

PRIVATE SECTOR HOUSING CIVIL PENALTY POLICY

1. INTRODUCTION

- 1.1 The power to impose a Civil Penalty as an alternative to prosecution for certain housing offences was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016.
- 1.2 In determining the Civil Penalty amount, a Local Housing Authority is required to have regard to the statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016.
- 1.3 The approach to issuing a Civil Penalty is fundamentally made up of two stages, firstly determining the appropriate sanction and secondly (if appropriate) the level of Civil Penalty to be charged.
- 1.4 When determining the appropriate sanction, the Council will only consider a Civil Penalty in a situation where there would be a 'realistic prospect of a conviction' if the case was to be prosecuted. This yardstick will be the evidential test, as set out in the "Code for Crown Prosecutors", issued by the Director of Public Prosecutions, which provides that a case should not be prosecuted unless there is sufficient evidence to provide a 'realistic prospect of conviction'.
- 1.5 North Devon Council currently consults this code when determining whether to seek a prosecution for offences committed and will continue to do so on a case-by-case basis, in line with this procedure and its enforcement policy.
- 1.6 In developing this policy, NDC is acutely aware of the need to work positively with landlords to meet its wider housing responsibilities, particularly around homelessness. NDC will continue to incentive private sector landlords to improve conditions, and will work with landlords and tenants to help set up tenancies, and resolve any issues as part of its Private Rented Sector Access Scheme.

2 BACKGROUND

2.1 Civil Penalties were introduced by the Housing and Planning Act 2016 under Section 126 and Schedule 9 of that Act. The powers enable local authorities to impose Civil Penalties of up to £30,000 in respect of the following offences:

- a) Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004.
- b) Offences relating to licensing of homes in multiple occupation (HMOs) under Section 72 of the Housing Act 2004:
 - i. Section 72 (1) being in control or managing an HMO which is required to be licensed but is not so licensed.
 - ii. Section 72 (2) being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence.
 - iii. Section 72 (3) being a licence holder who fails to comply with any condition of a licence.
- c) Offences in relation to licensing of houses under Part 3 of the Act (Selective Licensing):
 - i. Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed.
 - ii. Section 95 (2) being a licence holder who fails to comply with any condition of a licence.
- d) Offences of contravention of an overcrowding notice under Section 139 of the Housing Act 2004.
- e) Failure to comply with management regulations in respect of HMOs under Section 234 of the Housing Act 2004.
- f) Breach of a banning order.

2.2 Statutory guidance has been issued by the Secretary of State under Schedule 9 (12) of the Housing and Planning Act 2016 and Local Authorities must have regard to this when exercising its functions in respect of civil penalties.

2.3 The maximum penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the Local Housing Authority. Only one penalty can be imposed in respect of the same offence.

3 DECISION MAKING

- 3.1 Ultimately, it is for a local authority to decide which option it wishes to pursue but as a general principle, local authorities should normally prosecute where an offence is particularly serious or where the offender has committed similar offences in the past.
- 3.2 Prosecution in serious cases demonstrates that a local authority will not hesitate to take formal action where needed and is likely to act as a strong deterrent, both to the offender and other rogue landlords. A prosecution also enables the local authority to apply for a banning order following a successful conviction.
- 3.3 North Devon Council has adopted an enforcement matrix approach to determine the most appropriate course of action in enforcement cases. The principle of the enforcement matrix is to provide a score based on a number of factors, both negative and positive. Bands are provided to reflect the score produced and the appropriate/indicative course(s) of action for dealing with the identified situation.

Bands	Score	Recommended Action
1	Plus to minus 10	Charge higher licence fee. Advisory letters. Invitation to landlord events. Change confidence in management.
2	Minus 11 to minus 30	Informal letter. Change confidence in management.
3	Minus 31 to minus 40	Commence investigation. Serve Section 16 and 235 Notices. Consider revoking licence. Formal action.
4	Greater than minus 41	Formal action.

- 3.4 The enforcement matrix is intended to provide guidance to officers carrying out investigations and ensures that enforcement is being carried out in a fair, proportionate and consistent way. The proposed enforcement matrixes are set out in Appendices A – E.

4 FACTORS IN DETERMINING PENALTY LEVELS

4.1 Clearly, a single level penalty will not be appropriate in all cases and when assessing the level of penalty to be imposed, it is expected that the maximum amount would be reserved for the worst offenders. The actual amount levied should reflect the severity of the case, and local authorities should have regard to the following:

- a) The more serious the offence, the more likely it is that prosecution will be the more appropriate course of action.
- b) Culpability of the landlord.

Factors to take into account when determining the culpability include where the offender:

- i. Has the **intention** to cause harm, the highest culpability where an offence is planned.
- ii. Is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
- iii. Has **knowledge** of the specific risks entailed by his actions, even though he does not intend to cause the harm that results.
- iv. Is **negligent in their actions**.

Examples of Culpability

High (Deliberate Act)	Intentional breach by landlord or property agent or flagrant disregard for the law, i.e. failure to comply with a correctly served Improvement Notice.
High (Reckless Act)	Actual foresight of, or wilful blindness to, risk of offending but risks nevertheless taken by the landlord or property agent, for example, failure to comply with HMO Management Regulations.
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence, for example, part compliance with a Schedule of Works, but failure to fully complete all schedule items within notice timescale.
Low (Low or No Culpability)	Offence committed with little or no fault on the part of the landlord or property agent, for example, obstruction by tenant to allow contractor access, damage caused by tenants.

c) Harm or potential for harm

In determining the level of harm, the local authority will have regard to:

- i. The person, i.e. physical injury, damage to health, psychological distress.
- ii. To the community, i.e. economic loss, harm to public health.
- iii. Other types of harm, i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood.

The nature of the harm will depend on the personal characteristics and circumstances of the victim, e.g. tenant.

Where no actual harm has resulted from the offence, the Local Housing Authority will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims.
- Especially serious or psychological effect on the victim.
- Victim is particularly vulnerable.

Examples of Harm Categories

High	Defect(s) giving rise to the offence, poses a serious and substantial risk of harm to the occupants and/or visitors. For example, danger of electrocution, carbon monoxide poisoning or serious fire safety risk.
Medium	Defect(s) giving rise to the offence, poses a serious risk of harm to the occupants and/or visitors. For example, falls between levels, excess cold, asbestos exposure.
Low	Defect(s) giving rise to the offence, poses a risk of harm to the occupants and/or visitors. For example, localised damp and mould, entry by intruders.

- d) Punishment of the offender
 - i. A Civil Penalty should not be regarded as an easy or lesser option compared to prosecution.
 - ii. The penalty should be proportionate and reflect the severity of the offence.
 - iii. The penalty should be set high enough to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- e) Deter the offender from repeating the offence
 - i. The ultimate goal is to prevent further offending and help ensure the landlord fully complies with their legal responsibilities in future.
 - ii. The level of penalty should be set at a high enough level to deter repeat offending.
- f) Deter others from committing similar offences.
 - i. Important part of deterrence is the realisation that the Council is pro active in levying Civil Penalties where the need exists and that the level of Civil Penalty will be set high enough to punish the offender and deter repeat offending.
- g) Remove any financial benefit the offender may have obtained as a result of committing the offence.
- h) 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 managed.

5 DETERMINING THE AMOUNT OF CIVIL PENALTY

- 5.1 North Devon Council has developed a draft spreadsheet, refer to Appendix F, for assessing the level of Civil Penalty that will be charged when offences have been committed and highlighted through the enforcement matrix, as appropriate for a Civil Penalty.
- 5.2 The idea of the spreadsheet is that it takes into account all elements set out in guidance provided by DCLG and the approach the Council adopts through its enforcement policy and procedures.
- 5.3 The table below sets out the interrelation between harm and culpability as a determinant of the Civil Penalty banding.

Low Culpability/High Harm Band 4	Medium Culpability/High Harm Band 5	High Culpability/High Harm Band 6
Low Culpability/Medium Harm Band 3	Medium Culpability/Medium Harm Band 4	High Culpability/Medium Harm Band 5
Low Culpability/Low Harm Band 1	Medium Culpability/Low Harm Band 2	High Culpability/Low Harm Band 3

- 5.4 The assumed starting point (ASP) in each band will be the mid point, i.e. for Band 3, the mid point will be £12,500.

Band 1 = £0 to £4,999 Assumed Starting Point of £2,500	Low Culpability/Low Harm
Band 2 = £5,000 to £9,999 Assumed Starting Point of £7,500	Medium Culpability/Low Harm
Band 3 = £10,000 to £14,999 Assumed Starting Point £12,500	Low Culpability/Medium Harm OR High Culpability/Low Harm
Band 4 = £15,000 to £19,999 Assumed Starting Point £17,500	Low Culpability/High Harm OR Medium Culpability/Medium Harm
Band 5 = £20,000 to £24,999 Assumed Starting Point £22,500	Medium Culpability/High Harm OR High Culpability/Medium Harm
Band 6 = £25,000 to £30,000 Assumed Starting Point £27,500	High Culpability/High harm

- 5.5 This approach ensures that the assessment of the level of Civil Penalty reflects the factors to be considered in the statutory guidance provided by the Secretary of State and takes into account the requirement to determine the appropriate sanction by using the score produced by the enforcement matrix as a guiding principle.

6 AGGRAVATING FACTORS

- 6.1 The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.
- 6.2 In order to determine the final penalty, the Council will consider any aggravating factors relevant to the case.
- 6.3 Below is a list which will be considered as part of the determination. This is not an exhaustive list and other factors may be considered, depending on the circumstances of each case.
- Previous convictions having regard to the offence to which applies and time elapsed since the offence.
 - Motivated by financial gain.
 - Obstruction of the investigation.
 - Deliberate concealment of the activity/evidence.
 - Number of items of non-compliance – greater the number the greater the potential aggravating factor.
 - Record of non-compliance.
 - Record of letting substandard accommodation.
 - Record of poor management/inadequate management provision.
 - Lack of a tenancy agreement/rent paid in cash.
 - Already a member of an accreditation scheme or letting standard, so should know better.

7 MITIGATING FACTORS

- 7.1 The penalty may be decreased by £1,000 for each mitigating factor to a minimum of the bottom of the band level determined above.
- 7.2 In order to determine the final penalty, the Council will consider any mitigating factors relevant to the case.
- 7.3 Below is a list which will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.
- Co-operation with the investigation.
 - Voluntary steps taken to address issues, e.g. submits a licence application.
 - Willingness to undertake training.
 - Willingness North Devon Council's landlord accreditation scheme.
 - Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns.
 - No previous convictions.
 - Vulnerable individual(s) where their vulnerability is linked to the commission of the offence.
 - Good character and/or exemplary conduct.

- 7.4 When considering aggravating and mitigating factors, the Civil Penalty imposed must remain proportionate to the offence.
- 7.5 Reference will be made to 'Sentencing Guidelines for use in the Magistrates' Court', as and when they are issued by the Sentencing Council, when considering relevant aggravating and mitigating factors.
- 7.6 An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

8 CIVIL PENALTIES – MULTIPLE OFFENCES

- 8.1 Where a Local Housing Authority is satisfied that more than one offence is being committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices (for example, where there are multiple breaches of the HMO Management Regulations).
- 8.2 However, where satisfied on the merits of the case and/or where the authority consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this draft policy shall require the authority to do that. This authority may take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

9 MAXIMUM LEVELS

- 9.1 North Devon Council takes the enforcement of housing conditions in the private rented sector extremely seriously and pro-actively pursues enforcement action where it is considered to be necessary and appropriate.
- 9.2 There may be circumstances when the Council is dealing with offences that it considers will warrant a maximum penalty.

10 RECORDING OF THE DECISION

- 10.1 A record of each decision and the reasons for the financial penalty will be made and how the amount of the penalty was obtained and the reasons for imposing it.

11 FINANCIAL HARDSHIP

11.1 North Devon Council is required to make an assessment of a landlord's assets, and any income (not just rental income) they receive when determining an appropriate penalty. The perpetrator will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship in those representations. It will be for the recipient of a Civil Penalty(s) to provide sufficient documented evidence of income when relying upon such representations, but as a minimum, any application of financial hardship should be accompanied by:

11.1.1 Copies of HMRC account submissions for the last 3 years.

11.1.2 Details of all forms of employment and company positions (formal or informal), the holder has held during the last 3 years, including Directorships.

11.1.3 Details of all paid employment, dividends and/or unearned income.

11.1.4 A full list of all residential and commercial properties, or landholdings that the applicant owns or in which they have a financial interest, including full addresses and/or locations, purchase price and current estimate of value. Details of mortgages held.

Details of all properties purchased, sold or transferred in the last 3 years.

11.1.5 Full details of all stocks and shares; Bank; Building Society and similar accounts, and all owned (full or partial) assets worth more than £1,000.

11.2 The Council reserves the right to request further information to support any financial claim, and where this is incomplete, appears to be inaccurate, or is not sufficiently evidenced, may determine that the representation should not be considered.

APPENDIX A
DRAFT ASSESSMENT FOR AN UNLICENSED HMO

Property Address			
Officer			
Date of assessment			
Unlicensed HMO for more than 6 months	-20		0
Unlicensed HMO for less 6 months	-10		0
Unlicensed HMO - Failed to renew	-10		0
Total number of adults (-1 for each occupant)	-1		0
Children (under 18 years)	-10		0
High risk HMO - No AFD or Protection - overcrowding	-20		0
Medium risk - Limited AFD - poorly managed and disrepair	-15		0
Low Risk - Otherwise well managed - AFD working	-5		0
Prior informal interventions	-10		0
Other unlicensed HMO`s (per HMO)	-5		0
Prior convictions/caution for housing related offences	-20		0
Submitted valid application within 2 weeks	5		0
Tenants behaviour	5		0
Landlord does not need chasing – communication is effective	5		0
Agents can demonstrate owners are poor	5		0
Owners can demonstrate agents are poor	5		0

Total	0
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Unlicensed HMO

Pass to Private Sector Housing Licensing to send letters Advisory letter
Informal letter Revoke licence not FPP
Re-inspection
Formal investigation Section 16 and 235s
Re-inspection
Case conference with Head of Service EH&H/Private Sector Housing Manager
Financial Penalty - Refer to FP Matrix
Financial Penalty - Refer to FP Matrix Formal Action

Band 1 = + to -10

Band 2= -11 to -30

Band 3= -31 – to -40

Band 4 = Greater than -41

APPENDIX B
DRAFT ASSESSMENT FOR AN UNLICENSED S257
HMO

Property Address			
Officer			
Date of assessment			
Number of flats -1 for each	-1	0	0
Number of flats with vulnerable persons in occupation -5 for each flat	-5	0	0
Fire safety - high risk -	-30	0	0
Fire safety - medium risk	-20	0	0
Fire safety - low risk	-10	0	0
Category 1 hazards present (-10 for each)	-10	0	0
Prior informal interventions (-5 for each)	-5	0	0
Landlord has other unlicensed HMOs	-5	0	0
Prior convictions for housing offences	-5	0	0
Licence application or application to Building Control submitted and followed through	20	0	0
Communication is effective	5	0	0

Total	0
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APPENDIX C
DRAFT ASSESSMENT FOR HMO MANAGEMENT REGULATION
BREACHES

Property Address			
Officer			
Date of assessment			
Unlicensed	-10	1	-10
Number of adults (-1 per adult)	-1	7	-7
Children (under 18 years)	-5	0	0
Fire Safety breaches (per offence)	-5	1	-5
Other Management Reg breaches (per offence) (EXC Fire)	-1	7	-7
Other properties with noteworthy management reg breaches (-5 per property)	-5	0	0
Prior informal interventions	-10		
Prior convictions/caution for housing related offences	-20	0	0
Tenants behaviour	5	0	0
Satisfactory management arrangements	5	0	0
Landlord does not need chasing – communication is effective	5	0	0
50% or more breaches potentially due to tenant damage	5	0	0

Total	-29
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Management Regulation Breaches

Set as Licence Conditions Advisory Letter
Revoke Licence not FPP Informal letter
Request copies of Certificates Section 16 and 235s Revoke Licence Financial Penalty - Refer to FP matrix
Financial Penalty - Refer to FP matrix Formal Action

Band 1 = + to -10

Band 2= -11 to -30

Band 3= -31 – to -40

Band 4 = Greater than -41

APPENDIX D
DRAFT ASSESSMENT NON COMPLIANCE WITH HMO LICENCE
CONDITIONS

Property Address			
Officer			
Date of assessment			
Non-compliance of fire safety conditions (per condition)	-10		0
Non-compliance of Conditions relating to health and safety (per condition)	-5		0
Non-compliance of Other Conditions (per condition)	-1		0
Conditions carried over from previous licence (per condition)	-3		0
Prior informal interventions	-10		0
Prior convictions/caution for housing related offences	-20		0
Awkward tenants	5		0
Other conditions complied to a good standard (number)	1		0
Landlord does not need chasing – communication is effective	5		0
Accredited Landlord	2		0

Total	0
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Non Compliance with Licence Conditions

Reminder letter Carry forward on Renewal
Advisory letter Revoke Accreditation
S235 to produce Certificates Refuse to Licence Financial Penalty - Refer to FP Matrix Revoke Licence
Financial Penalty - Refer to FP Matrix Formal Action

Band 1 = + to -10

Band 2= -11 to -30

Band 3= -31 – to -40

Band 4 = Greater than -41

APPENDIX E

DRAFT ASSESSMENT NON COMPLIANCE WITH IMPROVEMENT NOTICE

Property Address			
Officer			
Date of assessment			
Over 90% work outstanding	-30	0	0
75% to 90% work outstanding	-25	0	0
50% to 74% work outstanding	-20	0	0
25% to 49% work outstanding	-15	0	0
Less than 24% work outstanding	-10	0	0
Fire Safety work outstanding	-20	0	0
Serious health and safety items outstanding	-10	0	0
Landlord can prove tenants did not give access	5	0	0
If over 50% work completed, it has been completed to good standard	5	0	0
 Total score	 0		

Non Compliance with HHSRS Improvement notices

Extend completion deadline (only once)
PACE Interview
Financial Penalty - Refer to FP Matrix
Works in default
Financial Penalty - Refer to FP Matrix
Formal Action

Band 1 = a plus score
Band 2= 0 to -10
Band 3= -11 – to -40
Band 4 = Greater than -41

APPENDIX F

DRAFT FINANCIAL PENALTIES MATRIX

Name				
Property Address				
Offence				
Officer				
Date of assessment				
	Band		1 = Yes	
Level of Culpability/Harm				
Low Culpability / Low Harm	1		4999.00	
ASP			0.00	£ -
Medium Culpability/Low Harm	2		9999.00	
ASP			0.00	£ -
Low Culpability / Medium Harm	3		14999.00	
ASP			0.00	£ -
High Culpability/ Low Harm	3		14999.00	
ASP			0.00	£ -
Low Culpability/High Harm	4		19999.00	
ASP			0.00	£ -
Medium Culpability/Medium Harm	4		19999.00	
ASP			0.00	£ -
Medium Culpability/High Harm	5		24999.00	
ASP			0.00	£ -
High Culpability/ Medium Harm	5		24999.00	
ASP			0.00	£ -
High Culpability/ High Harm	6		30000.00	
ASP			0.00	£ -
Culpability and Harm Combined				£ -
Aggravating Factors				
Previous formal action			0	£ -
Motivated by financial gain			0	£ -
Negligent, deliberate concealment of evidence			0	£ -
Lack of co-operation/ communication			0	£ -
Other - eg. Obstruction			0	£ -
Mitigating Factors				
No previous/relevant convictions			0	£ -
High level of co-operation/ communicating effectively			0	£ -
Medical conditions/ disability/ immaturity			0	£ -
Voluntary action taken to address problem			0	£ -
Other - E.g. Good character/exemplary conduct			0	£ -
SUB TOTAL				£ -

TOTAL BEFORE INCOME/ASSET CHECK				£	-
INCOME/ ASSET CHECK					
Other income > £25,000			0.00	£	-
Other Income < £25,000			0.00	£	-
In receipt of benefit			0.00	£	-
Not in receipt of benefit			0.00	£	-
Rental Income > £820m-1			0.00	£	-
Rental Income < £820m-1			0.00	£	-
Property value above North Devon Council Average			0.00	£	-
Property value below North Devon Council Average			0.00	£	-
No mortgage			0.00	£	-
TOTAL FINANCIAL PENALTY				£	-

Band 1 = £0 to £4,999 ASP £2,500	Low Culpability/Low Harm
Band 2 = £5,000 to £9,999 ASP £7,500	Medium Culpability/Low Harm
Band 3 = £10,000 to £14,999 ASP £12,500	Low Culpability/Medium Harm OR High Culpability/Low Harm
Band 4 = £15,000 to £19,999 ASP £17,500	Low Culpability/High Harm OR Medium Culpability/Medium Harm
Band 5 = £20,000 to £24,999 ASP £22,500	Medium Culpability/High Harm OR High Culpability/Medium Harm
Band 6 = £25,000 to £30,000 ASP £27,500	High Culpability/High Harm