

Private Sector Housing - Prosecution and Civil Penalties Enforcement Policy

Civil Penalties Housing Act 2004, Housing and Planning Act 2016

This document is part of the Private Sector Housing Enforcement policy and will form part of the full Regulatory Services Enforcement Policy. All of these policies sit under the Council's General Enforcement Policy.

1. Once the Council has determined that formal action should be taken it will, on a case by case basis, decide whether the formal action should be to instigate prosecution proceedings or to serve a civil penalty in respect of any of the following offences:
 - (a) Failure to comply with an Improvement Notice
 - (b) Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
 - (c) Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
 - (d) Failure to comply with an Overcrowding Notice
 - (e) Failure to comply with a management regulation in respect of an HMO
 - (f) Breaching a Banning Order
2. The following factors will be taken into account:
 - (a) severity of the offence;
 - (b) culpability and track record of the offender;
 - (c) the harm caused to the tenant;
 - (d) punishment of the offender;
 - (e) deter the offender from repeating the offence;
 - (f) deter others from committing similar offences;
 - (g) remove any financial benefit the offender may have obtained as a result of committing the offence.
3. Any decision to prosecute will be taken in accordance with the Council's Enforcement Policy, the Regulators Compliance Code, the Council's Enforcement Protocol and the Code for Crown Prosecutors.
4. Where an offence is particularly serious or where the offender has committed similar offences in the past it may be more appropriate to prosecute. Any decision to prosecute will be made in line with the PSHE/Regulatory Services Enforcement Policy.
5. Where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty would be calculated having regard to the matrix set out below.
6. Prosecutions and civil penalties can be imposed on landlords, or letting agents, or both.

Civil Penalty Calculation Matrix

Each offence receives its own civil penalty calculated on the matrixes below.

Penalties relating to housing conditions, management, licence conditions

A score for each of the five areas below is chosen depending on the seriousness of each area and reasons for each score must be accompanied by a full justification and production of relevant evidence.

Factors	Low Seriousness	Medium Seriousness	High Seriousness
1. Severity of offence	Score 5 Low level offence e.g. broken glazing (cat 2)	Score 15 Medium level offence e.g. defective boiler, no hot water (cat 1)	Score 25 Serious offence e.g. multiple management issues, inadequate/defective fire detection (imminent risk)
2. Deterrence & prevention	Score 5 High confidence a fine will deter repeat offending	Score 15 Medium confidence a fine will deter repeat offending	Score 25 Low confidence a fine will deter repeat offending
3. Harm to tenants	Score 5 Low level harm	Score 15 Moderate level harm	Score 25 High level harm
4. Size of business	Score 5 1 property	Score 15 2-5 properties	Score 25 6+ properties
5. History of offending	Score -5 First time offence	Score 5 Second time offence (previous FPN)	Score 10 Conviction in the Magistrates' Court (within previous 2 years)

Scores are added for each factor from the matrix above and the total score is then found on the chart below. The corresponding penalty on the chart below is the level of penalty to be incurred.

Score	Penalty to be incurred	Score	Penalty to be incurred
15-20	£250	66-70	£14000
21-25	£500	71-75	£16000
26-30	£750	76-80	£18000
31-35	£1000	81-85	£20000
36-40	£2000	86-90	£22000
41-45	£4000	91-95	£24000
46-50	£6000	96-100	£26000
51-55	£8000	101-105	£28000
56-60	£10000	105-110	£30000
61-65	£12000		

Penalties relating to failure to apply for a licence are calculated separately on the matrix below

Type of licensing scheme that applies	Penalty to be incurred
Mandatory 5+ tenants	£15000
Additional 4 or fewer tenants	£10000
Selective single family	£5000

Process for imposing a civil penalty and the right to make representations

7. Before imposing a financial penalty on a person or company, the Council will give the person or company notice of the authority's proposal to do so by service of a 'Notice of intent'.
8. A person or company who is given a notice of intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within a 28 day period starting the day after the date on which the Notice of intent was given.
9. Representations should be addressed to the Private Sector Housing Enforcement Unit Manager either by email to resi@southwark.gov.uk or by post to Southwark Council, Regulatory Services, Private Sector Housing Enforcement, PO BOX 70063, London SE15 9EG
10. Representations will be reviewed by a panel consisting of the following council officers; a lawyer from the Litigation Division, two managers and one senior manager from within the Environment and Leisure Department. The senior manager will also act as chair of the panel. The final decision of the panel will be sent, in writing, to the person(s) making the representation in the same manner as the representation was received (i.e. by email or post).
11. In the event of two or more persons receiving separate 'Notices of Intent' for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.
12. After the end of the period for representations the Council will:
 - a. Decide whether to impose a financial penalty on the person, and
 - b. If it decides to impose a financial penalty, decide the amount of the penalty
13. In the event that the Council has given Notice of Intent to impose a financial penalty to two or more persons for the same offence, the Council's decision as regards the imposition of any final penalty will be based upon the circumstances of each individual case and upon any received representations. In this regard, the payment or intended payment of a penalty by one recipient will not, in itself, be reason for the Council to determine that it should not impose a penalty on a second or further person.
14. If the Council decides to impose a financial penalty on the person or company, it will give the person or company a final notice imposing that penalty.
 - a. The final notice will set out:
 - b. The amount of the financial penalty,
 - c. The reasons for imposing the penalty,
 - d. Information about how to pay the penalty,
 - e. The period for payment of the penalty,
 - f. Information about rights of appeal, and
 - g. The consequences of failure to comply with the notice

Right of Appeal

15. Following service of a final notice, a landlord may appeal to the First-tier Tribunal. Appeals should be made within 28 days from the date the response to the representation is served. Where a landlord appeals to the First-tier Tribunal, the operation of the penalty charge notice is suspended until the appeal is finally determined or withdrawn.

Reduction in Penalty

16. If the offender complies with the identified offence within the representation period following service of the 'Notice of Intent' (28 days), the Council will consider a reduction of 20% of the intended civil penalty, to be applied in the 'Final Notice'.
17. If the offender pays the penalty, following the 'Final Notice' a discount of 20% will be applied.
18. Both discounts above can be applied where appropriate.

Definition of Category 1 and 2 hazards

The legislation places a duty on a Local Authority to take action on category 1 hazards but only places a power to take action on category 2 hazards, leaving it to the discretion of the LA. This reflects the severity of possible harm, to a person, from the level of hazard. All category 1 hazards will have the high likelihood of a definite and severe "harm outcome". (The occupiers' health, safety and welfare is therefore at risk). For example extensive dampness and mould growth in a bedroom is very likely to be a category 1 hazard. Breathing mould spores at night for 7 to 8 hours a night will have a huge impact of the occupier's health.. Whereas, a damp patch in the hallway is likely to be a significant category 2 hazard due to a reduced level of exposure to the tenant, who only passes through the hallway, (and no presence of mould spores to affect their health). The legislation recognises that a LA would very likely still want this hazard remedied but it will not be affecting the occupier's health to the same degree.

Some category 2 hazards could be deemed to be insignificant and as such the LA can choose not to take action in that case. For example, dampness to an attached garage that is only used for storing tools and for parking.

A lack of fire safety measures can be described as a category 1 hazard or a significant category 2 hazard depending on the layout and occupation of the building