



Procedure and Charging Schedule for Civil Penalties and Rent Repayment Orders

This Charging Schedule and Procedure for the use of Civil Penalties and Rent Repayment Orders forms part of the existing Resident Services Enforcement Policy
<https://www.hillingdon.gov.uk/article/11919/Housing-strategies>

Section 11.1 of the Resident Services Enforcement Policy now includes the following additional enforcement options:

- Rent Repayment Orders
- Financial Penalties
- Banning Orders

**Charging Schedule for determining value of Financial Penalties
in relation to offences under the Housing Act 2004 and the Housing and Planning Act
2016**

Magistrates Sentencing Guidelines have been considered in constructing the level of civil penalties in this charging schedule

<i>Failure to comply with an Improvement Notice (Section 30)</i>		£
<i>1st offence</i>	<i>(note 1)</i>	<i>10000</i>
<i>2nd subsequent offence by same person/company</i>	<i>(note 2)</i>	<i>15000</i>
<i>Subsequent offences by same person/company</i>	<i>(note 6)</i>	<i>25000</i>

Premiums (use all that apply)		
<i>Acts or omissions demonstrating high culpability</i>	<i>(note 7)</i>	<i>+2500</i>
<i>Large housing portfolio (10+ units of accommodation)</i>	<i>(note 3)</i>	<i>+2500</i>
<i>Multiple Category 1 or high Category 2 Hazards</i>	<i>(note 4)</i>	<i>+2500</i>
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions</i>	<i>(note 5)</i>	<i>+2500</i>

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)	(note1)	£
<i>Failure to obtain property Licence (section 72(1))</i>	<i>(note 1)</i>	<i>10000</i>
<i>2nd subsequent offence by same person/company</i>	<i>(note 2)</i>	<i>30000</i>
<i>Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach</i>		<i>5000</i>

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

Offences of contravention of an overcrowding notice (section 139)		£
<i>1st relevant offences</i>	(note 1)	10000
<i>2nd subsequent offence by same person/company</i>	(note 2)	15000
Premiums (use all that apply)		
<i>Acts or omissions demonstrating high culpability</i>	(note 7)	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of overcrowding</i>	(note 3)	+2500

Failure to comply with management regulations in respect of HMOs (Section 234)		£
<i>1st relevant offences</i>	(note1)	1000 / offence
<i>Second subsequent offences by same person/company for the same offence</i>		3000 / offence
Premiums (use all that apply)		
<i>Acts or omissions demonstrating high culpability</i>	(note 7)	+2500
<i>Large housing portfolio (10+ units of accommodation)</i>	(note 3)	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions</i>	(note 5)	+2500

Preparation of file costs may be added to the final amount but the final amount will not exceed £30,000

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.

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 of or manages 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 Guidance¹.

At the time of publication this document can be found at www.gov.uk and a summary table of vulnerable age in relation to hazards 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

¹ Housing Health and Safety Rating System Operating Guidance:
<https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>

Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

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.

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.

Process for imposing penalty charges

1. The Council is able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004 and Housing and Planning Act 2016:
 - Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
 - Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
 - Offences in relation to licensing of Houses under Part 3 of the Act (section 95 of the Housing Act 2004);
 - Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
 - Failure of comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
 - Breach of a banning order (section 21 of the Housing and Planning Act 2016).
2. The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by sections 23 and 126 and Schedule 9 of the Housing and Planning Act 2016.
3. The Council will have regard to the statutory guidance issued under section 23 (10) and Schedules 1 and 9 of the Housing and Planning Act 2016 in the exercise of its functions in respect of civil penalties.
4. The maximum penalty is £30,000. In determining an appropriate level of penalty, the Council will have regard to the following factors to help ensure that the civil 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 know, or ought to have known, that they were in breach of their legal responsibilities.
 - c) **The harm caused to the tenant.** The greater the harm or the potential for harm, the higher the amount of civil penalty that will be imposed.
 - d) **Punishment of the offender.** The penalty will be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.
 - e) **Deter the offender from repeating the offence.** The level of the penalty will 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.** 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.** It should not be cheaper to offend than to ensure a property is well maintained and properly managed.
5. The Council will follow the procedure for imposing a civil penalty as set out in Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016.
 6. A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:
 - a. The amount of any proposed financial penalty
 - b. The reasons for proposing the financial penalty
 - c. Information about the right to make representations to the Council.
 7. The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
 8. Following the 28 day period the Council will decide:
 - a. Whether to impose a financial penalty on the person, and
 - b. The value of any such penalty imposed
 9. If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
 - a. The amount of the financial penalty;
 - b. The reasons for imposing the penalty;
 - c. Information about how to pay the penalty;
 - d. The period for payment of the penalty;
 - e. Information about rights of appeal to the First tier Tribunal;
 - f. The consequences of failure to comply with the notice.

Consequences of non-compliance and miscellaneous provisions

10. Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.
11. The Council may, at any time:
 - a. Withdraw a notice of intent or final notice
 - b. Reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either action, it will write to the person to whom the notice was given.
12. The Council is required to issue a 'notice of intent' to issue a financial penalty. Under this notice a landlord has 28 days with which to make representations to the Council. At the end of this period, should the Council still propose to issue the financial penalty, the will serve a 'final notice' imposing the penalty.
13. On receipt of a final notice imposing a financial penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.
14. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.
15. If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.
16. Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences committed, the Council will consider making an entry on the Greater London Authority database and the National database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued.

Rent Repayment Orders

17. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95 (1)).
18. Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover the following situations:
 - Failure to comply with an Improvement Notice under section of the Housing Act 2004;
 - Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
 - Breach of a banning order made under section 21 of the Housing and Planning Act 2016;

- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
 - Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.
19. A rent repayment order can be applied for when the landlord has committed an offence for which a rent repayment order can be imposed, whether or not a landlord has been convicted to the offence. A criminal standard of proof is required. The First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence or the landlord has been convicted in the courts of the offence for which the rent repayment order application is being made.
20. The Council will have regard to the relevant statutory guidance issued under in the exercise of its functions in respect of rent repayment orders.
21. The Council will consider applying for a rent repayment order if it becomes aware that a person who is a landlord has been convicted of any of the offences for which a rent repayment order can be imposed.
22. The Council will consider each case independently in deciding when to prosecute and when to apply for a rent repayment order.
23. Where a landlord has been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).
24. Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the Council will take the following factors into account when considering how much rent to seek to recover:
- a. Punishment of the offender. Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlords and tenant, the financial circumstances of the landlord and whether the landlord has previously been convict of similar offences
 - b. Deterring the offender from repeating the offence. The level of the penalty should be set a high enough level such that it is likely to deter the offender from repeating the offence;
 - c. Dissuading others from committing similar offences. Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
 - d. Removing any financial benefit the offender may have obtained as a result of committing the offence. The landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.
25. The Council will consider imposing a civil penalty and applying for a rent repayment order for the following offences:
- Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of Houses of Multiple Occupation (section 7(1));
 - Offences in relation to licensing of houses Under Part 3 of the Act (sections 96(1))

26. The Council will consider prosecuting a landlord and seeking a rent repayment or for the same offence.
27. The Council will follow the following process for applying for a rent repayment order:
- Before applying for a rent repayment order, the Council will give the landlord a notice of intended proceedings;
 - A notice of intended proceedings will be served within 12 months of the date on which the landlord committed the offence to which it relates;
 - A notice of intended proceedings will
 - Inform the landlord that the local housing authority is proposing to apply for a rent repayment order and explain why;
 - State the amount that the local housing authority is seeking to recover;
 - Invite the landlord to make representations within a period specified in the notice which must be at least 28 days.
 - The Council authority will consider any representation made within the notice period;
 - The Council will not apply to the First-tier Tribunal for a rent repayment order until the period specified in the notice of intended proceedings has expired;
 - An application for a rent repayment order may be made to the First-tier Tribunal once the notice has been made and the time for representations has passed.
28. If the landlord refuses to pay a rent repayment order, the Council can refer the case to the county court for an Order of that Court.