

Leicester City Council

Civil Penalties Policy for

Private rented housing related offences

This policy should be read in conjunction with Leicester City Council's General Regulatory Policy and the Guidance for Local Authorities on Civil Penalties under the Housing and Planning Act 2016 published by the Department of Communities and Local Government (DCLG).

Introduction

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow Leicester City Council to impose financial penalties, up to a maximum of £30,000, as an alternative to prosecution for certain relevant housing offences.

This legislative provision has been enacted to deter landlords from flouting the law and to enable local authorities to clamp down on rogue landlords where fines may not be significant enough to ensure landlords think seriously about the management of their properties and provide safe, good quality rented accommodation for tenants.

The City Mayor is considering the adoption of this regulatory sanction for the better protection of tenants of private rented properties in Leicester.

Subject to consultation the City Mayor is considering endorsing the imposition of civil penalties by authorised officers as the preferred alternative for other breaches in line with the policy and procedure set out below and subject to any changes that may be required from time to time to comply with legislative changes, statutory guidance and developments in best practice.

Scope of the Policy

Civil penalties are an alternative to prosecution by Leicester City Council when a landlord fails to comply with the following sections of the Housing Act 2004:

- Section 30 – failure to comply with an improvement notice
- Section 72 – mandatory licensing of HMO
- Section 95 – licensing under Part 3 of the Housing Act 2004
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO

Section 249A of the Housing and Planning Act 2016 establishes the legal basis for Leicester City Council to impose civil penalties as an alternative to prosecution for specific offences under the 2004 Act.

Factors in choosing the imposition of a civil penalty

Leicester City Council will seek to impose a civil penalty in preference to a prosecution unless the harm caused by the offence is such that a trial in a court of law is in the public interest and/or a successful prosecution is more likely to deter further offences.

Leicester City Council will apply the same tests for an imposition of civil penalty as for a prosecution for offences under the Housing Act 2004. These tests are set out in the 'Crown Prosecution Service Code for Crown Prosecutors' published by the Director of Public Prosecutions.

To undertake a criminal prosecution the council must satisfy itself that it can show beyond reasonable doubt that the landlord has committed the offence and that if heard in a magistrates' court there would be realistic prospect of conviction.

The council will consider:

- Does it have sufficient evidence to prove beyond reasonable doubt that an offence has been committed by the landlord?
- Is there a public interest in imposing a Civil Penalty on the landlord in respect of the offence?
- Has the Council taken into account its own Regulatory Policy in dealing with the offence and deciding to impose the civil penalty including the alternative option of prosecuting for the offence?

Factors in determining the level of the civil penalty

The law allows Leicester City Council to impose a maximum financial penalty of £30,000 per offence.

In determining the level of any penalty the council will have regard to local circumstances, the relevant local regulatory/enforcement policy and the relevant Government guidance detailing the factors to take into account.

Decisions on the appropriate penalty will be made on a case by case basis.

The following factors will be considered by Leicester City Council when considering an offence and determining a civil penalty:

- The level of risk created and/or harm caused to the tenant and others
- The culpability and track record of the offender
- The financial benefit the offender may have obtained as a result of committing the offence
- Aggravating factors
- Mitigating factors
- The deterrence effect on the offender not to repeat the offence
- Penalty to be otherwise fair and reasonable

The procedure is set out below.

Private Sector Housing Procedure for determining and issuing the civil penalty for offences under the Housing Act 2004

[proposed for commencement 1 April 2019]

Overview

The procedure for determining the level of civil penalty has the following steps:

- Step 1: Determine the level of harm caused by the offence**
- Step 2: Determine the culpability of the Offender**
- Step 3: Determine the **default** penalty**
- Step 4: Adjust the default penalty to account for unjust economic benefits**
- Step 5: Adjust the default penalty for aggravating and mitigating factors in conduct**
- Step 6: Adjust the default penalty for costs incurred by Leicester City Council**
- Step 7: Adjust for the Offender's means**
- Step 8: Determine the **proposed** penalty charge**
- Step 9: Determine the appropriate regulatory sanction and serve the Notice of Intent to levy a penalty charge**
- Step 10: Determine the **actual** penalty charge**
- Step 11: Serve the Final Notice**
- Step 12: Withdrawal or subsequent amendments**

Step 1: Determine the level of harm caused by the offence

Determine the level of harm that may or has arisen from the non-compliance. If necessary the officer will refer to guidance on the classes of harm in the Housing Health and Safety Rating System - HHSRS – ODPM 2006.

Level of harm	Details of harm
Very high	Operating a HMO without a licence.
	Choose this level where a Class I harm is potentially the worst outcome because of the offence. This class covers the most extreme harm outcomes including: death from any cause; lung cancer; mesothelioma and other malignant lung tumours; permanent paralysis below the neck; regular severe pneumonia; permanent loss of consciousness; 80% burn injuries.
High	Choose this level where a Class II harm is potentially the worst outcome because of the offence. This class covers severe harm outcomes, including: cardio-respiratory disease; asthma; non-malignant respiratory diseases; lead poisoning; anaphylactic shock; cryptosporidiosis; legionnaires disease; myocardial infarction; mild stroke; chronic confusion; regular severe fever; loss of a hand or foot; serious fractures; serious burns; loss of consciousness for days.
Medium	Choose this level where a Class III harm is potentially the worst outcome because of the offence This Class covers serious harm outcomes, including: eye disorders; rhinitis; hypertension; sleep disturbance; neuro-psychological impairment; sick building syndrome; regular and persistent dermatitis, including contact dermatitis; allergy; gastro-enteritis; diarrhoea; vomiting; chronic severe stress; mild heart attack; malignant but treatable skin cancer; loss of a finger; fractured skull and severe concussion; serious puncture wounds to head or body; severe burns to hands; serious strain or sprain injuries; regular and severe migraine.
Low	Choose this level where a Class IV harm is potentially the worst outcome because of the offence. This Class includes moderate harm outcomes which are still significant enough to warrant medical attention. Examples are: pleural plaques; occasional severe discomfort; benign tumours; occasional mild pneumonia; broken finger; slight concussion; moderate cuts to face or body; severe bruising to body; regular serious coughs or colds.

Note: Operating a HMO without a licence

HMOs by their nature pose enhanced risks to the health and safety of the occupants and require high standards in the condition and management of the properties.

A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed but is not so licensed.

Operating a HMO without a licence is considered to be a very serious offence as it undermines the council's ability to carry out its statutory duties under the Housing Act 2004 and other legislation.

This is considered to be a very serious offence in every case even where the current occupants are not suffering harm or exposed to potential harm to occupants.

Step 2: Determine the culpability of the Offender

Next the culpability of the Offender is determined using the table below: With regard to culpability there is inevitable overlap between the factors described in adjacent categories. Individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Deliberate:	The Offender intentionally or flagrantly breached the law - the offence was a premeditated or planned act of defiance
Reckless:	The Offender foresaw the risk of offending but nevertheless went ahead and offended
Negligent:	Offence committed through act or omission which a person exercising reasonable care would not commit.
Low or no Culpability:	Offender committed offence with little or no fault on their part.

Step 3: Determine the default penalty

The default penalty is selected from the table below using the 'level of harm' and 'culpability' factors.

Culpability	Deliberate	Reckless	Negligent	Low/No culpability
Harm				
Very high level of harm	£27,500	£22,500	£17,500	£12,500
High level of harm	£25,000	£20,000	£15,000	£10,000
Medium level of harm	£20,000	£15,000	£10,000	£5,000
Low level of harm	£15,000	£10,000	£5,000	£2,500 - minimum penalty

Note: Multiple breaches or incidents

If there are multiple breaches of the regulations, then a separate assessment will be undertaken for each offence.

Where an incident gives rise to multiple offences or multiple incidents give rise to the same offence then default penalty will be based on the most serious incident or offence.

Step 4: Adjust the default penalty to account for unjust economic benefits

If an economic benefit has been derived by the Offender from the offence, including through avoided costs or operating savings, and these significantly exceed the default penalty identified then an adjustment will be made upwards.

The Officer will produce an estimate of the derived economic benefits in commissioning the offence.

Step 5: Adjust the default penalty for aggravating and mitigating factors in conduct

The table below contains a non-exhaustive list of factors that may result in an upward or downward adjustment of the penalty.

The penalty would typically be increased by £500 for each aggravating factor up to a maximum of £2,500 and the penalty would normally be decreased by £500 for each mitigating factor up to a maximum of £2,500.

Aggravating factors potentially increasing penalty	Mitigating factors potentially reducing penalty
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.	Self-reporting, co-operation and acceptance of responsibility
History of penalty charge notices having regard to nature of offence and its relevance to current offence.	Evidence of prompt steps taken to comply with the law and/or restitution to victims.
History of one or more instances where works undertaken in default at properties owned by the Offender or where emergency measures have had to be taken.	Evidence of good customer/tenant service and support
History of warnings of non-compliance by LCC or other authorities.	Mental disorder or learning disability, where linked to the commission of the offence.
History of ignoring requests from tenants to remediate hazards.	Serious medical conditions requiring urgent, intensive or long-term treatment.
History of obstruction and non-co-operation of officers from Leicester City Council	Age and/or lack of maturity where it affects the responsibility of the Offender.
	Sole or primary carer for dependent relatives and who may be adversely affected.

Step 6: Adjust the default penalty for costs incurred by Leicester City Council

The costs of investigating a non-compliance and issuing the requisite penalty charge notices are to be added to the proposed penalty charge by the Officer.

The average cost for investigating and issuing the penalty charge is estimated at £1,100.

This can be reduced or increased depending on the complexity of the case. Where this is to be charged then the Officer will substantiate this with a detailed statement of the costs incurred based on the current Fees and Charges Schedule.

Step 7: Adjust for the Offender's means

The Offender is assumed to be able to pay a penalty up to the maximum and continue running their business to the required standard and in compliance with regulations.

If Leicester City Council has information to the contrary then a reduction in the proposed penalty may be made by the Officer.

Note: Business viability

Whilst the Officer will consider the effects of the penalty on the viability of the business, the risk of putting the Offender out of business will be an acceptable outcome for Leicester City Council in some circumstances.

Step 8: Determine the proposed penalty charge

The Officer will consider the adjusted penalty charge and will determine the proposed penalty charge at that level if they are satisfied that it meets the aims of Leicester City Council's General Regulatory Policy/Civil Penalty Policy, that is, does the punishment:

- Deter future non-compliance and/or
- Remove any gain derived through the commission of the offence;

And

- is it otherwise fair and proportionate

The Officer can make further adjustments if appropriate and will document the reasons for this.

Note: The Totality Principle

Penalty charges are capped at £30,000.

If there are multiple breaches of the same or different regulations then the financial penalties for each offence should be added up.

If the aggregate total is not considered fair and proportionate, then each penalty should be proportionately reduced so as to reach a fair and proportionate total proposed penalty charge.

The elements composing the total proposed penalty charge will then be assigned to each offence.

Step 9: Determine the appropriate regulatory sanction and serve the Notice of Intent to levy a penalty charge

The Team Manager, Private Sector Housing, will determine whether the matter is to be disposed of by civil penalty or prosecution.

The Officer shall issue the Offender with a 'notice of intent' to impose a financial penalty.

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

Step 10: Determine the penalty charge

After the end of the period for representations the Team Manager, Private Sector Housing, shall review the Officer's case file, consider any representations, consult with Legal Services if appropriate, and will decide whether to impose a penalty and, if so, the amount of the penalty.

Step 11: Serve the Final Notice

If the decision is to impose a financial penalty, a 'final notice' requiring that the penalty is paid within 28 days shall be issued by the Team Manager, Private Sector Housing, to the Offender.

A person who receives a final notice may appeal to the First-tier Tribunal against: the decision to impose a penalty; or the amount of the penalty.

Step 12: Withdrawal or subsequent amendments

If circumstances arise after the issue of the Final Notice that indicate that the penalty should be amended or withdrawn then this decision will be taken by the Head of Service after appropriate consultation.