



# Procedure for Establishing Level of Financial Penalty under Housing and Planning Act 2016

## Summary for consultation

### Introduction

The Housing and Planning Act 2016 introduced the option for local housing authorities to impose a financial penalty on an individual or organisation as an alternative to prosecution for the following housing offences under the Housing Act 2004.

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

This procedure sets out the factors that will be considered when making a decision on the level of financial penalty to be imposed to ensure consistency. The procedure has two steps.

#### Step 1:

Decide the seriousness of the offence by deciding which band the offence sits within, according to the “Level of Financial Penalty under Housing and Planning Act 2016 – Central Bedfordshire Council” table (see Table C below).

#### Step 2:

Determine the level of severity of the offence within the band – this will be low, medium, high or very high according to the scoring of six factors.

Points will be allocated from 1 (low) to 4 (high) for each of the six categories below in Table A. The total of these points (minimum 6, maximum 24) will determine the severity level as shown in Table B.

**Table A - The factors to be scored to calculate the level of severity are:**

No.	Factors to consider severity of offence	Low (1 point)	High (4 points)
1	<u>Culpability</u> (are they primarily or solely guilty of the offence or was there joint culpability with another person e.g. managing agent or "head" tenant)	Actions were not deliberate, error of omission only	Actions were deliberate action by a sole person who runs a business and was or should have been aware of their legal obligations
2	<u>History of offences</u> (e.g. landlord with a large portfolio, links to other crime, been prosecuted by us before, high levels of profit)	No previous history	Previous history in our borough and in other boroughs and has history of prosecutions
3	<u>Harm to tenants</u> (higher number of tenants or vulnerable tenants the greater the harm)	Little or no actual impact on occupiers	Serious illness or injury caused to occupiers or third parties; also as per 3 but more than 4 persons affected.
4	<u>Mitigating factors</u> (number of breaches, each breach is a separate fine; attempts to remedy; co-operative etc)	A significant number of mitigating factors in the landlord's favour	No mitigating factors in the landlord's favour.
5	<u>Proportionality</u> (small portfolio i.e. one to two properties or a large portfolio i.e. has more than two properties)	Individual only has the one property	Large portfolio with a large income.
6	<u>Impact of fine</u> (economic impact on the landlord; must serve as a deterrent to other landlords)	Significant (e.g. in administration or near bankrupt)	Minor (e.g. wealthy Landlord)

The severity scores for each factor are added together and an overall severity score is produced.  
The overall severity score is given a category of low to high as below:

**Table B - Severity score**

Score	Overall severity category
6 - 10	Low
11 - 15	Medium
16 - 20	High
21 - 24	Very high

**Table C - Level and banding of financial penalty under Housing and Planning Act 2016 – Central Bedfordshire Council**

	<b>Band 1 £600 - £1,000</b>				<b>Band 2 £2K - £8K</b>				<b>Band 3 £10K - £16K</b>				<b>Band 4 £20K - £30K</b>			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
	Low 6-10	Medium 11-15	High 16-20	V High 21-24	Low 6-10	Medium 11-15	High 16-20	V High 21-24	Low 6-10	Medium 11-15	High 16-20	V High 21-24	Low 6-10	Medium 11-15	High 16-20	V High 21-24
	£600	£700	£800	£1K	£2K	£4K	£6K	£8K	£10K	£12.5K	£15K	£17.5K	£20K	£22.5K	£25K	£30K
Failure to comply with Improvement Notice	Category 2 Hazards F and below				Category 2 Hazards D or E or 5 or more D-J hazards											
					Category 1 Hazards C				Category 1 Hazards B				Category 1 Hazards A			
Failure to comply with Overcrowding Notice					Overcrowding according to Housing Act 1985 but little health hazard to occupiers				Overcrowding according to Housing Act 1985 and significant health hazard to occupiers							
HMO Licence exceed occupier maximum	Occupancy levels exceeded temporarily (less than 3 months) by one or two occupiers				Occupancy levels exceeded by 3 people above maximum or by any number for more than 3 months				Occupancy levels exceeded by 4 or more people above maximum							
HMO Licence failure to comply with condition	Conditions related to “signage” or information for tenants				Conditions related to: procedures for dealing with complaints or ASB; waste receptacles, maintenance of common parts and means of escape, decoration etc				Conditions related to provision of documentation regarding fire detection, emergency lighting, gas, electricity installations				Conditions related to condition of smoke alarms, carbon monoxide alarms, emergency lighting, gas, electricity installations or fire detection and prevention including provision of safe means of escape			
HMO Licence failure to obtain licence					Failure to obtain HMO licence for 5 person HMO				Failure to obtain HMO licence for 6 or 7 person HMO				Failure to obtain HMO licence for 8 or more person HMO			
Breach of HMO Management Regulations	3 or 4 person HMO				5 person HMO				6 or 7 person HMO or any size HMO where breach relates to provision of safe gas, electricity or water supplies				8 or more person HMO or any size HMO where breach relates to provision of fire safety measures			