

Executive Decision Report

Adoption of Civil Penalties

Decision to be taken by: Assistant City Mayor, Education
and Housing

Decision to be taken on: 3 December 2019

Lead director: **John Leach, Director of Neighbourhood
and Environmental**



City Mayor

Useful information

- Ward(s) affected: All
- Report author(s): John Leach, Director of Neighbourhood and Environmental Services/ Alison Lea, Team Manager, Private Sector Housing
- Author contact details: 0116 454 3151

- Report version number: 1

1. Summary

- 1.1 The purpose of this report is to seek an executive decision on the adoption of Civil Penalties.
- 1.2 The Housing and Planning Act 2016 amends the Housing Act 2004 to allow Local Housing Authorities a discretion to impose financial penalties, up to a maximum of £30,000, as an alternative to prosecution for certain offences.
- 1.3 This option, which applies where the LHA is satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence in respect of premises in England, became available to LHAs on 6th April 2017, and applies to any relevant housing offence committed on or after that date.
- 1.4 The Council's General Regulatory Policy 2015 sets out how the Council's regulatory teams undertake their regulatory activities and exercise discretion in taking enforcement actions where non-compliance is discovered. The General Regulatory Policy will be amended to make provision for civil penalties.
- 1.5 This report sets out the results of the public consultation on the adoption of civil penalties.
- 1.6 Following the public consultation and further consideration by officers the policy and procedure have been amended.

The proposed implementation date for the adoption of Civil Penalties is 11th December 2019.

2. Recommendations

2. Recommendations

The City Mayor is requested to:

- 2.1 "Consider the draft policy and procedure for a civil penalties regime and the comments from the public consultation.
- 2.2 To adopt and implement the Civil Penalties from 11 December 2019, in the city of Leicester as set out in the report and the Council's General Regulatory Policy be amended accordingly."

3. **Civil penalties as an alternative to prosecution**

- 3.1 The Housing and Planning Act 2016 amends the Housing Act 2004 to allow financial penalties, up to a maximum of £30,000, to be imposed by Local Housing Authorities (LHAs) as an alternative to prosecution for certain offences.
- 3.2 This enforcement option, applies where the LHA is satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence in respect of premises in England, became available to LHAs on 6th April 2017, and can be invoked in response to any relevant housing offence committed on or after that date.
- 3.3 To be able to use the new powers the Council must have its own relevant policies and procedures in place. The Draft Policy is set out in **Appendix A**.
- 3.4 The draft procedure (serves as guidance for officers) on the stages, method and criteria in determining and issuing a penalty are set out in **Appendix B and Appendix C**. The workings of these will be subject to periodic review and may be amended
- 3.5 The legal provisions are outlined below in section 4 and section 5.
- 3.6 The government has published statutory guidance for Councils on powers. When exercising its functions the Council must have regard to the Statutory Guidance 'Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - April 2018.
- 3.7 The Council's General Regulatory Policy 2015 sets out how the Council's regulatory teams undertake their regulatory activities and exercise discretion in taking enforcement actions where non-compliance is discovered. The General Regulatory Policy will be amended to make provision for civil penalties.
- 3.8 There is no statutory requirement to consult regarding the policy and procedures to be adopted. However, a public consultation was undertaken. See section 8.
- 3.9 The proposed implementation date is 9th December 2019.

4 **Relevant housing offences and civil penalties**

- 4.1 The relevant housing offences are detailed in section 249A of the Housing Act 2004 as:
- (section 30) failure to comply with an Improvement Notice;
 - (section 72) offences in relation to licensing of houses in multiple occupation;
 - (section 95) offences in relation to licensing of houses under Part 3;
 - (section 139) offences of contravening an overcrowding notice;
 - (section 234) failure to comply with management regulations in respect of houses in multiple occupation.

4.2 Only one financial penalty can be imposed on a person in respect of the same conduct. Where both a landlord and a letting / management agent have committed the same offences, a financial penalty can be imposed on both. The amount for each may differ depending on the individual circumstances of the case. The Council determines the level of the financial penalty which must not be more than £30,000.

5 Determining the level of penalty

5.1 The Council must be satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence. Council officers will consult the Crown Prosecution Service Code for Crown Prosecutors when considering this aspect.

5.2 Officers will prepare individual cases to the same evidential standard as a full file for prosecution. If necessary the authorised officer (Team Manager, Head of Service) will consult with Legal Services to advise on whether the standard to proceed is met.

5.3 The draft policy is set out in **Appendix A**. Each will be considered on a case by case basis in line with that policy.

5.4 The level of financial penalty is to reflect the extent to which the Offender fell below the required standard.

5.5 The financial penalty is to meet, 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 the appropriate precautions.

5.6 The cost involved dealing with a non-compliance up to the stage of serving a financial penalty notice will be added to the overall penalty. This will act as a deterrent to non-compliant landlords as it is clear that landlords or agents who do not comply will be liable to pay the cost of any enforcement action

5.7 The policy and guidance on determining the appropriate level of financial penalty in a particular case is set out in **Appendix B**. The Statutory Guidance details a number of factors to which the Council should have reference to help ensure that any financial penalty is set at an appropriate level.

6 Determining the level of penalty

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- 6.3 The draft policy is set out in **Appendix A**. Each will be considered on a case by case basis in line with that policy.
- 6.4 The level of financial penalty is to reflect the extent to which the Offender fell below the required standard.
- 6.5 The financial penalty is to meet, 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 the appropriate precautions.
- 6.6 The cost involved dealing with a non-compliance up to the stage of serving a financial penalty notice will be added to the overall penalty. This will act as a deterrent to non-compliant landlords as it is clear that landlords or agents who do not comply will be liable to pay the cost of any enforcement action
- 6.7 The policy and guidance on determining the appropriate level of financial penalty in a particular case is set out in **Appendix B**. The Statutory Guidance details a number of factors to which the Council should have reference to help ensure that any financial penalty is set at an appropriate level.

7 Procedure for imposing a financial penalty

7.1 The Council's power to impose a financial penalty is subject to procedural requirements and safeguards.

7.2 The high level procedure is as follows:

- **Stage One – Issue of Notice of Intention**
The Notice of Intention will be issued by the investigating officer.
- **Stage Two – Review of Intention**
After the end of 28 day period for representations, the Council will decide whether to impose a penalty and, if so, the amount of the penalty.

The decision will be made by the Team Manager, if necessary, after consultation with Legal Services.

- **Stage Three – Issue of Final Notice**

If the Council decides to impose a penalty, then the person will be issued with a "final notice" requiring payment of the penalty within 28 days.

The Council may at any time, withdraw a notice of intent or final notice; or reduce the amount specified in either notice. This decision will be made by the Head of Service.

- **Stage Four – Appeal against Final Notice**

A person in receipt of final notice may appeal to First-tier Tribunal against the decision to impose a penalty or the amount of the penalty.

Appeal rights are contained within Schedule 13A of the Housing Act 2004. Appeal may be dismissed by Tribunal if satisfied appeal is frivolous, vexatious, an abuse of process or has no reasonable prospect of success.

- **Stage Five – Recovery/enforcement of financial penalty**

If a person fails to pay the whole or any part of a financial penalty which they are liable to pay the Council may recover the money on order of the County Court.

Pro's and Con's of Civil Penalties

8.1 Pro's

- The Civil Penalty legislation and guidance provides strong safeguards for the fair treatment of persons suspected of an offence and an appeal mechanism.
- The ability to impose Civil Penalties will act as a deterrent to non-compliant landlords and agents – it will also enable Officers to take quick and decisive action to act quickly and thereby alleviating hardships being experienced by private sector tenants
 - The application of Civil Penalty sanction will be less costly for Council than pursuing a prosecution.
 - LCC is more likely to recover its costs when issuing a civil penalty. A successful prosecution where fines are imposed are paid the court and take precedence over any costs awarded to the Council.

8.2 Cons

- A prosecution provides a public trial and the outcomes are public.
- The Court can award compensation to a victim.

Other Private Rented Sector Related Regulatory/Enforcement Measures

The Civil Penalties enforcement option sits alongside other regulatory and enforcement measures that can be taken by Leicester City Council. These are:

9.1 Rent Repayment Orders

Rent Repayment Orders were introduced by the Housing Act 2004 to cover situations where a landlord had failed to obtain a licence for a property where one is required.

The use of these Orders has now been extended by the Housing and Planning Act 2016 to cover a wider range of offences. These are outlined below:

- Failure to comply with an Improvement Notice served under the Housing Act 2004
- Failure to comply with a Prohibition Order served under the Housing Act 2004
- Breach of a Banning Order made under the Housing and Planning Act 2016

- Illegal eviction or harassment of the occupiers of a property under the Protection of Eviction Act 1977
- Using violence to secure entry to a property under the Criminal Law Act 1977

Rent repayment orders can be granted to either the tenant or the local authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

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.

An Order can also be applied for where an offence has been committed but a landlord has not been convicted of one of the above offences. In this instance the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. In this instance when considering how much rent should be recovered the following factors should be taken into consideration:

- The Rent Repayment Order should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities
- The level of the penalty should be such that it is likely to deter the offender from repeating the offence
- The imposition of the Order will be in the public domain so robust and proportionate use of them will dissuade others from committing similar offences
- Removal of any financial benefit the offender may have obtained as a result of committing the offence

9.2 Banning Orders

The Housing and Planning Act 2016 gives Councils the option of applying for a Banning Order to prevent a person from managing rented property, where they have been prosecuted for a relevant offence.

In deciding whether to apply for an Order the following will be considered:

- The seriousness of the offence to which the person has been convicted
- Any previous convictions the person has for a banning order offence

- Whether the person has at any time been included in the database of rogue landlords and property agents
- The likely effect of the banning order on the person and anyone else who may be affected by the order

Banning Orders must be for a minimum of 12 months except for certain exemptions.

Any person who is subject to a Banning Order may not hold a HMO licence.

9.3 Database Of Rogue Landlords And Letting Agents

This is a national database that contains details of landlords and property agents who have been convicted of a Banning Order offence or have received two or more civil penalties by any Local Authority, in any 12 month period.

Banning order offences are specified in legislation and can be for landlords or property agents who have been convicted of particular serious offences and/or are repeat offenders.

A number of offences set out in the regulations are not directly related to housing, such as fraud, sexual assault, misuse of drugs, theft and stalking.

To result in a banning order such an offence must be committed:

- against or in collusion with her/his tenant or licensee (or member of her/his household) or at (or in relation to) the property let out, and at a time when the offender was a landlord or property agent of that property, and
- by an offender who was sentenced in the Crown Court.

The offence can also be for relevant housing offences including any offence under the Housing Act 2004, committing or causing overcrowding, providing a local authority with false or misleading information, continuing to let to illegal immigrants, or illegally evicting or harassing as residential occupier.

Their details can be entered on the National Database of Rogue Landlords and Property Agents. This national database is an important tool to assist local authorities and prospective tenants identify landlords who have failed to maintain their properties to the required standard.

10 Public Consultation

There is no statutory requirement to consult prior to the adoption of the Civil Penalties Policy and procedure.

A public consultation was undertaken between 21 January 2019 to 14 April 2019. The results are set out in Appendix D.

10.1 44 responses were received.

22 members of the public
6 from landlords/agents,
6 tenants

10 others

10.2 38 (86%) were supportive of the proposals.

20 members of the public

3 landlords/agents

5 tenants

10 others

10.3 Regarding the level of the proposed penalties the respondents thought;

64% About right

23% too low

3% too high.

10.4 25% of respondent thought the proposed policy should be amended.

Suggestions/Comments included:

- Ensuring the offender had made necessary changes
- It should not apply to landlords with less than 10 properties
- Increase proposed penalties
- Tenants should be compensated
- Consideration should be given to mental and emotional effects (of poor property)
- Fines should reflect the size of the business as smaller businesses could be out of business

10.5 Other comments included:

- One respondent wants to assist Leicester City Council to educate landlords
- The fines should be large enough to act as a deterrent
- It is grossly unfair on smaller landlords
- A great idea that will alleviate the court system and provide a faster alternative
- Fines should be set taking into consideration profit made
- Will the council have the resource to action this plan
- Heavily fine slum landlords and limit HMOs in the Westend

11. Details of Scrutiny

The Director of Neighbourhood and Environmental Services submitted a report to the Neighbourhood Services and Community Involvement Scrutiny Commission on 20th March 2019.

The Commission was asked to consider the draft policy and procedure for a civil penalty regime and the comments from the public consultation and provide comments on the policy and procedure to the City Mayor for consideration prior to adoption in the city.

Members welcomed the proposals but raised the point that tenants who complained about landlords could face retaliation. Members were reassured that there is legal protection to help prevent this from happening.

It was noted that any response by the Council to a complaint needs to be reasonable and proportionate.

It was agreed;

- That the Executive be asked to take the comments of the Commission recorded at the meeting and the Equalities Implications set out in the report into account when considering the proposal to adopt civil penalties for non-compliant landlords; and
- That the Director of Neighbourhood and Environmental Services be asked to provide Members with information on how the Private Sector Housing Team can be contacted.

12. Financial, legal and other implications

12.1 Financial implications

12.1.1 Regulations made under The Housing and Planning Act 2016 specify that all of the income that a local authority receives from the imposition of civil penalties (and the recovery of Housing Benefit through Rent Repayment Orders) can be retained by the local authority to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

The Rent Repayment Orders and Financial Penalties (amounts Recovered) (England) Regulations 2017

The Housing (Management Orders and Financial Penalties) (Amounts Recovered) (England) Regulations 2018

12.1.2 Any income that a local authority receives from Civil Penalties and Rent Repayment Orders but fails to spend in support of private sector enforcement must be paid into a Central Government Consolidated Fund.

12.1.3 A First-Tier Tribunal would consider any appeal against the imposition of a civil penalty or a request (from tenants or the local authority) for a rent repayment order. On appeal the parties are normally expected to bear their own costs and, in most cases, it is unlikely that the Council will be able to recover any costs in relation to such appeals.

Colin Sharp, Finance

13.2 Legal implications

13.2.1 The Power to impose a civil penalty as an alternative to prosecution for certain offences was introduced by the section 126 and schedule 9 of the Housing and Planning Act 2016. This provision amended The Housing Act 2004 by inserting a new section 249A and Schedule 13A. The power came into force on 6th April 2017.

13.2.2. The maximum penalty is £30,000. The amount of the penalty is to be determined by the council in each case and in determining an appropriate level of penalty the council should have regard to the Secretary of State Guidance – ‘Civil Penalties under the Housing and Planning Act 2016’.

13.2.3 The same criminal standard of proof is required for a civil 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. In order to actually achieve a conviction in the magistrates’ court, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

13.2.4 Any person who is issued a civil penalty may appeal to the First-Tier Tribunal against the decision to impose a penalty and/or the amount of the penalty.

13.2.5 Officers should ensure that necessary delegations are in place in order to exercise the decision making powers set out in the Policy and Procedure.

13.2.6 If a civil penalty remains unpaid , The Chief Financial Officer will need to sign a certificate before enforcement action can be taken in the County Court

Feizal Hajat, Legal Services.

14.3 Climate Change and Carbon Reduction implications

None

15.4 Equalities Implications

A number of landlords and property agents in Leicester exploit tenants by letting out unsuitable and/or dangerous properties that can impact adversely upon the quality of life for tenants and the wider community.

The adoption of the option of civil penalties expands the enforcement choices for Leicester City Council and thereby provides the Council with more flexibility to take cost-effective and proportionate enforcement action for specified housing offences.

The 2011 Census identifies that there were c. 30,000 (23%) households living in Private Rented Sector accommodation.

Tenants

The assessment is that the adoption of the civil penalties regime will have a positive impact upon all groups of tenants as it will deter landlords from committing serious housing offences.

It facilitates enforcement action against errant landlords. This alongside other regulatory measures will remove rogue landlords from the Leicester's private rented sector.

Leicester City Council will promote the levying of civil penalties through local media to increase the deterrence effect and reinforce the social norm against poor landlord practices.

Where a civil penalty is applied then there is an increased risk that the landlord will increase rent fees for tenants to help pay the penalty. There is an increased risk that a landlord having to pay a civil penalty may want to evict tenants as they leave the private rented sector.

Leicester City Council's Private Housing Team will assess these risks and if appropriate will work with the Council's tenant focussed teams and other partners to provide appropriate support and take further enforcement action where this is necessary.

Landlords

The assessment is that the adoption of the civil penalties regime will have a positive impact upon all groups of landlords as it will help support a level playing field in the private rented sector market in Leicester. Public trust will be maintained and enhanced.

Where a civil penalty is applied there are procedural and appeal provisions to safeguard a landlord from an inappropriate or disproportionate penalty.

Leicester City Council will continue to contribute to landlord awareness and knowledge of their responsibilities in the provision of rented accommodation in the City and will specifically provide information on these enforcement changes when these come into force.

15.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

There are no other implications.

16. Background information and other papers:

None

17. Summary of appendices

APPENDIX A: Policy Statement on Civil Penalties

APPENDIX B: Procedure for imposing a financial penalty

APPENDIX C: Private Sector Housing Procedure for determining the civil penalty for offences under the Housing Act 2004

APPENDIX D: Consultation Results

18. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

Yes/No

19. Is this a “key decision”?

Yes, this is a key decision as it effects on communities living or working *in two or more wards in the City*.

APPENDIX A:

Leicester City Council Draft Policy on Civil Penalties under the Housing Act 2004

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 a financial penalty, up to a maximum of £30,000, as an alternative to prosecution for certain relevant housing offences.

This legislative provision has been enacted to help local authorities deal with landlords that are not properly managing their properties and/or providing safe, good quality rented accommodation for tenants.

The City Mayor considers the adoption of this enforcement option necessary for the better protection of tenants of private rented properties in Leicester.

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

Where there has been a breach of the Housing Act 2004 with very serious consequences for tenants or other parties then Leicester City Council will institute criminal proceedings unless this is not considered to be in the public interest.

The City Mayor endorses 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.

The monies received from civil penalties will be used to meet the costs and expenses associated with the Council's enforcement function in relation to the private rented sector.

Scope

This policy applies to the following housing offences under the 2004 Act:

- section 30 (failure to comply with improvement notice),
- section 72 (licensing of Houses in multiple occupation (HMOs)),
- section 95 (licensing of houses under Part 3),
- section 139(7) (failure to comply with overcrowding notice), or
- section 234 (management regulations in respect of HMOs).

As set out in Schedule 9 of the Housing and Planning 2016 Act has introduced amendments to the 2004 Act.

Government Guidance

The Government's Department for Communities and Local Government (DCLG) have published the following document: "Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities". This is statutory guidance to which local housing authorities must have regard.

Commencement

This Policy is effective from 10th December 2019.

APPENDIX B: Procedure for imposing a financial penalty

The general procedure is as follows:

Stage One – Issue of Notice of Intention

Person is given a notice of the Council's proposal (notice of intent) to impose a financial penalty. This sets out:

- The amount of proposed penalty
- Reasons for proposing to impose the penalty; and
- Information about the right to make representations

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. This is extended if the conduct is continuing at the end of that period.

The Notice of Intention will be issued by the investigating officer.

Stage Two – Review of Intention

The person given notice of intent may make written representations to the Council, within 28 days.

After the end of period for representations, the Council will decide whether to impose a penalty and, if so, the amount of the penalty.

The decision will be made by the Team Manager, if necessary, after consultation with Legal Services

Stage Three – Issue of Final Notice

If the Council decides to impose a penalty, then the person will be issued with a "final notice" requiring payment of the penalty within 28 days.

The Final Notice will set out:

- Amount of the penalty;
- Reasons for imposing the penalty;
- Information about how to pay;
- Period for payment (28 days)
- Information about rights of appeal to First-tier Tribunal;
- Consequences of failure to comply with the notice

The Final Notice will be issued by the Team Manager.

The Council may at any time, withdraw a notice of intent or final notice; or reduce the amount specified in either notice. This decision will be made by the Head of Service.

Stage Four – Appeal against Final Notice

A person in receipt of final notice may appeal to First-tier Tribunal against the decision to impose a penalty or the amount of the penalty.

A Final Notice is suspended until the appeal is determined or withdrawn.

On appeal the Tribunal will re-hear the Council's decision to impose a penalty. The Council must be in a position to demonstrate beyond reasonable doubt that the relevant housing offence has been committed.

The Tribunal may have regard to matters of which the Council was unaware at time of making decision to impose penalty.

The Tribunal may confirm, vary size of the penalty or cancel the penalty. If increasing the penalty it can only be increased up to the maximum of £30,000.

Appeal rights are contained within Schedule 13A of the Housing Act 2004. Appeal may be dismissed by Tribunal if satisfied appeal is frivolous, vexatious, an abuse of process or has no reasonable prospect of success.

Stage Five – Recovery/enforcement of financial penalty

If a person fails to pay the whole or any part of a financial penalty which they are liable to pay the Council may recover the money on order of the County Court.

Income received can be retained by the Council provided it is used to further the Council's statutory functions in relation to their enforcement activities concerning the private rented sector.

APPENDIX C: Draft Private Sector Housing Procedure for determining the civil penalty for offences under the Housing Act 2004

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 for the Offender's means**
- Step 7: Determine the proposed penalty charge**
- Step 8: Determine the appropriate regulatory sanction and serve the Notice of Intent to levy a penalty charge**
- Step 9: Determine the actual penalty charge**

- Step 10: Serve the Final Notice**
- Step 11: 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 LCC	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 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 LCC 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 7: 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 £30K

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 8: 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 9: 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 10: 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 11: 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.

Appendix D: Consultation Results

Do you agree with the scope of the policy?

Respondent	No	Yes	Grand Total
A housing advice / support agency	0	1	1
A landlord	2	3	5
A landlord's agent	1	0	1
A member of the public	2	20	22
A tenant	1	5	6
Other	0	9	9
Grand Total	6	38	44

Comments:

"I agree with everything except the level of fines.

For the larger agents, those fines are cheap. For agencies like ours, one single fine will put us out of business.

I feel it should be based on revenue earned rather than set values up to the value of £30000 in severe cases; anything that warrants a higher fine should be pursued through court. "

"Fining a landlord will not prevent them continuing failing to comply with any offence; civic penalties would be appropriate if they went alongside a revoking of their licence to act as a landlord. Further any civic penalty received under these failures should automatically be reinvested into social housing"

"Private Landlords will stop providing a service, and the council/housing associations will be left to pick up the slack, the homeless problem in Leicester will increase.

There is already provision in law to punish rogue landlords, there is no more legislation necessary."

"With the current shortage of property compared to population, a larger number of people are being forced into substandard accommodation and having to pay high prices for it. This is allowing the unscrupulous to take advantage of the poorly informed and less well educated, not to mention the unknown number of people living here who are unregistered by choice or because they are illegally imported."

What do you think about the default level of the civil penalties?

Respondent	About right	Too high	Too low	Grand Total
A housing advice / support agency	1			1
A landlord	2	3		5
A landlord's agent		1		1
A member of the public	8	1	13	22
A tenant	3	1	2	6
Other	9			9
Grand Total	23	6	15	44

Comments:

"For some professional property investors and large agents, they're far too low. For small agents and landlords with one or two properties, they're far too high. A percentage of revenue will be more accurate in demonstrating the severity of offence."

"As above fines should be escalating for every second and subsequent failure to comply. The whole purpose of fines should be to deter landlords from breaking their licence conditions, Too small the fine is NO deterrent against the cost of compliance"

"Most private rented properties need to be improved to a zero energy environmental standard in this environmental crisis"

"If I have one house as a HMO the fine could be more than one month's rent, if I have ten HMO's the fine would only be less than 10% of my monthly income."

"Highest penalty is average wage. In some instances a HMO could be earning £25,000 per year"

"If a person can afford to own a property that they are making money out of they should be able to afford to make it as comfortable to live in as the property they live in themselves."

Do you think we should amend, withdraw or add to the Procedure?

Respondent	No	Yes	Not answered	Grand Total
A housing advice / support agency			1	1
A landlord	2	3		5
A landlord's agent		1		1
A member of the public	16	5	1	22
A tenant	3	2	1	6
Other	2	4	3	9
Grand Total	23	15	6	44

Comments:

“Perhaps have a step to ensure that the offender has made the necessary changes. “

“To determine the level of default fine, we need to understand the impact this could have on the company or individual who have breached regulations. If they're a small agent who employ two or three staff, it could result in job losses. For landlords who have one property, it could mean not being able to afford the mortgage and the property being repossessed and the tenants evicted so it can be sold quickly.

"Remove step 2 culpability should exist or not
 step 3 should only be determined by level of harm
 step 5 should be removed a fines level is just that
 steps 6 & 7 are unnecessary when fines are set at appropriate level
 step 8 would be void with one fine level
 steps 9 & 10 would also be void
 step 12 should not be needed if work is carried out appropriately"

“Withdraw it to landlords with less than 10 properties”

“Amend - increase penalties”

“I would want the power to claim the building that the Land Lord is obviously unable to manage so that the Local Council can manage it properly.”

“If a repeat offender carries on they should be put out of business and their properties taken into public ownership to house homeless people in a proper stable and supported environment”

Do you have any additional comments of the proposed Civil Penalties Policy?

“It's a great idea that would not only alleviate the court system but also provide a faster alternative for those suffering in inadequate housing.”

“Landlords (especially those with many properties) are making life difficult for both people attempting to rent out their own properties and for the people who actually rent the properties to live in. There should be legislation that reduces the capacity for abuse.”

“I think is an excellent proposal”

“To reiterate my point above. The whole purpose of fines should be to deter landlords from breaking their licence conditions, Too small the fine is NO deterrent against the cost of compliance.”

“It is grossly unfair on smaller landlords”

“Perhaps it might be an idea to engage with your local residential landlord association EMPO on these types of consultations. We have many professional members managing property in Leicester who can add value”

"If this goes ahead, I'd like to have an active involvement in how the policy is amended and enforced.

We have offered to assist Leicester City Council with uneducated landlords who are at risk of or in breach of legislation by taking their properties under management and assisting them in becoming compliant with the offer of full support for any who are unwilling to engage with us or honour their obligations; this offer is still on the table. My belief is education is a better first option than enforcement but I also recognise the need to fix the private rented sector.

Harry Albert Lettings & Estates "