document sets out the enforcement policy for the Council’s Housing Renewal Team when dealing with non-compliance of laws enforced by this Service. It is an appendix to the overarching Hastings Borough Council Corporate Enforcement Policy which was adopted by Cabinet in April 2013. A copy of which can be downloaded at <https://goo.gl/crmDhB> or available on request.
- 1.4 The content of the Housing Renewal Enforcement Policy has been written having regard to;
- **The Regulators Compliance Code** – This promotes proportionate, consistent and targeted regulatory activity through transparent and effective dialogue and understanding between regulators and those they regulate. Regulators must have regard for this code when developing policies and procedures that guide their regulatory activity.
A copy of the code is available on request or may be downloaded from <https://www.gov.uk/government/publications/regulators-code> . In certain situations we may decide that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

- **The Enforcement Concordat** – The concordat is a voluntary, non - statutory code of practice which Hastings Borough Council has signed up to. It sets out principles with regards to good enforcement practice. The principles cover: Standards of Service and Performance, Openness, Helpfulness, Proportionality, Consistency and Complaints about Service. A copy of the Enforcement Concordat: Good Practice Guide is available on request or may be downloaded from <https://goo.gl/hfvzWH>
- **Ministry of Housing, Communities and Local Government Guidance for Local Authorities on Rogue Landlord Enforcement** – This guidance is non-statutory however it sets out the enforcement approaches available to a local authority when tackling rogue landlords. In particular the guidance sets out general guidelines of routes to enforcement: Proportional and escalating, Transparent, Evidence based, Repeat offenders.
- **The Code for Crown Prosecutors 2018** – The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, which sets out the general principles Crown Prosecutors should follow when they make decisions on cases. Whilst the Crown Prosecutor does not take decisions in relation to local housing authority cases it is expected that the councils litigation team follow its principles.

2. Human Rights and Equality Issues

- 2.1 Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.
- 2.2 Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender. For a copy of Hastings Borough Councils full equalities policy please go to http://www.hastings.gov.uk/my_council/transparency/equalities/equalities/

3. Purpose and Methods of Enforcement

- 3.1 The Council expects full voluntary compliance with the law. We will help owners of housing to meet their legal obligations by providing clear and concise information about what they need to do comply. However, we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, against those who flout the law or act irresponsibly.
- 3.2 Enforcement includes any action aimed at ensuring compliance with the law. The principle legislation used by the Housing Renewal Team is the Housing Act 2004 and the Housing and Planning Act 2016. The range of action that will be considered under these Acts include but is not limited to;

- 3.2.1 **Informal Action** – will be considered where one or more of the following circumstances apply; there is no legislative requirement to serve formal notice or an order *and* the circumstances are not serious enough to warrant formal action; past history suggests informal action will achieve compliance; there is confidence in the management or the individual; the consequences of non-compliance will not pose a significant risk to occupiers or others.
- 3.2.2 **Serve a Statutory Notice / Order** – This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice or order.

In relation to Part One offences under the Housing Act 2004, service of statutory notices / orders will be based on the hazards found following an inspection of the whole dwelling and how serious they are deemed to be. This is assessed using the Housing Health Safety Rating System. This system has been adopted by regulation as the prescribed method for assessing housing conditions (The Housing Health and Safety Rating System (England) Regulations 2005). The aim is to identify deficiencies within dwellings that may lead to a hazard. Each hazard is assessed and assigned a band. These bands are translated into either a category one or a category two hazard. The Council has a legal duty to take the most appropriate enforcement action available in relation to category 1 hazards. This is where the risk to health and/or safety is high.

There is a power for the Council to deal with category 2 hazards. This is where the risk to health and/or safety is not so significant.

The Housing Renewal Team will exercise this power in the following circumstances;

- Where there are category 1 hazard(s) present at the residential unit of accommodation
- Where the category 2 hazard is progressive and will likely become a category 1 hazard unless preventative action is taken
- Where there are a number of category 2 hazards which would present a hazard to occupiers as they moved room to room
- In other exceptional circumstances outside the scope of supplement and procedures at the discretion of the Housing Renewal Manager

Notices will include reasonable time limits for compliance having regard to the seriousness of the defects and/or contraventions.

As a minimum category 1 hazards must be reduced to a low category 2. Where this is not possible all reasonable steps must be taken to reduce the hazards as far as reasonable practicable to a category 2 hazard.

The notice/order will contain all required information as specified by the relevant Act or Regulation. All appropriate persons will be notified of the formal action, e.g. tenants, mortgagees, leaseholders, freeholders etc. The types of notice/order that can be issued by the Housing Renewal Team under the Housing Act 2004 include;

- Hazard Awareness Notice – notice advising the person on whom it is served of category 1 and/or category 2 hazard(s) at the property. This is used where a hazard has been identified but the circumstances are not necessarily serious enough to require an improvement notice or prohibition order. It is a way of drawing attention to the need for remedial action. This notice is not registered as a local land charge and has no appeal procedure.
- Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the category 1 and/or category 2 hazards found. This is used where reasonable remedial works can be carried out to sufficiently reduce the hazard. This notice is registered as a local land charge.
- Prohibition Order – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property. This may be used where category 1 and/or category 2 hazards are found and conditions present a risk but remedial action is unreasonable or impractical. This notice is registered as a local land charge.
- Suspended Improvement Notices or Prohibition Orders – these notices may be suspended where enforcement action can be safely postponed until a specified event or time. This notice is registered as a local land charge.
- Emergency Prohibition Order – same as a prohibition order but the order will take effect immediately. This is only acceptable where there is an imminent risk of serious harm from a category 1 rated hazard. It is also not practicable to carry out the remedial works.
- Demolition Order – an order requiring the demolition of the property. It can only be used in response to category 1 hazards, however not on listed buildings.
- Declaring a Clearance Area – an area which is to be cleared of all buildings. All residential buildings in the proposed area must have at least one category 1 hazard.

There are circumstances where other pieces of legislation may be appropriate in dealing with an identified problem. Officers are expected to use professional judgement to determine the most appropriate piece of legislation to use. It sometimes may be appropriate to use a range of appropriate tools. For example, The Environmental Protection Act 1990 allows the Council to serve an Abatement Notice in relation to certain types of nuisance coming

from one property and affecting another. Regardless of the legislation used the principles of this policy will be followed.

3.2.3 **Take Emergency Remedial Action** – this will be considered where there is an imminent risk of serious harm and the hazard is rated as category 1. The Housing Renewal Team will take the action necessary to reduce the imminent risk and formal action will be taken by the Housing Renewal Team to recover the full costs incurred.

3.2.4 **Suspend, revoke or refuse to renew or grant a licence or authorisation** – This relates to parts 2 & 3 of the Housing Act 2004 and the Licensing of Houses in Multiple Occupation and Selective Licensing. Where the relevant person does not comply with the prescribed conditions and or is not deemed to be a fit a proper person to hold a licence, this course of action may be considered.

Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records. The data will be kept and processed in line with the Council's data protection and data retention policy. For further information please see the following link <https://www.hastings.gov.uk/privacy/your-privacy/>

A Public Register of licensed HMOs, dwellings with interim/final/empty dwelling management orders and HMOs with temporary exemption Notices in force will be available, upon request, for public inspection at the appropriate Council office, in line with the requirements of the legislation and guidance. If a copy of the register, in full or part is requested by a member of the public, this will be subject to a reasonable fee to cover administration costs.

3.3 Where there is evidence of non-compliance with a statutory notice or order served under Part One of the Housing Act 2004, a failure to appropriately licence property under Parts 2 and 3 of the Act, or non-compliance with any other legislation enforced by the Housing Renewal Team the following enforcement options will be considered.

3.3.1 **Formal (Simple) Caution** – used to deal quickly and simply with less serious offences. There must be sufficient evidence of guilt to give a realistic prospect of conviction and the offender must formally admit to the offence. Simple cautions will be administered by the Chief Legal Officer in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders (April 2015) .

3.3.2 **Penalty Charge Notice** – a number of Acts and Regulations provide for the issuing of a penalty charge notice for non-compliance. These include the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

and the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014. Where the Council decides to issue a Penalty Charge Notice it will follow the same principles as the Civil Penalty below (and in Appendix 1).

The amount of penalty will be capped at the maximum provided for the offence.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require that the Council have a statement of principles for its application of penalty charge notices in relation to offences under those regulations. The Civil Penalty process described in Appendix 1 forms the council's statement of principles.

- 3.3.3 **Civil Penalty** – under s249A of the Housing Act 2004 as introduced by The Housing and Planning Act 2016 the Council may decide to impose a financial penalty as an alternative to prosecution for certain housing offences. The Council must be satisfied beyond reasonable doubt that the person's conduct amounts to a relevant housing offence.

The offences under the Housing Act 2004 which the Council can impose a financial penalty as an alternative to prosecution are:

- Failure to comply with an improvement notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)
- Under the Housing and Planning Act 2015 the offence of breach of a banning order can also be dealt with by a financial penalty (section 21(1))

The amount of a financial penalty is determined by the Council but it must not exceed £30,000.

The Housing Renewal Team, in consultation with the legal department will determine on a case by case basis whether to issue a civil penalty or instigate a prosecution in respect of the offences listed above. Examples of situations where a decision to prosecute may be made taken are;

- Offences of a particularly serious nature
- Where the offender has committed similar offences in the past

In circumstances where it has been deemed appropriate to issue a civil penalty as an alternative to prosecution, the level of penalty will be calculated having regard to the matrix set out in Appendix 1.

3.3.4 **Prosecution** – may be considered for more serious offences. It aims to punish wrongdoing, to avoid a reoccurrence of the offence and to act as a deterrent to others. The Housing Renewal Team will take account of the Code for Crown Prosecutors (https://www.cps.gov.uk/publications/code_for_crown_prosecutors/) and will only seek to prosecute where;

- There is sufficient admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction

AND;

- We believe that it is in the public interest to do so.

The following factors will be considered in deciding whether or not to prosecute:

- Social, physical or economic, environmental or personal health and safety effect of the offence in order to quantify the serious nature of the offence,
- Failure to comply with the requirements of an improvement, enforcement, or prohibition notice
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.
- Excessive or persistent breaches of regulatory requirements,
- Foreseeability of the offence and the circumstances leading to it,
- Intent of the offender, individually and/or corporate body,
- History of offending,
- Attitude of offender,
- Deterrent effect of a prosecution on the offender and others,
- Culpability of the offender,
- A history of similar offences.
- Carrying out operations without a relevant licence,
- Failure to comply or to comply adequately with formal remedial requirements,
- Obstruction of an authorised officer

The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Housing Renewal Team will

decide how important each factor is in the circumstances of each case and go on to make an overall assessment before passing to Legal Services.

3.3.5 Rent Repayment Order (RRO) – the Council is required to consider an application to the First Tier Tribunal for a rent repayment order in cases where a landlord has been convicted of:

- failing to comply with an improvement notice (Housing Act 2004),
- failing to comply with a prohibition order (Housing Act 2004),
- being in control or managing an unlicensed HMO or house (Housing Act 2004)
- concerning violence for securing entry (Criminal Law Act 1971)
- concerning eviction or harassment of occupiers (Protection from Eviction Act 1977)
- breach of a banning order (Housing and Planning Act 2015).

The Council may apply to a First Tier Tribunal (FTT) for a RRO award in respect of rent payments within 12 months of an offence. In a notice of intended proceedings the Council must specify how much the order for repayment of rent is. The level of rent relates to a defined period of 12 months in the period leading up to the offence or during the 12 month period whilst the offence was being committed.

Where the Council is satisfied beyond reasonable doubt that a relevant housing offence has been committed they may consider an application to the First Tier Tribunal for a rent repayment order irrespective of whether landlord has been convicted of an offence. In either case a notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations

Regardless of whether a conviction has or has not been achieved any RRO applied for by the Council will be for the maximum rent repayment; within a 12 month period.

A person aggrieved by the decision of the First Tier Tribunal may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

3.3.6 Works in Default – may be considered as an alternative to, or in addition to prosecution or issuing a civil penalty under s249A of the Housing Act 2004. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the Courts. This will include where applicable, administration costs and officer time. The Financial Rules and Financial Operating Procedures of the Council will be fully adhered to. Where appropriate the costs will be placed against the property as a Charge.

The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

3.3.7 Rogue Landlord Database – where a landlord has received a banning order (see below) the Council must enter this onto the Rogue Landlord Database. In cases where a landlord has been found guilty of committing a banning order offence (but no banning order has been made) or has received two or more civil penalties in respect of banning order offences may enter this onto the database.

When deciding whether to make an entry onto the rogue landlord database the Council will take into account:

- Severity of the offence. The more serious the offence, the stronger the justification for including the offender on the database
- Mitigating factors. In cases where a less serious offence has been committed and/or there are mitigating factors, the Council may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement.
- Culpability and serial offending. Whether the offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the justification for making an entry on the database. Conversely, where it is a first offence and/or where it is a relatively minor, the Council may decide that it is not appropriate to record a person's information on the database.
- Deter the offender from repeating the offence. The ultimate goal of the database is to prevent landlords and property agents, who have failed to comply with all of their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that (a) the Council has the tools and is proactive in recording the details of rogue landlord and property agents and (b) that they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities
- Deter others from committing similar offences. Knowing that they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlords from committing banning order offences in the first place

3.3.8 Banning Orders – may be considered as an addition to prosecution or issuing numerous civil penalties under section 214(2)(b) of the Housing and Planning Act 2016. The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 outline the offences for which Banning Orders can be issued under section 14(3) of the Housing and Planning Act 2016.

The Council has to apply to the First Tier Tribunal which has the power to issue the order.

When deciding to apply to the First Tier Tribunal for a banning order, the Council will consider

- The seriousness of the offence. All banning order offences are serious. When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court in respect of the banning order offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made. This will later be considered by the First Tier Tribunal when determining whether to make, and the appropriate length of a banning order.
- Previous convictions/rogue landlord database. The Council will check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may 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.
- The harm caused to the tenant. This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud).
- Punishment of the offender. A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.
- Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future.
- Deter others from committing similar offences. An important part of deterrence is the realisation that (a) the Council is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending

Landlords aggrieved by the decisions of the First Tier Tribunal may appeal under section 15(1) of the Housing and Planning Act 2016.

Once granted a banning order remains in place for at least 12 months. Once a banning order is in place, the local housing authority can take over the management of the property or properties of the landlord receiving the order.

4. Proceeds of Crime

- 4.1 The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity.
- 4.2 The Housing Renewal Team will use this legislation where appropriate and in consultation with legal services.

5. Delegation & Decision Making

- 5.1 Decisions about the most appropriate enforcement action to be taken will be made in line with this policy and based on professional judgement, legal guidelines and advice, statutory codes of practice and priorities set by the Council and/or Central Government. Every case is assessed on its own merits.
- 5.2 The Assistant Director for Housing and Built Environment has the delegated authority in accordance with the Councils Scheme of Delegation to Officers within the Councils constitution to take certain action under a range of legislation, e.g. the service of enforcement notices. The Assistant Director Housing and Built Environment appropriately delegates these powers to other Officers.
- 5.3 A recommendation to instigate a prosecution will be made by the Housing Renewal Manager (as delegated by the Assistant Director Housing and Built Environment). The decision to prosecute lies constitutionally with the Chief Legal Officer.

6. Costs of Enforcement

- 6.1 The Housing Act 2004 gives the Council the power to charge for enforcement action under Section 49 and to recover these costs.
- 6.2 Enforcement action may arise as a result of a complaint, usually the occupier of the residential premises. However they may arise as a referral from other agencies or third parties or as a result of a proactive inspection regime undertaken by the Housing Renewal Team.
- 6.3 Charging will apply for enforcement action in the following circumstances:
 - serving an improvement notice under section 11 or 12
 - making a prohibition order under section 20 or 21
 - serving a hazard awareness notice under section 28 or 29

- taking emergency remedial action under section 40
- making an emergency prohibition order under section 43 or
- making a demolition order under section 265 of the Housing Act 1985
- carrying out a review under section 17 (review of suspended improvement notices) or
- section 26 (review of suspended prohibition orders) or
- serving copies of the Council's decision on such a review

What can be charged for will depend on the type on action taken. However in most instances it will include;

- the expenses incurred in determining whether to serve a notice / order
- identifying any action to be specified within the notice /order
- serving the notice /order

6.4 Expenses will be recovered in accordance with Section 50 of the Housing Act 2004, via a demand for payment of the charge. As from the time the demand becomes operative until recovered, the sum recoverable will be registered as a local land charge on the premises concerned.

6.5 Expenses in respect of which a demand is served carry interest, at such reasonable rate as the Council may determine, from the date of service until payment of all sums due under the demand. (Housing Act 2004 – Schedule 3, Part 3, Paragraph 10)

Charges will be made for the service of certain notices. The charge for enforcement is a separate payment and is not the same as a penalty charge or civil penalty issued as an enforcement mechanism to address non-compliance

7. Powers of entry

7.1 Entry to a property is usually required to enable the Housing Renewal Team to carry out its statutory functions. We will normally make an appointment to visit in the first instance and will give 24 hours' notice to the occupants and owners of our intention to enter properties to inspect them

7.2 Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

7.3 The Housing Renewal Team will exercise its statutory powers to gain entry without giving prior notice to investigate non- compliance with Housing related law or to carry

out a statutory duty where it is necessary to do so. Reasons for the use of these powers include;

- Protection of the health and safety of any person or to protect the environment without avoidable delay;
- Prevent the obstruction of officers where this is anticipated;
- To determine if a property is an unlicensed HMO or does not have a selective licence

7.4 The Housing Renewal Team will apply to the Magistrates Court for a Warrant to Enter Premises if entry has been consistently refused or refusal is reasonably anticipated.

8. Appeals

8.1 Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate

8.2 Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant First Tier Tribunal (Property Chamber). Further details on this process are contained in the relevant notice/order.

8.3 All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served.

8.4 The Council will rigorously defend any appeals where the notice/order has been correctly served.

9. Complaints

9.1 Hastings Borough Council provides a well-publicised, effective and timely complaints procedure. The procedure is accessible on the Council website at http://www.hastings.gov.uk/my_council/complaints/policy/. Alternatively it can be made available on request via the following contact methods;

- Community Contact Centre, Hastings Town Hall, Queens Square, Hastings, East Sussex, TN34 1TL or Tel: 01424 451066

9.2 The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal

10. Review

- 10.1 This Enforcement Policy shall be reviewed annually and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest

Appendix 1 – Civil Penalties

Section 126 and Schedule 9 of the Housing and Planning Act 2016 provides local authorities with the power [through the creation of section 249A Housing Act 2004] to impose a civil penalty (in the form of a financial penalty) as an alternative to prosecution in respect of certain offences under the Housing Act 2004. These are listed above at paragraph 3.3.3

The Council has the power to impose a civil penalty of up to £30,000, with a level of civil penalty imposed decided on a case by case basis in line with its policy. This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an appropriate enforcement option.

The standard of proof required to issue a civil penalty is the same as that which is required for preparing a criminal case. This means that the evidence should indicate beyond reasonable doubt that an offence has been committed.

A civil penalty cannot be issued where there has been a previous prosecution for the same set of circumstances, or where a prosecution is currently pending for the same offence.

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016. Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties. A full copy of that guidance can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf.

Paragraph 3.5 of the statutory guidance states that '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'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

Severity of the offence. The more serious the offence, the higher the penalty should be.

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.

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 civil penalty.

Punishment of the offender. A civil 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 demonstrate the consequences of not complying with their responsibilities.

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.

Deter others from committing similar offences. While the fact that someone has received a civil 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 civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

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.

Civil Penalties Matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out in this policy. The matrix is intended to provide an indicative minimum 'tariff' under the various offences, with the final level of the civil penalty adjusted in each case to take into account other relevant aggravating or mitigating factors. The rationale will be applied on a case by case basis and applied to the specific circumstances of each case.

In cases where the maximum level of fine is less than £ 30,000 the fine will be capped at the maximum amount allowable. For instance where the maximum level of penalty is £ 5,000 the matrix cannot

Hasting Borough Council uses a five stage process to provide a framework to assist with "determining the level of fine" which will ensure consistency, transparency and a fair assessment for all parties.

The process has taken into account the following documents;

1. The statutory guidance issued by the Secretary of State under;
 - Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.

- Para 12 of the new schedule 13A in the 2004 Act.
- 2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
- 3. Sentencing Council Guidance for Health and Food Safety Offences (2016)
- 4. Hastings Borough Council Corporate Enforcement Policy (April 2013)
- 5. Ministry of Housing, Communities and Local Government Guidance for Local Authorities on Rogue Landlord Enforcement

The five Stages in ‘Determining the Level of Financial Penalty (FP)’.

Stage One: Banding the offence. The initial FP band is decided following the assessment of two factors; culpability and harm.

If more than one party is involved in the commission of the offence then this will be considered in terms of each person’s culpability. Any penalty will then be calculated based on each party’s involvement and level of culpability.

Stage Two: Amending the penalty band based on aggravating factors.

Stage Three: Amending the penalty band based on mitigating factors.

Stage Four: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage Five: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour.

Stage One: Banding the level of Offence (there are two factors to assess)

Banding the Offence	
<p>Factor 1.</p> <p>Culpability</p> <p>(seriousness of offence and culpability)</p> <ul style="list-style-type: none"> • To consider as part of assessment the scale and scope of the offences, • was length of time did the offence continue for or repeat over? • what was the legislation being breached? • to what extent was the offence premeditated or planned, • whether the landlord/agent knew, or ought to have known, that they were not complying with the law, • the steps taken to ensure compliance. • whether the landlord/agent has previous relevant unspent housing offence related convictions (source National Landlord database), • the likelihood of the offence being continued, repeated or escalated. • the responsibilities the landlord/agent had with ensuring compliance in comparison with other parties 	<p>Assessment:</p> <p>The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</p> <hr/> <p>Low</p> <p>Offence committed with little fault, for example, because:</p> <ul style="list-style-type: none"> • Significant efforts were made to address the risk although they were inadequate on this occasion • There was no warning/circumstance indicating a risk • Failings were minor and occurred as an isolated incident <hr/> <p>Moderate</p> <p>Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <hr/> <p>High</p> <p>Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <p>Breaches allowed to subsist over a period of time</p> <hr/> <p>Very High</p> <p>Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p>

<p>Factor 2</p> <p>Level of Harm</p> <p>(to tenant / community)</p> <ul style="list-style-type: none"> To consider as part of assessment circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010) tenant's views about the impact that the offence has had on them. the extent to which other people in the community have been affected, for example, because of anti-social behaviour, excessive noise and damage to adjoining properties. Was more than one other household affected, the level of actual or potential physiological or physical impact on tenant(s) and third parties what regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence has the level of trust been breached and have landlord actions impacted on sector 	<p>Assessment:</p> <p>The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</p> <p>Low</p> <p>Low risk of an adverse effect on individual(s) (not amounting to low risk)</p> <p>Public misled but little or no risk of actual adverse effect on individual(s)</p> <p>Moderate</p> <p>Adverse effect on individual(s) (not amounting to high)</p> <p>Moderate risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities.</p> <p>Regulator and/or legitimate industry substantially undermined by offender's activities</p> <p>Consumer/tenant misled</p> <p>High.</p> <p>Serious adverse effect(s) on individual(s) and/or having a widespread impact</p> <p>High risk of an adverse effect on individual(s) – including where persons are vulnerable</p> <p>Significant disregard of Regulator or legitimate industry role with significant deceit.</p>
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Scoring Matrix to determine the level of fine

Scoring Matrix for Financial Penalty				
LEVEL OF CULPALABILITY (SERIOUSNESS OF OFFENCE)	Very High	4	5	6
	High	3	4	5
	Moderate	2	3	4
	Low	1	2	3
		Low	Moderate	High
IMPACT, LEVEL OF HARM				

Financial Penalty Banding

Band	Penalty range	Mid-point
Band 1	£ 0 to £ 1,000	£ 500
Band 2	£ 1,000 to £ 4,000	£ 2,500
Band 3	£ 4,000 to £ 8,000	£ 6,000
Band 4	£ 8,000 to £ 12,000	£ 10,000
Band 5	£ 12,000 to £ 20,000	£ 16,000
Band 6	£ 20,000 to £ 30,000	£ 25,000

The starting point for each band will be the mid-point e.g. for Band 1 the mid-point will be £ 500. In cases where the amount of penalty is capped below £ 30,000 then the penalty cannot exceed this amount

Stage Two: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. The penalty can be increased within the assigned band based on aggravating factors.

Example aggravating factors:

- 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 (is conviction spent)?
- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
- Falsification of documents / records
- Established evidence of longer term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to the Council advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of the Council or other Regulatory Body.
- Targeting of vulnerable tenants
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

Stage Three: Amending the penalty band based on mitigating factors.

Objective: to consider any mitigating factors and whether they are relevant to the offence. The penalty can be decreased within the band based on mitigating factors.

Example mitigating factors:

- No evidence of 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 maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Where the person has been assessed as having mental health issues or learning disabilities, where linked to the commission of the offence
- Where the person is diagnosed with a debilitating or life limiting medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

Stage Four: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:

Step 1: to check that the provisional assessment, proposed FP meets the aims of the Crown Prosecutions code of practice:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Step 2: to check that provisional FP assessment, proposed FP is proportionate and will have an appropriate impact.

The Council will use its 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 by making an adjustment within the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6, Schedule 6 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be taken into account when making an assessment and setting the level of penalty.

The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the Council such data relevant to his financial position as will enable it to assess what he 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 offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

Stage Five: Totality principle

Objective: Where the offender is issued with more than one financial penalty, the Council will consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality. Where separate financial penalties are passed, the Council will be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that 'only one financial penalty under this section may be imposed on a person in respect of the same conduct'. The 2016 Act does permit the Council to issue a financial penalty and also apply for a rent repayment order. Where the financial penalty is issued the First Tier Tribunal must award the maximum rent repayment order.

The total financial penalty is inevitably cumulative. The Council will determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the Council. The Council will add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council will consider how to reach a just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management

offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;

- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The Council will add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council will consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- where the Council has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, if successful, the RRO award will be the maximum.

Rights to Make Representations

Before imposing a financial penalty on a person under section 249A the Council must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the Council will decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 requires that the Council must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the Council about the proposed RRO.

The landlord has the right to make representations and any representation must be duly considered. The Council will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

Appeals

Under Section 249A of the Housing Act 2004 recipients may appeal to the First-Tier Tribunal following a review of their written representations to the Housing Renewal Team. An appeal can only be made on specific grounds which are;

- a. the decision to impose the penalty, or
- b. the amount of the penalty.

Full details of the appeals process can be found on the penalty notice issued.

Non-Payment of Penalty Charge

If any notices are not paid within the specified period following issue, or where applicable following a review procedure, the Council will refer the case to the County Court for an order of that Court.

Income from Civil Penalties

The income from civil penalties will be retained by the Hasting Borough Council Housing Renewal Team and used to further statutory functions in relation to their enforcement activities in the private rented sector.