

BROMSGROVE DISTRICT COUNCIL

Appendix 1

Civil Penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016)

The Housing and Planning Act 2016 section 126 and Schedule 9 amended the Housing Act 2004 and introduced the ability for Local Housing Authorities to use financial penalties of up to £30,000 per offence as an alternative to prosecution for the following offences under the Housing Act 2004:

- 1. Failure to comply with an Improvement Notice (section 30).**
- 2. Offences in relation to Licensing of Houses in Multiple Occupation (section 72);**
- 3. Offences in relation to Licensing of Houses under Part 3 of the Act (section 95);**
- 4. Offences of contravention of an Overcrowding Notice (section 139)**
- 5. Failure to comply with Management Regulations in respect of Houses in Multiple Occupation (section 234).**

The Council will normally seek to use the Civil Penalties power to impose a financial penalty in preference to using the power of prosecution for the above offences. Prosecution will be considered in preference to financial penalty where there is a reasoned public interest case to do so or it is considered the more appropriate or effective sanction. The Council will still have to be satisfied of a realistic prospect of conviction should the Council have decided to prosecute the case. The case would still have to meet the evidential and public interest stages referred to in the Crown Prosecution Service Code for Crown Prosecutors. The Council will also consider whether or not to undertake works in default when an improvement notice has not been complied with.

Statutory guidance issued by the Department for Communities and Local Government in April 2017 sets out clearly appropriate criteria for decision making about the level of fine able to be imposed and the process that the Council will follow.

BROMSGROVE DISTRICT COUNCIL

The Council will have regard to this guidance and the Code for Crown Prosecutors in considering cases. Reflecting this guidance the following factors will be used for the basis of determining the level of financial penalty for a specific apparent offence:

1. **Consideration of the financial means of the landlord**, including the number of properties and tenants and likely monthly income from those.
2. **The severity of the offence**. The more serious the offence the higher the penalty.
3. **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.
4. **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.
5. **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 demonstrates the consequences of not complying with their responsibilities.
6. **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.
7. **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 housing 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.

BROMSGROVE DISTRICT COUNCIL

- 8. 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.

The Council will determine the level of financial penalty from a review of the case that will start with considering which of the following 6 categories the case falls into:

- 1. Very minor.** Examples: First apparent offence of one or two minor breaches of HMO management regulations not causing any harm and rectified as soon as practical or failing to comply completely with the works required in an improvement notice but most works are done within the timescale required and remaining works are in progress. ***For such cases no financial penalty is appropriate but a warning letter would normally be issued.***
- 2. Minor.** For example a first apparent offence by a small scale landlord with only one or two properties and only one or two hazards that were not having a direct significant impact on the tenant and where the works required have been done, albeit not in the notice timescale or, once alerted to the offences under management regulations the works were undertaken within the shortest practical timescale. There may have been some minor financial benefit to the landlord. ***Such cases should be considered for a financial penalty of up to £1000.***
- 3. Medium.** For example where several failures to comply with management regulations have occurred on more than one occasion, or an improvement notice has failed to be complied with even after prior notification of works by a landlord who only has one property. Also for example where a landlord has failed to apply for a licence for a house in multiple occupation. ***For such cases a financial penalty up to £5000 to be considered.***
- 4. Significant.** For example there is a history of failing to comply with management regulations on 2 or more occasions by a landlord who has more than 2 properties and has also failed to respond to requests to undertake work or provide information within a reasonable time. Also for failure to comply with all or most of the requirements of an improvement notice without seeking a justified variation in timescale or an offence following a history of non-compliance with requirements including requests for information. Normally cases where there is some harm or potential harm to the tenants. ***For these cases a financial penalty of between £5000 and £10000 to be considered.***
- 5. Very Significant.** Examples to include cases of failing to comply with all or most of improvement notice requirements with a history of failing to comply or

BROMSGROVE DISTRICT COUNCIL

being a landlord with 2 or more properties and no apparent reasonable excuse for not undertaking the works required. The works being themselves significant actual or potential harm to residents. ***For these cases a financial penalty of between £10000 and £20000 to be considered.***

6. Most Serious. Examples to include where a landlord with multiple properties has been operating an HMO without required licence and failing to meet multiple HMO regulation requirements and not having appropriate fire precautions in place and having history of non-compliance with requirements, including requisitions for information. Also where the landlord is not co-operating with officers, to attend notices of entry for example, and multiple regulation failures are apparent and there is significant harm or potential harm to residents. Cases where there is failure to comply with an improvement notice that has a number of very significant category 1 hazards causing harm or potential harm to the residents and there is no attempt by the landlord to undertake work or engage with the Council. ***For these cases a financial penalty of between £20000 and £30000 to be considered.***

The above categories with typical examples are the starting point for determining what actual level financial penalty is appropriate. For each specific case a record sheet will be produced that relates the case to one of the above categories and determines, taking into account the statutory guidance and relevant factors, the exact level of financial penalty to be imposed. For example multiple historic offences or landlords who have more properties and therefore more income should expect their financial penalty to be at the higher end of the scale within that category.

The actual amount of the financial penalty will be considered for variation (normally within the scale of that category) following any representation, in particular if the landlord can demonstrate otherwise good compliance record and a willingness to work with the Council to improve conditions for tenants.

If a landlord receives two or more financial penalties in a 12 months period they will normally be included in the rogue landlord database to help inform other local housing authorities.

A landlord who has received a Civil Penalty would not normally be considered fit and proper to manage a HMO within the next year for a minor or medium category penalty or for 3 years for a significant, very significant or most serious category penalty.

Charging table for determining value of Financial Penalties imposed under Housing Act 2004

BROMSGROVE DISTRICT COUNCIL

Failure to comply with an Improvement Notice (Section 30)	Up to £
1st offence <i>(note 1)</i>	5000
2nd subsequent offence by same person/company <i>(note 2)</i>	15000
Subsequent offences by same person/company <i>(note 7)</i>	25000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability <i>(note 8)</i>	+2500
Large housing portfolio (10+ units of accommodation) <i>(note 3)</i>	+2500
Multiple Category 1 or high Category 2 Hazards <i>(note 4)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>	+2500
Perpetrator demonstrates Income less than £440/week <i>(note 6)</i>	-50%

Offences in relation to Licensing of HMOs under Part 2 of the Act (Section 72)	£
Failure to obtain property Licence (section 72(1)) <i>(note 1)</i>	10000
2nd subsequent offence by same person/company <i>(note 2)</i>	30000
Perpetrator demonstrates Income less than £440/week <i>(note 6)</i>	-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach	5000
Perpetrator demonstrates Income less than £440/week <i>(note 6)</i>	-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)	£
Failure to Licence (section 95(1)) <i>(note 1)</i>	10000
2nd subsequent offence by same person/company <i>(note 2)</i>	30000
Perpetrator demonstrates Income less than £440/week <i>(note 6)</i>	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach	5000
Perpetrator demonstrates Income less than £440/week <i>(note 6)</i>	-50%

Offences of contravention of an overcrowding notice	£
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BROMSGROVE DISTRICT COUNCIL

(section 139)	
1st relevant offences <i>(note 1)</i>	5000
2nd subsequent offence by same person/company <i>(note 2)</i>	15000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability <i>(note 8)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding <i>(note 3)</i>	+2500
Perpetrator demonstrates Income less than £440/week <i>(note 6)</i>	-50%

Failure to comply with management regulations in respect of HMOs (Section 234)	£
1 st relevant offences <i>(note 1)</i>	1000/offence
Second subsequent offences by same person/company for the same offence	3000/offence
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability <i>(note 8)</i>	+2500
Large housing portfolio (10+ units of accommodation) <i>(note 3)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>	+2500
Perpetrator demonstrates Income less than £440/week <i>(note 6)</i>	-50%

NOTES

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed

BROMSGROVE DISTRICT COUNCIL

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

BROMSGROVE DISTRICT COUNCIL

At the time of publication this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates Income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

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

Note 7 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

BROMSGROVE DISTRICT COUNCIL

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.