



Housing Enforcement Policy

Appendix 1: Financial Penalty Policy

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Introduction

This policy for determining the level of Financial Penalties under the Housing and Planning Act 2016 follows the Government Guidance [‘Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities’](#) published in April 2017 and updated in April 2018. When reading this policy the term ‘financial penalty’ and ‘civil penalty’ should be read as one and the same.

This policy sets out the framework within which decisions will normally be made with regard to issuing financial penalties for certain specified offences under the Housing Act 2004 and the Housing and Planning Act 2016 as referred to in the Mendip District Council, Housing Enforcement Policy. The legal basis for the power to impose a financial penalty is section 249A of the Housing Act 2004 (as inserted by Schedule 9 of the Housing and Planning Act 2016) and section 21 of the Housing and Planning Act 2016.

The same criminal standard of proof is required for a financial penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates’ court, there would be a realistic prospect of conviction having regard to the Crown Prosecution Service’s Code for Crown Prosecutors and the need for full assessment of the evidence. In carrying out such assessment, the Council may consider that the offences alleged are more suitable for prosecution rather than a financial penalty.

The maximum penalty is £30,000 but the amount is determined by the local authority in each case having regard to the above statutory guidance. It is expected that the maximum amount is reserved for the very worst offenders. 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.

An offence which results in a high risk of harm will increase the severity of the offence. Likewise an offence which is the result of a failure to act following a formal requirement to do so, such as failure to comply with an improvement notice or breaching a banning order, will increase the severity of the offence.

A higher level of culpability or responsibility of the offender for the offence will also increase the severity of the offence.

The aim of this policy is that the level of financial penalty reflects the severity of the offence with a greater severity resulting in a higher penalty.

Aggravating factors, mitigating factors and the value of the assets of the offender are also taken into account to determine the value of the financial penalty.

An appeal against the issue of a financial penalty is heard by the First-tier Tribunal.

1. Statutory Guidance

The Government Guidance referred to previously states that local housing authorities should consider the following factors to help ensure that the financial penalty is set at an appropriate level:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **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.
- c) **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 financial penalty.
- d) **Punishment of the offender.** A financial penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, 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.
- e) **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.
- f) **Deter others from committing similar offences.** While the fact that someone has received a financial 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 financial penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying financial penalties where the need to do so exists and (b) that the level of financial penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **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.

2. Assessment process

Once a decision has been made that the evidential test is met and the offences are suitable for financial penalty, a judgement is made on the level of culpability and harm and used to identify a range for the financial penalty. Aggravating and mitigating factors are then applied to calculate an initial value of financial penalty. The initial value is then adjusted in the light of the offender's assets following the statutory guidance to achieve the financial penalty.

In formulating this assessment process, the principles of the '[Sentencing Council: Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences - Definitive Guidelines](#)' have been used as a guide to help develop the culpability, harm and fine levels. Specific reference was made to the 'Breach of food safety and food hygiene regulations' for micro businesses as this provided the most comparative guidelines.

The process is divided into a number of steps and these are described in detail below.

Step 1 – Decide the level of culpability

Step 2 – Decide on level of harm/potential harm

Step 3 – Consider aggravating and mitigating factors

Step 4 – Assets check

Step 5 – Review the penalty

Step 6 – Totality principle for multiple offences

Step 7 – Reduction for early payment

Each step contains definitions and guidance (below) on what elements should be considered when making a judgment. These definitions are not limiting and other relevant information may be included as appropriate.

Step 1 – Decide the level of culpability

Key factor	Definition
Culpability	<p>Very high Deliberate breach of or flagrant disregard for the law</p> <p>High Offender fell far short of the appropriate standard; for example, by:</p> <ul style="list-style-type: none"> • failing to put in place measures that are recognised standards; • ignoring concerns raised by officers, tenants, employees or others • allowing breaches to subsist over a long period of time <p>Serious and/or systemic failure to address the risks</p> <p>Medium Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories.</p> <p>Systems were in place but these were not sufficiently adhered to or implemented.</p> <p>Low Offender did not fall far short of the appropriate standard; for example, because:</p> <ul style="list-style-type: none"> • significant efforts were made to meet housing legislation although they were inadequate on this occasion • there was no warning/circumstance indicating a risk to safety and breach of legislation <p>Failings were minor and occurred as an isolated incident</p>

Step 2 – Decide on level of harm/potential harm

Key factor	Definition
Harm	<p>High</p> <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s), other relevant parties and/or community • High risk of an adverse effect on individual(s) including vulnerable groups/ community <p>Medium</p> <ul style="list-style-type: none"> • Adverse effect on individual(s)/community • Risk of an adverse effect on individual(s)/community • Tenants misled regarding compliance

	<p>Low</p> <ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s)/ community • Some actual but small adverse effect on individual(s)/community
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Having considered the culpability and harm, table 1 provides a starting point to reach an appropriate level of penalty for each combination.

Table 1. Financial Penalty Levels

Harm and culpability assessment	Starting point	Range	
		Low	High
Very high culpability			
High harm	£15,000	£6,250	£30,000
Medium harm	£6,250	£2,500	£12,500
Low harm	£2,500	£1,250	£4,500
High culpability			
High harm	£6,250	£2,500	£12,500
Medium harm	£3,000	£1,000	£5,500
Low harm	£1,000	£500	£2,250
Medium culpability			
High harm	£2,500	£750	£4,500
Medium harm	£1,000	£350	£2,000
Low harm	£350	£175	£750
Low culpability			
High harm	£300	£125	£750
Medium harm	£125	£50	£350
Low harm	£50	£25	£175

Step 3 – Consider aggravating and mitigating factors

A further adjustment upward or downward within the stated range in table 1 should then be considered for any mitigating or aggravating factors as described below.

Key factor	Guidance
Aggravating factors	Include but not limited to: <ul style="list-style-type: none"> • 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 • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Evidence of wider/community impact • Breach of any court order • Obstruction of justice / obstruction of officers in their duties • Poor track record of compliance with legal obligations • Refusal of free advice or training • Poor condition of the property • More than one hazard/Multiple hazards (improvement notices) • Vulnerable people living at the property*
Mitigating factors	Include but not limited to: <ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Steps taken voluntarily to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good history of compliance / no history of non-compliance • Self-reporting, co-operation and acceptance of responsibility • Mental disorder, learning difficulty or serious medical condition linked to the commission of the offence.

The Local Authority will consider factors that it is reasonably aware of. The above list is not exclusive and does not limit the consideration of other relevant aggravating and mitigating factors. In exceptional cases, having considered all the aggravating and mitigating factors, it may be appropriate to move outside the identified category range in table 1.

***Vulnerable people** (Non exhaustive list of vulnerable people):

- | | |
|-----------------------------|---|
| • Young adults and children | • People exploited where English is not their first language. |
| • Disabled persons | • Victims of Trafficking or sexual exploitation |
| • People on a low income | • People at risk of harassment or eviction |
| • Victims of domestic abuse | • People at risk of homelessness. |
| • Looked after children | • People with complex health conditions |
| • Refugees | • Persons with a Drug or alcohol addiction |
| • Asylum seekers | |

Step 4 – Assets check

Use of existing powers to, as far as possible, make an assessment of a landlord's assets and any income they receive (not just rental income) to determine an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his/her financial position to enable the Council to assess what an offender can reasonably afford to pay.

Representation on this may be made following a notice of intention to charge.

Step 5 – Review the penalty

A check should be made as to whether the level of financial penalty reached meets, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take appropriate precautions.

Where appropriate, wider consideration should be given to a reduction in the penalty taking account of the impact on innocent third parties, such as (but not limited to): the offender's ability to comply with the law or make restitution to victims; employment of staff, service users, customers and the local economy.

Step 6 – Totality principle for multiple offences

When issuing financial penalties for more than one offence, it will be considered whether the total penalties are just and proportionate to the offending behaviour.

The Council will add up the penalties and consider if they are just and proportionate. If the total is not just and proportionate the Council will consider how to reach a just and proportionate financial penalty. This will be carried out in accordance with the [Offences Taken into Consideration and Totality - Definitive Guideline](#).

Step 7 – Reduction for early payment

Once a final notice is issued, if the penalty is accepted and payment is received in full within 28 days then a 20% reduction will be applied.

3. Procedural matters

The legislation and Government guidance imposes a number of procedural steps which must be taken before the council can impose a financial penalty. It also specifies a person's right to make representation to the Council and the right of appeal once the final notice has been issued.

The procedure for imposing a penalty is set out in Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016.

In summary, a Local Authority wishing to impose a financial penalty, must first give the person/organisation a notice of its proposal ('notice of intent') to do so.

The notice of intent must set out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose the penalty; and
- information about the right to make representations.

The notice of intent must be given no later than 6 months after the Local Authority has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

A person who is given a notice of intent may make written representations to the Local Authority about the intention to impose a financial penalty. Any representations must be made within 28 days from the date the notice was given.

After the end of the period for representations, the Local Authority must decide whether to impose a penalty and, if so, the amount of the penalty. In making this decision the facts of the case will be reviewed along with any representations received which may include financial information or additional mitigation. If the authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

The final notice must set out:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

The Local Authority may at any time withdraw a notice of intent or final notice or reduce the amount specified in either notice. In consideration of this, the circumstances of the case will be reviewed along with any new information that may have come to light. Where a notice is to be withdrawn or the amount reduced, the person on whom a notice has been served will be advised in writing.

Appeals

On receiving a notice of intent, a person has 28 days to make written representations to the Local Authority about the intention to impose a financial penalty.

Following this, if a final notice is issued a person has 28 days to appeal to the First-tier Tribunal against the decision of the Local Authority to impose a penalty and/or the amount of the penalty. The final notice is suspended until the appeal is determined or withdrawn.

An appeal will involve a re-hearing of the Local Authority's decision and the First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the penalty or cancel the penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000.

The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

Annex 1: Financial Penalty Assessment form

Financial Penalty Assessment form							
<i>To be read in conjunction with the Financial Penalty Policy and statutory guidance.</i>							
Date:							
Officer:							
Property address:							
Offender:							
Name:							
Address (registered address):							
Nature of offence / Date of offence:							
<p>Prior to completion of this form, the evidential and public interest tests must be satisfied and agreed by Team Leader – Private Sector Housing.</p> <p>Background and details of the alleged offence:</p> 							
<p>Step 1: Culpability Detailed explanation:</p>	Low						
	Medium						
	High						
	Very high						
<p>Step 2: Level of harm (potential or actual) Detailed explanation:</p>	Low						
	Medium						
	High						
<p>Culpability/harm assessment: (Refer to Table 1: Financial penalty levels)</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Min</th> <th style="text-align: center;">Starting point</th> <th style="text-align: center;">Max</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">£</td> <td style="text-align: center;">£</td> <td style="text-align: center;">£</td> </tr> </tbody> </table>		Min	Starting point	Max	£	£	£
Min	Starting point	Max					
£	£	£					

Step 3(a): Aggravating factors (move up within band to increase charge)

Explanation of all aggravating factors:

Combination of factors considered to be: Substantial / Significant / Minor / N/A

Step 3(b) Mitigating factors (move down within band to reduce charge)

Explanation of mitigating factors:

Combination of factors considered to be: Substantial / Significant / Minor / N/A

Proposed penalty

Explanation of rationale:

Step 4: Asset Check (assume can pay the max unless evidence otherwise)

Factors to consider:

Explanation:

Revised penalty £ _____

Step 5: Review the penalty

Does the revised penalty level align with the statutory guidance (summarised above). Full explanation if further revision required.

Step 6: Totality principle

Where it is proposed to serve more than one financial penalty notice (FPN) – consider if **totality principle is just and proportionate** in accordance with the 'Offences Taken into Consideration and Totality - Definitive Guideline'. Full details to be given:

Sign off

Action and proposed penalty reviewed and agreed by:

XXX:

Serve notice of intention to charge.
Date served:
Representation received Date: Details: Further revision of charge following representation Explanation:
Final penalty charge amount £_____
Step 7: Reduction for early payment 20% discount if payment received within 28 days. Applied: Yes / No / Why:
Serve final charge notice
Date served:
Record debt

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This document is also available on our website at www.mendip.gov.uk