

# Civil Penalty Policy

## Version Control

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# Civil Penalty Policy

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## **1. Introduction**

North West Leicestershire District Council (“the Council”) is committed to improving the standards of homes within the private rented sector, ensuring that all accommodation is safe, well managed, adequately maintained and compliant with regulations and requirements.

The Council acknowledges that the majority of landlords and letting agents operate their businesses in a professional and legal manner. However, it is also recognised there are some landlords and letting agents within the private rented sector that poorly manage and fail to maintain their properties to a safe standard and in some cases knowingly and wilfully disregard the law.

This policy set out below is supplementary to the Private Sector Housing Enforcement Policy and applies to both individuals and businesses.

This document follows the DCLG guidance in using the term "Civil Penalty", but the terms "Civil Penalty" and "financial penalty" are interchangeable.

## **2. What is a Civil Penalty**

Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. The amendments provided by the Housing and Planning Act 2016 allow the Council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.

A Civil Penalty is a financial penalty that may be imposed as an alternative to prosecution for certain housing offences under the Housing Act 2004. Therefore, before imposing a Civil Penalty the Council must be satisfied ‘beyond reasonable doubt’ that a persons’ conduct amounts to the relevant housing offence as defined by section 249A(2).

The exception to this is the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as this is not considered as a criminal offence, however, a financial penalty may still be served. However, to impose a Civil Penalty the

Council must still be satisfied beyond reasonable doubt that the landlord has breached a duty under regulation 3.

The maximum fine that can be imposed is £30,000 per offence. The 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' stipulates that the maximum penalty is for the worst offenders.

## **2.1 Offences Covered under Civil Penalties**

A Civil Penalty can be imposed on a landlord or letting agent or both. The power to impose a Civil Penalty as an alternative to prosecution for certain specified housing offences is stated in section 126 of the Housing and Planning Act 2016. The Civil Penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation(HMO)
- Section 95 – Offences in relation to licensing of houses under Part 3 (Including Selective Licensing)
- Section 139 – Offences of contravening of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of HMO
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)
- Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Civil Penalties can be imposed under regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Electrical Regulations) where the authority is satisfied beyond reasonable doubt that a landlord has breached a duty under regulation 3.

The breach of a Prohibition Order under section 30 of the Housing Act 2004 is not one of the specified offences. Where appropriate, the Council will be able to seek a rent repayment order in addition to prosecuting the landlord for the offence.

Sometimes minor offences and those that are less serious may be better addressed using a Civil Penalty. Court time is relatively limited, and the public interest test is applied before decision is made to bring a prosecution. The most appropriate course of action will be considered on a case-by case basis. This is in line with the Council's Private Sector Housing Enforcement Policy.

In circumstances where both a landlord and letting/managing agent have committed the same offence, a Civil Penalty can be imposed on both as an alternative to prosecution.

## **2.2. Burden of proof**

The same criminal standard of proof is required to serve a Civil Penalty as to bring a criminal prosecution. The Council must therefore be satisfied that, before a Civil Penalty can be imposed, it can demonstrate it is satisfied 'beyond all reasonable doubt' that criminal offence(s) have been committed by either a landlord and/or letting / managing agent, and if the matter were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to its own Enforcement Policies and the Crown Prosecution Service Code for Crown Prosecutors. The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each offender on each charge. The Code for Crown Prosecutors has two stages, the evidential stage and the public interest stage. Both tests will be considered during the Council's decision making process to determine the most appropriate course of action when considering issuing a financial penalty.

## **2.3 Considerations prior to a Civil Penalty being issued.**

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be

properly served by imposing a Civil Penalty. The following questions should be considered:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the Council?
- Has the evidence been reviewed by the Council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a Civil Penalty? i.e., the offence is particularly serious and the landlord has committed similar offences in the past and/or a banning order should be considered.
- The Council will consider its own Private Sector Housing Enforcement Policy when determining whether it is appropriate to serve a Civil Penalty as an alternative option for prosecuting the relevant offence.

### **3. Determining Level of Civil Penalty**

When determining the level of the Civil Penalty the severity and harm of the offence must be considered as stated in section 63 of the Criminal Justice Act 2020 in considering the seriousness of any offence, 'it must consider the culpability in committing the offence, and any harm which the offence caused, was either intended to cause or foreseeably have caused'.

The Government has laid out statutory guidance (*Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities 2018* )(as to the process and the criteria that need to be considered when determining Civil Penalties.

#### **3.1 Considerations**

**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 Civil Penalty.

**d) 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.

**e) Deter the offender from repeating the offence** - The primary aim is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in the 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 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 Civil 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 of Civil Penalties is that they should remove any financial benefit 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.

### **3.2 Civil Penalty Calculator**

The Council have adopted the following approach which is based on the same approach devised by West Lindsey District Council and subsequently adopted by Blaby District Council.



## Matrices

Table 1 details the overall calculation process. Each of the 3 columns are totalled to give the cumulative total in Column 4 which is applied.

**Table 1: Civil Penalty level for relevant offences**

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	
		180-230	£10,000	
		240	£20,000	

**Step 1: Column 1** in table 1 involves detailing what “Offence specific penalties” apply. This will involve going through the case in question and comparing the offences the officer is able to demonstrate “beyond reasonable doubt” to column A of Table 2 (below). For example, an offence of failing to obtain a HMO licence under section 72 of the Housing Act 2004 will automatically get an offence specific penalty of £2,500. If more than one offence has been committed at a property then they must be added together. So, for example, in a HMO the officer notes a series of offences under the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the Management Regulations”), then each breach of a regulation has an associated offence specific penalty and must be must be aggregated (added together). Where a licensing offence is also a Management Regulations offence the licence offence will take primacy.

**Step 2: Column 2** in table 1, involves looking at column B and C of Table 2 (below). This step applies where offences have been noted under sections 30 of the Housing Act 2004, 139 of the Housing Act 2004, or the Electrical Safety Standards in the

Private Rented Sector (England) Regulations 2020. For example, if in the improvement notice that has not been complied with, an offence may have occurred under section 30 of the Housing Act 2004; If the notice relates to three hazards (e.g. excess cold rated as an A, damp and mould rated as a D and falls between levels rated as B) then an additional £2,000 is added under Column B. An additional £1,000 is then added for column C as there are 3 or more “high scoring hazards”, as all hazards were scored E or higher.

**Table 2: Offence specific penalty and other penalties.**

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards <sup>1</sup>	£1,000
	Section 72	Failure to obtain property licence	£2,500				
		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
	Section 234	Failure to comply with HMO management regulations (per breach)	£500				
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. <sup>2</sup>	£3,500	There is one or more identified relevant defect (s)	£2,500

<sup>1</sup> A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

<sup>2</sup> A relevant defect for the purpose of this matrix is defined as a defect which would result in a Unsatisfactory grading on an Electrical Installation Condition report (EICR) Namely a defect given a C1, C2 or F1 observation code.

**Step 3:** involves evaluating the impact and this requires table 3 (below) to be considered and applied.

The officer is required to answer questions 1-5 and score appropriately using the evidence of the case. It is important the officer records this in a narrative or tabulated form including the evidence that they are relying on. This may be required to be evidenced in next stages.

### Table 3: Impacts scoring matrix

Answer each of the questions 1-5 below and apply the score shown in the column header.

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk Previous /current occupant not in vulnerable category. No impact assessed	MODERATE Moderate level of risk to relevant persons , Previous/ current occupant not in vulnerable category. Low impact assessed.	HIGH High level risk(s) to relevant persons. Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	SEVERE High level of risk(s) to relevant persons. Previous/ current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High Income received
5	Deterrence and prevention	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

Note that the score for row 1 should be multiplied by two (doubled). When each question is completed and the total aggregated the total is compared to Table 1 column 3 so that an appropriate level of penalty for column 3 is apportioned. A number of worked examples are included at the end of the document.

The assessment of the impacts scoring matrix may take into consideration the following:

**1) Severity of the Offence and Severity of Harm** - the more serious the offence, a higher penalty should be imposed. The greater the harm or the potential for harm, the higher the amount should be when imposing a Civil Penalty. The severity of harm will also consider whether the property is occupied by a vulnerable individual (as detailed in the Housing Health and Safety Rating System (HHSRS) operating guidance). A vulnerable individual is one who is at greater risk of harm, and therefore the penalty should be greater when vulnerability is an issue. This assessment will consider both harm or potential harm within the property. The level of severity will be determined by whether Category One or Category Two hazards are present.

**2) Number of properties owned/managed** - consideration here is made towards the number of properties that are owned and/or managed by the offender.

**3) Culpability and track record of the Offender** - culpability levels will be considered higher if the offender has a large portfolio. Landlords, including property managers and agents are running a business and are expected to be aware of their legal obligations. A higher penalty will be appropriate where there is a history of failing to comply with obligations and that they were in breach of their legal responsibilities.

An assessment of culpability and track record includes any past enforcement action taken by the Council. This assessment can include, but is not limited to, the history held of the landlord or letting agent, the number of Housing Act 2004 notices served, previous Civil Penalties served, simple cautions issued, whether works in default have been undertaken by the Council as a result of relevant notices being breached, whether the landlord has been subject to either an Interim or Final Management Order, if the landlord is registered on the Rogue Landlord Database or is or has been subject to a Banning Order.

**4) Removal of Financial Incentive** - the principle is to ensure that the offender does not benefit due to committing an offence. The Council will consider the financial advantage as a result of the offence, including but not limited to, rental income gained, financial benefit from not undertaking remedial works contained within a

notice, and/or financial benefit in failing to obtain a property licence when required to do so.

**5) Deterrence and Prevention** - 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. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in the 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.

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.

**3.3 Recording the decision:** The officer making the decision shall be accountable to outline the rationale for imposing the penalty, giving reasons for coming to the amount of financial penalty which is to be imposed.

#### **4. The Procedure for Imposing the Civil Penalty**

Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016 lays out the process the Council must undertake when imposing a Civil Penalty.

##### **4.1 Notice of Intent - Housing Act 2004 Schedule 13A, paragraph 1**

The Council will firstly serve a notice of intent on the person suspected of committing the offence. The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing. The notice of intent will specify:

- The amount of any proposed financial penalty
- The reasons for proposing the financial penalty

- Information about the right to make representations to the Council.

#### **4.2 Written Representations following Notice of Intent - Housing Act 2004 Schedule 13A, paragraph 4**

Any person in receipt of a notice of intent has the right to make representations in writing to the Council within 28 days of the date on which the notice was given.

#### **4.3 Final Notice - Housing Act 2004 Schedule 13 A, paragraph 6**

After the period for making representations has ended, the case, including the representations, will be reviewed by a senior officer within the Public Protection Team. If the senior officer still considers the issue of a Civil Penalty to be correct, a final notice will be served, signed by the Team manager. This notice will include the following information:

- 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 to the First Tier Tribunal;
- the consequences of failure to comply with the notice.

The period for payment of a Civil Penalty is 28 days beginning with the day after that on which the notice was served, unless appealed.

At any time, the Council may withdraw the notice of intent or final notice, however, it reserves its right to pursue a prosecution for the original offence where appropriate to do so. If a notice of intent or final notice is withdrawn it will be by a written notice to the person on whom the notice was served. The Council may also reduce the amount specified in the notice of intent or final notice at any time. This will also be by a written notice to the person on whom the notice was served.

#### **4.4 Right of Appeal**

The person served with the final notice has the right to appeal to the First Tier Tribunal against: The decision to impose a penalty; or the amount of the penalty.

The appeal must be made within 28 days of the date the final notice was issued. If a

person appeals, the final notice is suspended until the appeal is determined or withdrawn.

## **5. Recovering an unpaid Civil Penalty**

It is the policy of the Council to consider all legal options available for the collection of unpaid Civil Penalties and the Council will commence proceedings to recover the debts owed. The Council will endeavour to recover these debts through the County Court, usually in form of a Court Order. Some of the Orders available to the Council through the County Court are as follows:

- A Warrant of Control for amounts up to £5,000;
- A Charging Order,
- A Third Party Debt Order;
- An Attachment of Earning Order;
- Bankruptcy or insolvency

A certificate, signed by the Council's Chief Finance Officer, which states the outstanding amount has not been received by a specified date, will be accepted by the Courts as conclusive evidence of the outstanding payment due to the Council.

Where appropriate, and where the amount of the Order is more than £1,000, the Council may consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.

The recovery of the debt may be undertaken by third party Enforcement Agents (Bailiffs) and this may lead to additional fees being applied to the outstanding amount.

## **6. Income from Civil Penalties**

Income received from a Civil Penalty can be retained by the Council provided it is used to further the Council's statutory functions in relation to its private rented sector enforcement activities as detailed in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

## **7. Enforcement or other consequences**

Where a Civil Penalty has been imposed on a landlord or agent, this will form part of the Council's consideration when it reviews the HMO licence applications relating to properties in which that person has had some involvement.

Although the imposition of a Civil Penalty will not automatically prevent the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant a HMO licence.

In line with Government guidance where a landlord or property agent has received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent, the Council will seek to register the landlord's details on the Database of Rogue Landlords and Property Agents.

### **Further guidance**

The 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' is statutory guidance which Local Housing Authorities must have regard to and has been reviewed as part of developing this Civil Penalty Policy. The Policy has also been developed with specific regard to the Housing Act 2004, Housing and Planning Act 2016 and North West Leicestershire District Council Private Sector Housing Enforcement Policy.



## 8. Worked Examples

### Worked example 1

Landlord Mr Smith has a number of HMO's, he has forgotten to licence one of them. He is interviewed under PACE and admits that it was an oversight by one of his members of staff, for which he is responsible. He takes full responsibility of the oversight and has applied immediately upon finding two months after it expired previously.

He is genuinely remorseful and is happy to accept a CPN instead of prosecution which would affect his ability to hold a licence. The HMO is relatively safe, complaint with LACORS fire guide and in good condition with correct facilities and the certificates etc are up to date despite being unlicensed.

The Council officer judge it to be Low harm level and high culpability.

He otherwise has an exemplary record and has licensed properties for a number of years.

The Council decide that he should receive a CPN as he was sent a reminder letter which apparently was lost by junior staff in his office as they have a note as having received it in their mail log but didn't action a response to the reminder.

**Table 1: Civil Penalty level for relevant offences**

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	

		180-230	£10,000	
		240	£20,000	

Table one determines the overall process and cumulative total.

Therefore, we next look at Table 2 below.

The offence is under Section 72 of the Housing Act 2004- a failure to obtain a HMO licence. Which has a £2,500 offence specific penalty.

There are no hazards noted so nothing added from column B and/or Column C.

**Table 2: Offence specific penalty and other penalties**

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards <sup>1</sup>	£1,000
	Section 72	Failure to obtain property licence	£2,500				
		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
Section 234	Failure to comply with HMO management regulations (per breach)	£500					
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. <sup>2</sup>	£3,500	There is one or more identified relevant defect (s)	£2,500

Then consider Table 3.

**Table 3: Impacts scoring matrix**

Answer each of the questions 1-5 below and apply the score shown in the column header.

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk Previous /current occupant not in vulnerable category. No impact assessed	MODERATE Moderate level of risk to relevant persons , Previous/ current occupant not in vulnerable category. Low impact assessed.	HIGH High level risk(s) to relevant persons. Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	SEVERE High level of risk(s) to relevant persons. Previous/ current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High Income received
5	Deterrence and prevention	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

From Table 3 (above) we judge that the severity of harm or potential for harm is low. So zero scored for row 1.

We noted that the Landlord has 5 other HMOs, totalling 6. So that row totals 30.  
Row three – he has an exemplary record, so the officer scored this 0.

Row 4- Little or no income received, it had only just expired, and he has since put in an application so is no better off by not complying with the law. Interest rates are low so any financial income from that money being in his account for slightly longer is negligible. Landlord is also liable to a Rent Repayment Order should a tenant apply.

Row 5 – High confidence this will have the desired effect of making him manage his properties licenses better. The fine is enough to make him take note both financially and reputationally. Next time he would likely risk prosecution. Row 5 scored 0.

Totalling the 5 rows we get an impact matrix score of 30. Which has an additional fine of £500.

Going back to table 1, we thus score,

Column 1=£2500

Column 2=0

Column 3=£500

Cumulative total of £3000. So the total to be included without early repayment deduction is £3000.

### Worked example 2

A freeholder has given his property to his Letting agent to hold the licence and manage the HMO as he is away from the Country for part of the year. The agents are specialist in managing HMO, hold 50 licenses and have previously had an adequate compliance record, though standards appear to have fallen. An officer has done a compliance inspection of a three storey, licensed student HMO.

The HMO is licensed for 5 people in five bedrooms. It was noted that two bedrooms had two people living in them with no alternative living arrangements. The Landlord had consented to this but didn't charge them additional money for it. The additional persons noted were in relationships with the student on the agreement for the room they were found in. This is a HMO licence condition offence.

The fire safety was adequate, fire doors were closing though the letting agent hadn't provided any additional facilities and though one bathroom with WC with an extra separate WC downstairs was OK for 5 people, it doesn't meet the Councils standards for 7 people. The existing licence required an additional WC room to have been provided 6 months ago. This hasn't been provided and is a HMO licensing offence.

The garden is overgrown with a wall partially knocked over by tree roots. The bins are a mess and recycling hasn't been collected for some time due to them being contaminated with non-recyclable materials. These are all HMO licence conditions offences (totalling 3 offences).

The front door lock was damaged to the front door leaving the house insecure if pushed and a bedroom where a tenant is alleged to have kicked his door in having lost his door key 6 months ago hasn't been repaired. This has been evidenced by the students and he has offered to pay for the damage he caused. It still hasn't been repaired. 2 HMO management regs offences.

There is a leak going down the living room wall from the WC pan connector in communal bathroom, which has been present for months and has been reported to the agent by the student's numerous times. They evidence these texts during the inspection and sent to the Council following the inspections. 1 HMO management regs offence.

There are few working lightbulbs in any communal areas and the handrail to stairs has fallen off and is in the front garden. 2 HMO management regs offences  
 Radiators to two top floor bedrooms don't work as the system doesn't have enough power/ pressure to go to the top of the house. The rooms are noticeably cold in autumn. This again is evidenced by the students as having been reported and the Licence holder refuses to spend the money to address the problem. 2 HMO management regs offences

**Table 2: Offence specific penalty and other penalties**

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards <sup>1</sup>	£1,000
	Section 72	Failure to obtain property licence	£2,500				

		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
	Section 234	Failure to comply with HMO management regulations (per breach)	£500				
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. <sup>2</sup>	£3,500	There is one or more identified relevant defect (s)	£2,500

<sup>1</sup> A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

<sup>2</sup> A relevant defect for the purpose of this matrix is defined as a defect which would result in a Unsatisfactory grading on an Electrical Installation Condition report (EICR) Namely a defect given a C1, C2 or F1 observation code.

Looking initially at table 2, we have a string of offences under the breach of licence conditions, and a string of HMO management offences. Where licence conditions overlap with HMO management regs offences we pursue under the licence condition offence as the primary offence.

In total we note 5 failures to comply with licence conditions and 7 HMO management regs offences.

From table 2 we calculate £5,000 and £3,500 respective offence specific penalties in relation to these offences.

### Table 3: Impacts scoring matrix

Answer each of the questions 1-5 below and apply the score shown in the column header.

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk	MODERATE Moderate level of risk to relevant persons,	HIGH High level risk(s) to relevant persons.	SEVERE High level of risk(s) to relevant persons.

		Previous /current occupant not in vulnerable category. No impact assessed	Previous/ current occupant not in vulnerable category . Low impact assessed.	Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	Previous/ current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	<b>Number of properties owned/managed</b>	1	2-3	4-7	8+
3	<b>Culpability and Track record</b>	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	<b>Removal of financial incentive</b>	Little or no income received	Low income received	Moderate income received	High Income received
5	<b>Deterrence and prevention</b>	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

From the above table we calculate

Row 1; Officer observed it's a high risk regarding both the front door, missing handrail on steep stairs and the excessive number of people using one bathroom so  $40 \times 2 = 80$ .

Row 2; More than 8+ properties managed. So scored 40.

Row 3; Actions were deliberate so 40.

Row 4; Income 0 as no additional rent requested.

Row 5; Medium confidence=20 They're a big going concern. This was only one property though if standards don't improve, suggest straight to prosecution next time, depending on details of case (if similar) next time.

Total for table 3= 180 which equates to £10,000 according to table 1 below.

### Table 1: Civil Penalty level for relevant offences

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
<b>Offence Specific Penalties</b>	<b>Further Penalties (if any)</b>	<b>Table 3 impact matrix score A</b>	<b>Level of penalty</b>	<b>Cumulative total</b>

Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	
		180-230	£10,000	
		240	£20,000	

Therefore, as per the table above, the cumulative total of table one is £18,500 for Column 1,2&3. This is the amount to include on the proposed Civil Penalty notice before any early repayment discount.



### Worked example 3

Landlord Mrs Dench rents out her property to Mr and Mrs Smith and their young family including 2 small children under 5 years old. The date they moved in on the tenancy agreement was 3<sup>rd</sup> July 2020. Mrs Dench provided an EICR to Mr and Mrs Smith when they moved in. It stated that there were 2 issues. Firstly, exposed wiring due to a smashed double switched socket in the children's bedroom. This was stated to be a "C1" and there was also a lack of supplementary bonding to radiators meaning the radiators and hot water system wasn't earthed. This was a C2. Mrs Dench owns 3 properties, has some history of noncompliance and failed to address the issues in 28 days stating they were caused by the previous tenant. She had pushed a bed frame against the damaged socket in an attempt to prevent its use. When questioned by the EHO she didn't think the bonding was that serious as was stated to be a C2.

Thus, using tables 1,2 and 3 above we note 2 breaches of the regulations in failing to ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy. So the table 2 details that 2x £1000 offence specific penalties are noted.

We have noted from the EICR one CODE 1 (C1) which entails a penalty of £3500 in column 2 and another £1000 for the column 3 C2 defect. Totalling £6500 for columns 1 and 2 in table 1.

Looking at table 3 we note that children under 5 were present and they are the most vulnerable to electrical safety hazards. So we score  $40 \times 2 = 80$  for row 1.

For row 2 she has 3 properties so scores 20.

Row 3, the offender ought to have known she was in breach of the law. She was advised to sort it out by the certificate/ electrician but instead ignored that advice and moved a bed over the damaged socket. So we scored this 30. Though 40 would also be ok.

Row 4 the cost of works wasn't even that high, perhaps 200 pounds. So she hasn't benefitted financially excessively. So, we have scored that as 20 for low income.

Row 5 we scored as 0, as we have high confidence that this penalty will deter her from doing so again.

Total for table 3 is 150 which when we convert to £ in table 1= £5,000

So, the cumulative total is £6,500 + £5000 = £11,500 which is an effective deterrent.

*Mrs Dench agrees to pay the fine and may in future hand over management of her portfolio of three properties to a managing agent. The Council then uses that money to part fund a post to proactively educate local Tenants, Landlords and agents on their responsibilities under the act. This could include employing an electrician to provide reports for the council on substandard electrical installation.*

