

	<h2>Policy and Resources Committee</h2> <h3>5th December 2017</h3>
<p>Title</p>	<p>Implementation of new enforcement powers as alternatives to prosecutions under the Housing Act 2004 introduced under Housing and Planning Act 2016 (Part 2) and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.</p>
<p>Report of</p>	<p>Deputy Chief Executive</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>Yes</p>
<p>Enclosures</p>	<p>Appendix 1 - Amendments to the Development and Regulatory Services Enforcement Policy introduced through the Housing and Planning Act 2016 Appendix 2 – Draft Assessment Table for civil penalties issued under the Housing and Planning Act 2017 Appendix 3 – Worked examples for civil penalties issued under the Housing and Planning Act 2017 Appendix 4 - Amendments to the Development and Regulatory Services Enforcement Policy introduced through Smoke and Carbon Monoxide (England) Regulations 2015</p>
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<p>Summary</p>
<p>This report sets out the powers and obligations introduced by the Housing and Planning Act 2016 and the Smoke and Carbon Monoxide (England) Regulations 2015 aimed at targeting rogue landlords and improving the private rental sector. The report also sets out how the Council will implement them.</p>

From April 2017, local housing authorities have the power to issue civil penalties of up to £30,000 as an alternative to prosecuting landlords for failure to licence, and as an alternative to prosecuting a number of offences under the Housing Act 2004. Appropriate use of these powers will enable non-compliance in relation to housing conditions in the private rented sector to be addressed in a more effective way.

The Act also enables applications to be made for Banning Orders preventing a person from being a landlord, engaging in letting agency work, and/or property management work. It also creates a 'Rogue Landlord and Property Agent' Database that local authorities must update following the making of a Banning Order, and may update following a conviction for a banning order offence.

Housing Committee endorsed the recommendations of this report on 23rd October 2017

Recommendations

This report seeks agreement that the Committee:

1. Approve the additions to the Regulatory Enforcement Policy detailed at Appendix 1 and 2 to include information relating to civil penalties for relevant offences under the Housing Act 2004 as amended by the Housing and Planning Act 2016 , Rent Repayment Orders, Banning Orders, and the Rogue Landlords data base.
2. Approve the Statement of Principles to determine the amount of the penalty charge under the Smoke and Carbon Monoxide (England) Regulations 2015 detailed at Appendix 4.
3. Approve the method for determining the civil penalties as set out in Appendix 1,2 and 4
4. Approve the authority to delegate all powers to develop, implement and further minor amendments to the Council's detailed Policy and Procedure in respect of the imposition of civil penalties to the Service Director – Regulatory Services in consultation with Chairman of the Housing Committee. Such policy to be in accordance with Schedule 13A of the Housing Act 2004 where appropriate, and any other guidance issued by the Secretary of State.
5. The Service Director – Regulatory Services is authorised to delegate the discharge of powers above to other Council officers.

1. WHY THIS REPORT IS NEEDED

- 1.1 Barnet Council recognises the important role that the private rented sector plays in providing housing in the borough. The Private Sector Housing Team is proactive in enforcing property and management standards and also responds to complaints of poor and/or dangerous housing conditions . Parts 1 to 4 of the Housing Act 2004 details powers for officers to assess risk in premises and require landlords to undertake works to reduce the worst hazards identified through Hazard Awareness and Improvement Notices. In the worst premises, powers are provided for the Council to undertake work through Emergency Remedial Action and to close properties or parts of them using Prohibition Orders and Emergency Prohibition Orders.

- 1.2 The 2004 Act also introduced mandatory licensing for the highest risk houses in multiple occupation (HMOs). To further tackle poor standards in HMOs in Barnet, an Additional HMO Licensing Scheme was introduced on 5th July 2016 and lasting until 4th July 2021. All landlords are required to licence certain higher risk HMOs.
- 1.3 Since the introduction of the 2004 Act the Private Sector Housing Team has dealt with thousands of service requests regarding housing conditions. In 2016-17 there were 1,673. At 1st October 2017 there are 533 licensed premises. There have been 9 successful prosecutions since March 2016 and there are two pending. Work in default of notices is undertaken where there is an imminent risk to the occupiers.
- 1.4 In 2016-17 there were 50 enforcement notices served ranging from seven Hazard Awareness Notices to four Emergency Prohibition Orders (requiring immediate vacation of the property by the tenants).
- 1.5 Failure to comply with some of these enforcement notices is an offence under Part 1 of the Housing Act 2004. The only options currently available to the Council are to complete work in default and/or prosecution in the Magistrates Court. The use of civil penalties will provide an alternative option, which whilst still requiring a similar level of evidence required for court action, will provide a potentially quicker and less costly way of dealing with rogue landlords.
- 1.6 To support landlords in understanding their legal obligations, maintaining a good standard of accommodation and avoiding legal action, Barnet actively encourages landlords to become accredited under the London Landlord Accreditation Scheme (LLAS) through:
 - Reduced HMO Licensing fees for Accredited Landlords
 - Licensing conditions requiring accreditation where landlords have a lack of understanding of their legal requirements
 - Empty Property Grant Funding for Accredited Landlords
 - Statutory Notice Charges are also waived for landlords willing to become accredited within a set amount of time
- 1.7 Barnet currently use a full range of housing activities to drive up standards in the borough. This includes:
 - Advice and support for landlords including monthly landlord drop in sessions
 - Paid for services to support landlords in running their businesses
 - Additional and Mandatory Licensing Schemes for Houses in Multiple Occupation (HMOs) including pre licensing inspections and compliance visits
 - Partnership working with the London Landlord Accreditation Scheme and associated discounts for accredited landlords

- Service of enforcement notices and associated prosecutions and works in default of the notice in line with the Regulatory Services Enforcement Policy
 - Service of Prohibition Orders where accommodation is too unsafe for the tenant to remain and associated prosecutions in line with the Regulatory Services Enforcement Policy where the order is not complied with.
- 1.8 Work is undertaken in partnership with other relevant Council departments including CAFT, Council Tax, the Planning Enforcement Team, the Community Safety Team and Social Services. Also enforcement work is undertaken with external partners including the London Fire and Emergency Planning Authority, Police and Immigration services.
- 1.9 On a regular basis however very poor accommodation is still encountered, particularly in the south and west of the borough, highlighting the fact that there are still a high number of non-compliant landlords in Barnet.

Housing Act 2004 (as amended by the Housing and Planning Act 2017)

- 1.10 The Housing and Planning Act 2016 came into force in April 2017. Through section 126 and Schedule 9 of this legislation, the government has provided more powers for local authorities to take action against non-compliant landlords. This includes Civil Penalties, Banning Orders, and Rent Repayment Orders detailed in Appendix 1.

In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:

“[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000”

“It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”

- 1.11 Civil Penalties are unlikely to reduce the amount of work for Enforcement Officers as a Civil Penalty cannot be issued unless the evidence has met the criminal standard of proof, the same level as is used for prosecution cases. As such, the Authority needs to be confident that any case served with a Civil Penalty would have a realistic chance of conviction in the Magistrates Court, and be able to demonstrate beyond reasonable doubt that an offence had been committed. It would also need to be in the public interest to have taken the prosecution (Crown Prosecution Service *Code for Crown Prosecutors*). In addition, the recipient of a Civil Penalty Notice has a statutory right to make representations which the Council must consider before the final notice is issued and there is a further right of appeal to the First Tier Tribunal (Property Chamber).

1.12 Under Chapter 3 of the Housing and Planning Act the Secretary of State commits to establish and operate a database for use by Local Authorities of rogue landlords and property agents. This is scheduled for later this year and is currently being piloted by a small number of authorities. It should enable authorities to record information about any landlord or property agent who has:

- Received a Banning Order
- Been convicted of a Banning Order Offence
- Received 2 or more Civil Financial Penalties over a 12 month period

Following introduction, the service will enter the required information onto this database and use it to inform decisions about future enforcement action.

Penalty Charges for breaching the Smoke and Carbon Monoxide (England) Regulations 2015

1.13 The Smoke and Carbon Monoxide (England) Regulations 2015 requires that landlords for all let properties (some exemptions exist) ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contain a solid fuel burning appliance.

and for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his/her behalf, that the alarm(s) are in proper working order on the day the tenancy starts.

1.14 Regulation 8 of the Smoke and Carbon Monoxide Alarm (England) Regulations provides that where a Local Housing Authority is satisfied, on the balance of probabilities, that a Landlord on whom it has served a remedial notice under Regulation 5 is in breach of their compliance duty under Regulation 6(1), the Authority may require the Landlord to pay a penalty charge. The amount of the charge to be determined by the Authority, is up to a statutory maximum of £5,000.

1.15 Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires a Local Housing Authority to prepare and publish a Statement of Principles to be followed in determining the amount of penalty charge to be made for failure to comply with the requirements of a Remedial Notice under Regulation 5 of the regulations.

1.16 The Statement of Principles to determine the amount of the penalty charge under the Smoke and Carbon Monoxide (England) Regulations 2015 is detailed at Appendix 4.

- 1.17 Implementation of this legislation should improve housing accommodation in the private rented sector.

2 REASONS FOR RECOMMENDATIONS

- 2.1 This report sets out the new enforcement powers introduced under the Housing and Planning Act 2016. These were introduced on 6th April 2017. The Government wants to support good landlords who provide decent well maintained homes, and avoid unnecessary regulation which increases costs and red tape for landlords and also pushes up rents for tenants. But a small number of rogue landlords knowingly rent out unsafe and substandard accommodation.
- 2.2 Adoption of these powers will assist the Council which is determined to crack down on these landlords and disrupt their business model.
- 2.3 Implementing these powers will support the housing enforcement work already being undertaken by the London Borough of Barnet. The use of these powers is not however an easy undertaking and will require a significant evidence base, in line with a current prosecution bundle.
- 2.4 Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations.
- 2.5 Housing Committee endorsed the recommendations of this report on 23rd October 2017

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 It is clear from Government guidance, that Local Authorities are expected to adopt and make full use of this legislation. The new available powers are considered to supplement and enhance the existing powers and the Council will retain the option to prosecute landlords for the worst offences.
- 3.2 The Council could consider not implementing Civil Penalties – This is not considered a viable option as the introduction of a robust process for issuing Civil Penalties should encourage a greater level of compliance across the borough, making homes safer for private tenants. This course of action would also not be in line with the action being taken by other London Boroughs.

4 POST DECISION IMPLEMENTATION

- 4.1 If the Committee is minded to approve the recommendations the policy will be posted on the Council's website. The new policy will be implemented from 1st January 2018.

3 IMPLICATIONS OF DECISION

3.1 Corporate Priorities and Performance

3.1.1 This report is in accordance with the Council's Corporate Plan 2015-2020 which is based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place:

- Of opportunity, where people can further their quality of life
- Where people are helped to help themselves, recognising that prevention is better than cure
- Where responsibility is shared, fairly
- Where services are delivered efficiently to get value for money for the taxpayer

3.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 **Finance & Value for Money:** The penalties levied through Civil Penalties and Rent Repayment Orders can be retained by the Local Authority as long as the income is used to further the Local Authorities statutory functions in relation to enforcement activities in the private rented sector. Penalties are set on a case by case basis in line with the policy in Appendix 2, and as such it is not possible to estimate the level of income from these penalties. It is anticipated that these provisions will encourage landlords to be more compliant and as such the issuing of fines and the associated administrative work should be kept to a minimum.

5.2.5 **Procurement:** At this time there are no procurement implications.

5.2.6 **Staffing:** At this time there are no staffing implications.

5.2.7 **Property:** At this time there are no property implications.

5.2.8 **IT:** Civil Penalties will be recorded and monitored using the Regulatory Services existing Data Management System and associated Document Management System.

5.2.9 **Sustainability:** At this time there are no negative sustainability implications. Improving private rented housing provides an opportunity to reduce energy use and carbon dioxide emissions through improving poor heating and inadequate insulation provision through reduction of Category 1 hazards.

5.3 Social Value

5.3.1 The new powers will support and expand the Council's current housing enforcement activities delivering improvements to accommodation, and will target the worst performing landlords and deliver social benefits for residents in relation to improvement in standards of the private rented sector.

5.3.1 The new policy will ensure that penalties are transparent and proportionate to the offence.

5.4 Legal and Constitutional References

5.4.1 Constitution, Article 7 - Committees, Forums, Working Groups and Partnerships sets out the terms of reference of the Policy and Resources Committee including '(1) To determine strategic policy, finance including recommending capital and revenue budget to full Council, welfare, corporate plan and local plans, procurement, partnerships, IT, grants and the effective use of resources.'

5.4.2 Schedule 9 and section 126 of the Housing and Planning Act 2016 sets out the matters that the Council should have regard to when setting a Civil Penalty as an alternative to prosecution for certain Housing Act offences (detailed in Appendix 1).

5.4.3 If a landlord appeals to the First Tier Tribunal the Civil Penalty is suspended until the appeal is determined and the fine is either upheld, withdrawn or varied. The fine may not be increased.

5.4.4 The legislation in respect of Civil Penalties, Banning Orders and Rent Repayment Orders has been set out at Appendix 1. The legislation in respect of the Database of Rogue Landlords and Letting Agents has been set out in the body of this report.

5.5 Risk Management

5.5.1 The administration associated with implementing Civil Penalties and Rent Repayment Orders is complex. Care will need to be taken to ensure that any income from these courses of action, at a minimum, cover the administration of the action taken. This will need to be closely monitored and regularly reviewed.

5.6 Equalities and Diversity

5.6.1 The Corporate Plan 2015-2020 sets the Strategic Equalities Objective, which is: that citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the tax payer. Changes to policies and services are analysed in order to assess the potential equalities impacts and risks and identify any mitigating action possible before final decisions are made.

5.6.2 The Equality Act 2010 sets out the Public Sector Equality Duty which requires public bodies to have due regard to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act

- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not
- foster good relations between persons who share a relevant protected characteristic and persons who do not

5.6.3 The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

5.6.4 Implementation of this legislation has been reviewed against the protective characteristics and it is considered that there will not be any specific adverse impact on any of the groups.

5.6.5 Any enforcement action taken will need to be in line with the revised Enforcement Policy. Any offence for which a Civil Penalty issued will need to have a realistic chance of conviction in the Magistrates Court, and be able to demonstrate beyond reasonable doubt that an offence had been committed. It would also need to be in the public interest to have taken the prosecution (Crown Prosecution Service *Code for Crown Prosecutors*). Persons served with a Civil Penalty can appeal to the First Tier Property Tribunal in respect of the decision to issue and the amount imposed. As such the Council's policy must be clear on both of these matters. Fines must be set consistently and transparently on a case by case basis taking into consideration such matters as the severity of the offence.

5.6.5 It is considered that HMO licensing and housing enforcement action requiring the improvement of accommodation has an overall positive impact for landlords, tenants, residents and businesses by virtue of the potential improvement to the quality and management of accommodation in the borough.

5.6.6 In addition there are potential benefits arising from the increased choice of high quality, well-managed affordable housing.

5.7 Consultation and Engagement

5.7.1 There has been no specific consultation on the approach detailed in this report as fines will be set on a case by case basis. It would be very difficult to run a conclusive public consultation exercise based on this approach. The approach proposed is in line with the legislation, associated guidance and Barnet's policy has been developed taking into consideration the Civil Penalties for Private Landlords Resource Pack for London Boroughs developed by the London Mayor's Office in consultation with London Boroughs and wider stakeholders.

5.7.2 If the approach detailed is supported this will be actively communicated to landlords. This will be done through:

- Social media

- The Council's website
- Communication to landlords
- Communication to tenants
- Communication to advisory organisations for example CAB
- Barnet Homes Landlords Forum

6 BACKGROUND PAPERS

6.1 [Housing Act 2004](#)

6.2 [Housing and Planning Act 2016](#)

6.3 [Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#)

6.4 [Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015- Guidance for Local Authorities](#)

6.3 [DCLG – Civil Penalties Under the Housing and Planning Act 2016- Guidance for Local Housing Authorities](#)

6.4 [DCLG- Rent Repayment Orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#)

6.5 [Development and Regulatory Services Enforcement Policy](#)

6.6 [Housing Committee Minutes 23rd October 2017](#)

Appendix 1- Amendments to the Development and Regulatory Services Enforcement Policy introduced through the Housing and Planning Act 2016

The Housing and Planning Act 2016 came into force in April 2017. Through section 126 and Schedule 9 of this legislation the government has provided more powers for local authorities to take action against non-compliant landlords. This includes:

Civil Penalties

Schedule 9 of the Housing and Planning Act 2016 has introduced the power to issue civil penalties as an alternative to criminal prosecution for failure to comply with:

- an Improvement Notice (section 30 Housing Act 2004),
- failure to licence or be licensed in respect of HMOs (section 72 Housing Act 2004),
- failure to licence or be licensed in respect of a Selective Licensing Scheme,
- failure to comply with HMO licensing conditions (section 95 Housing Act 2004),
- failure to comply with an Overcrowding Notice (section 139 Housing Act 2004),
- failure to comply with Management Regulations in respect of HMOs (section 234 Housing Act 2004), and
- breaching a Banning Order (section 23 of the Housing and Planning Act).

Any decision to impose a civil penalty must be in accordance with schedule 13A of the Housing Act 2004 (introduced by Schedule 9 of the Housing and Planning Act 2016) and any other relevant guidance.

The, government has issued statutory guidance in relation to civil penalties and the local authority must have due regard to this. It is clear that each penalty should reflect the severity of the offence and the landlords previous record of offending. Consideration should also be given to:

- The severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit that the offender may have obtained from committing the offence

The level of civil penalty imposed must be in line with the Council's Adopted policy.

This appendix details the Council's process for deciding that a civil penalty is an appropriate alternative to prosecution, and the level of fine to be administered.

The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. Only one penalty can be imposed in respect of the same offence.

A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the local housing authority cannot impose a civil penalty in respect of the same offence.

A civil penalty can be issued as an alternative to prosecution for each separate breach of the relevant legislation (section 243 (3)) e.g. each Regulation of the Management Regulations breached.

Where both the letting agent and landlord could be prosecuted for failing to obtain a licence for a licensable property, then a civil penalty can also be imposed on both the landlord and agent as an alternative to prosecution. The amount of the civil penalty may differ depending on the individual circumstances of the case.

A civil penalty cannot be issued unless the evidence has met the criminal standard of proof, the same level as is used for prosecution cases. As such the Authority needs to be confident that any case served with a civil penalty would have a realistic chance of conviction in the Magistrates Court, and be able to demonstrate beyond reasonable doubt that an offence had been committed. It would also need to be in the public interest to have taken the prosecution (*Crown Prosecution Service Code for Crown Prosecutors*).

Persons served with a civil penalty can appeal to the First Tier Property Tribunal in respect of the decision to issue and the amount imposed. Fines must be set consistently and transparently on a case by case basis taking into consideration such matters as the severity of the offence.

The government has issued statutory guidance under schedule 9 of the Housing and Planning Act 2016 to which the local authority must have regard. Paragraph 3.5 states that

“the amount levied in any particular case should reflect the severity of the offence , as well as taking into account the landlords previous record of offending”. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

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 knew, or ought to

have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The penalty should therefore 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.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. 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 level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending. The Council will publicise any civil penalties that have been issued whilst the details will remain confidential except where the issue of two or more penalties leads to an entry on the Secretary of State's database of rogue landlords.

g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Civil Penalty Matrix

Officers setting civil penalties will have regard to the Barnet's Civil Penalty Matrix. This has been developed having consideration to a system proposed by the DCLG. This will be used as a guide assessing the appropriate civil penalty to be levied. Fines must be set on a case by case basis but officers must be clear of the factors informing each civil penalty.

Harm	Culpability	Starting assessment baseline
Moderate	Moderate	£750

Moderate	Substantial	£5,000
Moderate	Extreme	£10,000
Substantial	Moderate	£10,000
Substantial	Substantial	£15,000
Substantial	Extreme	£20,000
Extreme	Moderate	£15,000
Extreme	Substantial	£20,000
Extreme	Extreme	£25,000

A seven step process will be used for setting civil penalty levels.

Step 1: Severity of the offence

Objective: to determine the level of harm that was or could have been caused by the offence

The offence to be assessed against the degree of potential or actual harm caused, both to individual tenant and more widely, for example:

- Nature/extent of hazards present.
- Vulnerability of tenants e.g. age, illness, disability, someone with language issues etc
- Evidence of discrimination/action against the tenants
- Effect on neighbouring premises
- Number of persons and/or households affected e.g. single family or HMO
- Level of risk to occupiers or third parties

Step 2: Culpability

Objective: to determine the offender's culpability as deliberate, reckless or negligent.

Renting out or managing residential property is a business and it is the responsibility of a landlord or letting agent to ensure that they are fully aware of their legal responsibilities. Ignorance of the law is not an excuse and generally, therefore, the presumption should be that any offence was deliberately committed, unless the landlord or letting agent can demonstrate otherwise.

The offender to be assessed against three levels of culpability:

- Deliberate: offender intended to cause harm or ignored legal responsibilities.
- Reckless: offender was reckless as to whether harm was caused or duties were not complied with.
- Negligent: failure to ensure awareness of legal responsibilities.

Step 3: Initial assessment of civil penalty

Objective: to reach an *initial assessment* of the civil penalty based on severity of the offence and culpability.

Step 4: Track record of landlord

Objective: to consider the offenders track record and issues that may influence the civil penalty.

- Has committed similar offences before
- Offence was planned
- Experienced landlord who should know responsibilities
- Owns a number of properties so should be aware of the legislation (i.e. not a single property landlord)
- Period of time over which offence(s) committed
- High level of profit from the offence/sought profit in committing
- Offender is a letting agent
- Attempt to cover up evidence of offence
- Landlord with a generally well managed portfolio

Step 5: Any mitigating factors

Objective: to consider any mitigating factors and whether they are relevant to the offence e.g. ill health of landlord, obstructive behaviour of third parties etc

Step 6: Revised assessment

Objective: to reach a *provisional* overall assessment of a civil penalty appropriate to the offence based on following the above steps. The civil penalty imposed should never be less than what it would have cost the landlord to comply in the first place, in order to incentivise compliance.

Step 7: Check

Check that the provisional civil penalty assessment meets the aims of the sentencing principles:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community

Check that the provisional assessment is proportionate and will have an appropriate impact.

- This step should take account of the offender's income and assets, and make adjustments within band or change band accordingly. The general presumption should be that a civil penalty should not be revised downwards simply because an offender has (or claims to have) a low income. The Crown and Courts Act 2013 expressly permits the value of an offender's assets, e.g. their rental portfolio, to be taken into account when determining an appropriate penalty.
- For example, if a landlord with a large portfolio was assessed to warrant a low civil penalty, the civil penalty might require adjustment to have sufficient impact, and to conform to sentencing principles above.

Assessment Table

Draft assessment table in Appendix 2

Worked Examples

Examples of how the civil penalty will be approached are contained in Appendix 3

Offence Categories

1. Offence - Failure to comply with an Improvement Notice.

Under Part 1 of the Housing Act 2004 an Improvement Notice can be served requiring improvement and or repairs to reduce Category 1 and or 2 hazards. Hazards are identified using the Housing Health and Safety Rating System. Category 1 hazards (band A-C) are the most serious hazards and have the highest risk of harm to the occupiers. The Council has statutory duty to take enforcement action in relation to Category 1 hazards.

Following the identification of a category 1 hazard or category 1 and 2 hazards, the Enforcement Officer would contact the relevant person to advise them that a category 1 hazard had been identified, what was causing the hazard and the proposed enforcement action to be taken by the Council. If the landlord carries out the work at this stage no formal action is taken.

Where the landlord does not commence works within an appropriate timescale, and the proposed course of action is an Improvement Notice, this will be served and a charge made to the relevant person to cover the cost of service of the notice. This is currently £477.

Improvement notices do not become operative for twenty eight days and six to eight weeks are usually allowed for notice compliance to allow time to obtain quotes and complete the works. Where the work is still not completed, the tenant(s) will have

been living in unsafe/unhealthy conditions for weeks and sometimes months and the landlord will have had a significant amount of time to comply.

There is no limit to the maximum court fine that can be levied for failure to comply with an Improvement Notice.

2. Offence - Failure to licence a House in Multiple Occupation (HMO) under the Mandatory Scheme

Under Part 2 of the Housing Act 2004, higher risk HMOs of three or more stories, occupied by 5 or more persons forming two or more households have been required to hold a mandatory HMO licence. The aim of this legislation was for local authorities to improve standards and conditions in the higher risk HMOs through licence conditions. Relevant persons have been required to hold a mandatory HMO licence for over 12 years.

There is no limit to the maximum court fine that can be levied for failure to licence an HMO.

3. Offence - Failure to licence a House in Multiple Occupation under the Additional Licensing Scheme for HMOs

Barnet Council introduced an Additional HMO Licensing Scheme for lower risk HMOs on 5th July 2016. An HMO requires to be licensed under the Additional HMO Licensing Scheme when:

- it has two or more storeys, occupied by four or more persons in two or more households and where some or all facilities are shared or lacking
- It has two or more storeys, with a resident owner and is occupied by four or more other persons in two or more households and where some or all facilities are shared or lacking
- it is a flat occupied by four or more persons in two or more households and where some or all facilities are shared or lacking and where the flat is on the second storey or higher
- It is a building of three or more storeys that have been converted into and consist of four or more self-contained flats where the conversion was not undertaken in accordance with the Building Regulations 1991 (or later) and fail still to so comply; and where both the building and flats it contains are owned by the same person (none of the individual flats within the building being under separate ownership)
- It is a house of two or more storeys comprised of both self-contained and non-self-contained units of accommodation occupied in aggregate by four or more persons in two or more households (not including a resident owner), some of whom share or lack one or more basic amenities such as a bathroom, toilet or cooking facilities.

Relevant persons have been required to hold an Additional HMO licence for over a year.

There is no limit to the maximum court fine that can be levied for failure to licence an HMO.

4. Offence - Failure to comply with an Overcrowding Notice

Under section 139 of the Housing Act 2004, where an HMO is not required to be licensed, an Overcrowding Notice can be served. The notice specifies:

- the maximum number of persons allowed to occupy each room as sleeping accommodation.
- Rooms unsuitable to be used as sleeping accommodation

The standards for overcrowding are low and as such overcrowded accommodation exposes the occupying tenants to significant risk and has a detrimental effect on their health.

There is no limit to the maximum court fine that can be levied for failure to comply with an Overcrowding Notice.

5. Offence - Failure to Comply with the Management of Houses in Multiple Occupation (England) Regulations

The manager of an HMO is required to comply with the requirements of the Management of Houses in Multiple Occupation (England) Regulations 2006 or in the case of HMOs falling within Section 257 of the Housing Act 2004, the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007. Duties of a manager include:-

- that certain information is provided to occupiers and to be clearly displayed
- taking safety measures, including the maintenance of fire alarms and fire-fighting equipment
- maintaining water supply and drainage
- supplying and maintaining gas and electricity
- maintaining the common parts, fixtures and appliances (including windows)
- maintaining living accommodation
- providing waste disposal facilities

A person commits an offence if he/she fails to comply with any of the Regulations.

Contraventions of the Management Regulations can be fairly minor, for example failure to display a notice containing the contact details of the manager. They can also be extreme for example failure to maintain living accommodation leaving the tenants in imminent risk.

As such a failure to comply could for each regulation be considered against any banding depending on the severity of the offence, the risk to the occupiers and the culpability of the landlord.

Up to £5,000 fine can be levied for failure to comply with each individual management regulation.

Discounts

The following discounts will apply to any civil penalty imposed in the following circumstances:

- If the offender undertakes the necessary work of compliance within the representation period of the “Notice of Intent” stage the Council will reduce the penalty by 20%
- If the offender books onto an accreditation course with the London Landlord Accreditation scheme within the representation period of the “Notice of Intent” stage, and subsequently completes the course on the relevant date, the Council will reduce the penalty by 10%.

If an offender undertakes the necessary work of compliance within the representation period of the “Notice of Intent” stage and becomes accredited a total discount of 30% will apply.

Decision to issue a civil penalty or prosecute

The local authority cannot issue a civil penalty and prosecute for the same offence.

In deciding whether to prosecute or issue a civil penalty, consideration should be given to any public interest in referring the case for prosecution over and above that required to issue a civil penalty. The greater the impact of the offending on the community, the more likely it is that a prosecution will be appropriate.

The statutory guidance states that a prosecution may be the most appropriate option where an offence is particularly serious or the offender has committed similar offences in the past.

Imposing a civil penalty

Schedule 9 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a civil penalty.

Notice of Intent

Before imposing a civil penalty on a landlord or agent, the Council must serve a ‘notice of intent’ on the landlord or agent in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty;
- The reasons for proposing to impose a civil penalty, and;
- Information about the Landlord’s right to make representations to the Council.

Representations

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior colleague.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a Notice of Intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case by case basis and responded to where the Council considers it necessary.

Final Notice

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the Notice of Intent but it cannot be a greater amount.

The imposing of a civil penalty involves serving a Final Notice and this notice must contain the following information:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal, and;
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

Withdrawing or Amending Notices

At any time, the Council may withdraw a Notice of Intent or a Final Notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case by case basis.

Appeals to the Tribunal

If a civil penalty is imposed on a landlord/agent, that Landlord can appeal to the First-tier Tribunal (“the Tribunal”) against the decision to impose a penalty or the

amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

Payment of a civil penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given (“the 28 day payment period”), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice.

Other consequences of having a civil penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person’s involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12 month period, each for a banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

“Banning order offence” means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016.

Recovering an unpaid civil penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control for amounts up to £5000;
- A Third Party Debt Order;
- A Charging Order, and;
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, and the amount of the order is over £1000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the Landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court. Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

Income from civil penalties

Any income from Civil Penalties is retained by the Local Housing Council which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument 367 (2017).

Banning Orders

Section 15(1) of the Housing and Planning Act provides local authorities with the power to apply for a 'Banning Orders' against a person who has been convicted of a relevant offence. Details of the relevant offences has not yet been provided by the Secretary of State. A Banning Order prevents a person from:

- Letting any house
- Engaging in letting agency work
- Engagement in property management work or
- Doing two or more of these activities

An Order is limited to England, must specify the duration of the Order and must last at least 12 months. Penalty for breaching an Order, upon summary conviction is either a fine, imprisonment or both.

Rent Repayment Orders (RRO)

The Housing Act 2004 section 73 first introduced Rent Repayment Orders (RROs) where the tenant or the Local Housing Authority could apply to the First Tier Tribunal for the repayment of Housing Benefit/Universal Credit that was paid to convicted landlords where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, Under the 2016 Act RROs are being extended to cover the following situations:

- Failure to comply with an Improvement Notice under section 30 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.

An RRO can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed in above.

Where an application for an RRO is made and the landlord has not been convicted of the offence for which the RRO application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. The maximum rent recoverable is capped at 12 months. A local housing authority can impose a civil penalty or prosecute and apply for an RRO for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses of Multiple Occupation (section 72(1));
- Offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

Local Housing Authorities or tenants can use these powers, but under section 48 of the Housing and Planning Act 2016 local authorities now have a duty to consider applying for a Rent Repayment Order if a person has been convicted of a relevant offence.

Where the rent was paid from housing benefit or universal credit the sum awarded under the RRO is returned to the Council to be used by the Authority to further its statutory functions in relation to private housing enforcement work.

Decision to prosecute and/or apply for a Rent Repayment Order (RRO)

Local Housing Authorities are expected to develop and document their own policy on when to prosecute and when to apply for a Rent Repayment Order and when to do both. Each case should be decided independently.

In deciding whether to prosecute and/or apply for an RRO consideration should be given to any public interest in referring the case for prosecution over and above that required to apply for an RRO. The greater the impact of the offending on the community, the more likely it is that a prosecution will be appropriate.

The statutory guidance states that a prosecution may be the most appropriate option where an offence is particularly serious or the offender has committed similar offences in the past.

In deciding whether to apply for a Rent Repayment Order the Council will consider if there are tenants willing to be involved in the making of such an application.

Appendix 2

Draft Assessment Table for civil penalties issued under the Housing and Planning Act 2017

This assessment table is a draft to demonstrate how the civil penalty assessment will be completed under the Housing and Planning Act 2016. This may be revised and updated in line with the guidance contained in the committee report.

Details of offence	
Legal Contravention	
Condition of premises	
Number of tenants	
Number of households	
Any particular vulnerability of the tenants	
Had the landlord received any previous communication regarding the offence (add dates and detail of communication)	
Were any other properties affected by the offence?	
Is there evidence that the landlord has tried to avoid his legal responsibilities e.g. threatened the tenants or acted in a discriminatory way in relation to the tenants	
Severity of offence <ul style="list-style-type: none">• Nature/extent of hazards present.• Vulnerability of tenants e.g. age, illness, disability, someone with language issues etc• Evidence of discrimination/action against the tenants• Effect on neighbouring premises• Number of persons and/or households affected e.g. single family or HMO• Level of risk to occupiers or third parties	

Considerations					
Banding based on severity of offence considerations					
Extreme		Substantial		Moderate	
Culpability consideration					
<p>The offender to be assessed against three levels of culpability:</p> <ul style="list-style-type: none"> ▪ Deliberate: offender intended to cause harm or ignored legal responsibilities. ▪ Reckless: offender was reckless as to whether harm was caused or duties were not complied with. ▪ Negligent: failure to ensure awareness of legal responsibilities. 					
Considerations					
Banding based on culpability considerations					
Extreme		Substantial		Moderate	
Initial assessment of civil penalty	Severity of Offence			Moderate	
				Substantial	
				Extreme	
	Culpability			Moderate	
				Substantial	
				Extreme	
	Initial civil penalty assessment			£	
Track record of landlord					
<ul style="list-style-type: none"> ▪ Has committed similar offences before ▪ Experienced landlord who should know responsibilities ▪ Owns a number of properties (i.e. not a single property landlord) ▪ Period of time over which offence(s) committed ▪ High level of profit from the offence/sought profit in committing ▪ Offender is a letting agent ▪ Attempt to cover up evidence of offence 					
(Penalty to be increased by a minimum of £1k for each aggravating factor)					

Considerations	No considerations
	Penalty increase
Number of considerations	£
No considerations	£0
Mitigating Factors	
Any mitigating factors and whether they are relevant to the offence e.g. ill health of landlord, obstructive behaviour of third parties etc	
Penalty to be decreased by a minimum of £1k for each mitigating factor	
Considerations	
	Penalty decrease
Number of considerations	£
No considerations	£0
Check	
Check that the provisional civil penalty assessment meets the aims of the sentencing principles:	
<ul style="list-style-type: none"> ▪ Punishment of offender ▪ Reduction of/stopping crime ▪ Deterrent for other potential offenders ▪ Reform of offender ▪ Protection of public ▪ Reparation by offender to victim(s) ▪ Reparation by offender to community 	
Check that the provisional assessment is proportionate and will have an appropriate impact.	
<ul style="list-style-type: none"> • This step should take account of the offender's income and assets, and make final adjustments to the penalty calculation even where this results in a penalty point within another band. The general presumption should be that a civil penalty should not be revised downwards simply because an offender has (or claims to have) a low income. The Crown and Courts Act 2013 expressly permits the value of an offender's assets, e.g. their rental portfolio, to be taken into account when determining an appropriate penalty • For example, if a landlord with a large portfolio was assessed to warrant a low civil penalty, the civil penalty might require adjustment to have sufficient impact, and to conform to sentencing principles above. 	

Considerations		
Civil penalty assessment before discounts		
Discounts:	Details	Total Amount of Discount (£)
(a) Works of compliance within the representation period? (discount of 20% to be applied)		
(b) Accreditation course with the London Landlord Accreditation scheme booked within the representation period? (discount of 10% to be applied)		
(c) Total discounts (maximum 30%)		
Final assessment of civil penalty	£	

Appendix 3 – Worked examples for civil penalties issued under the Housing and Planning Act 2017

Example 1 - Improvement notice

HMO six people

Back door has no lock and opens onto an unlit alley way.

Landlord not notified by tenants although lock broken for 2 months

Cat 1 letter sent

Landlord has had cancer and been unable to organise the work

Improvement notice served and expired 2 months ago. Extra time given due to ill health.

Details of offence	
Legal Contravention	Failure to comply with an Improvement Notice under Section 11 of the Housing Act 2004
Condition of premises	Back door has no lock and opens onto an unlit alley way. Entry by intruders – Cat 1
Number of tenants	Six
Number of households	Six
Any particular vulnerability of the tenants	None
Had the landlord received any previous communication regarding the offence (add dates and detail of communication)	Yes and note additional time given in consideration of mitigating circumstances .
Were any other properties affected by the offence?	No
Is there evidence that the landlord has tried to avoid his legal responsibilities e.g. threatened the tenants or acted in a	No

discriminatory way in relation to the tenants					
Severity of offence <ul style="list-style-type: none"> • Nature/extent of hazards present. • Vulnerability of tenants e.g. age, illness, disability, someone with language issues etc • Evidence of discrimination/action against the tenants • Effect on neighbouring premises • Number of persons and/or households affected e.g. single family or HMO • Level of risk to occupiers or third parties 					
Considerations	<ul style="list-style-type: none"> • Substantial Category 1 hazard leaving tenants/premises vulnerable to intruders. • HMO six people and the effect of the hazards is amplified to that extent. • No particular vulnerability among the tenants noted. • No evidence of discrimination • No effect on neighbouring premises • Escalation to extreme 				
Banding based on severity of offence considerations					
Extreme	X	Substantial		Moderate	
Culpability consideration The offender to be assessed against three levels of culpability: <ul style="list-style-type: none"> ▪ Deliberate: offender intended to cause harm or ignored legal responsibilities. ▪ Reckless: offender was reckless as to whether harm was caused or duties were not complied with. ▪ Negligent: failure to ensure awareness of legal responsibilities. 					
Considerations	<ul style="list-style-type: none"> • Tenants had not advised the landlord • Notice of the hazard has been given in the form of a letter prior to service of the Improvement Notice and additional time to reflect mitigating circumstances. • Landlord is aware of responsibility but has been suffering from ill health which has been an obstruction to compliance. So cannot be said to be reckless or negligent in that respect. Downgrade to moderate. 				

Banding based on culpability considerations					
Extreme		Substantial		Moderate	X
Initial assessment of civil penalty	Severity of Offence			Moderate	
				Substantial	
				Extreme	X
	Culpability			Moderate	X
				Substantial	
				Extreme	
	Initial civil penalty assessment			£15,000.00	
Track record of landlord					
<ul style="list-style-type: none"> ▪ Has committed similar offences before ▪ Experienced landlord who should know responsibilities ▪ Owns a number of properties (i.e. not a single property landlord) ▪ Period of time over which offence(s) committed ▪ High level of profit from the offence/sought profit in committing ▪ Offender is a letting agent ▪ Attempt to cover up evidence of offence <p>(Penalty to be increased by a minimum of £1k for each aggravating factor)</p>					
Considerations		No considerations			
		Penalty increase			
Number of considerations		£			
No considerations		£0			
Mitigating Factors					
Any mitigating factors and whether they are relevant to the offence e.g. ill health of landlord, obstructive behaviour of third parties etc					
Penalty to be decreased by a minimum of £1k for each mitigating factor					

Considerations	Landlord has been unwell and unable to organise the work
	Penalty decrease
Number of considerations	£1,000
No considerations	£0
Check	
<p>Check that the provisional civil penalty assessment meets the aims of the sentencing principles:</p> <ul style="list-style-type: none"> ▪ Punishment of offender ▪ Reduction of/stopping crime ▪ Deterrent for other potential offenders ▪ Reform of offender ▪ Protection of public ▪ Reparation by offender to victim(s) ▪ Reparation by offender to community <p>Check that the provisional assessment is proportionate and will have an appropriate impact.</p> <ul style="list-style-type: none"> • This step should take account of the offender's income and assets, and make adjustments within band or change band accordingly. The general presumption should be that a civil penalty should not be revised downwards simply because an offender has (or claims to have) a low income. The Crown and Courts Act 2013 expressly permits the value of an offender's assets, e.g. their rental portfolio, to be taken into account when determining an appropriate penalty • For example, if a landlord with a large portfolio was assessed to warrant a low civil penalty, the civil penalty might require adjustment to have sufficient impact, and to conform to sentencing principles above. 	
Considerations	None
Final assessment of civil penalty	£14,000.00

Additional Comment

In this case the mitigating discount may be increased depending on any details provided by the landlord in relation to his illness, business model etc.

Example 2 -Failure to licence

- 4 person HMO 2 storeys
- 3 letters sent requesting the owner to licence
- Property generally in an ok condition
- No licence application

Details of offence	
Legal Contravention	Failure to licence a an HMO requiring a licence under S.72 Housing Act 2004
Condition of premises	Generally satisfactory
Number of tenants	Four
Number of households	Four
Any particular vulnerability of the tenants	No
Had the landlord received any previous communication regarding the offence (add dates and detail of communication	Three letters to landlord concerning the requirement to licence
Were any other properties affected by the offence?	No
Is there evidence that the landlord has tried to avoid his legal responsibilities e.g. threatened the tenants or acted in a discriminatory way in relation to the tenants	No

Severity of offence					
<ul style="list-style-type: none"> • Nature/extent of hazards present. • Vulnerability of tenants e.g. age, illness, disability, someone with language issues etc • Evidence of discrimination/action against the tenants • Effect on neighbouring premises • Number of persons and/or households affected e.g. single family or HMO • Level of risk to occupiers or third parties 					
Considerations		<ul style="list-style-type: none"> • No Cat 1/substantial hazards present. • Premises is an HMO but this is an inherent part of the offence and therefore not taken into consideration in determining the severity of the offence and although the fact that a small one may be a factor in determining moderate offence. • Tenants not especially vulnerable • No evidence of discrimination/action against the tenants • No known effect on neighbouring premises • No substantial level of risk to occupiers or third parties 			
Banding based on severity of offence considerations					
Extreme		Substantial		Moderate	X
Culpability consideration					
<p>The offender to be assessed against three levels of culpability:</p> <ul style="list-style-type: none"> ▪ Deliberate: offender intended to cause harm or ignored legal responsibilities. ▪ Reckless: offender was reckless as to whether harm was caused or duties were not complied with. ▪ Negligent: failure to ensure awareness of legal responsibilities. 					
Considerations		<p>Reckless: offender was reckless as to whether harm was caused or duties were not complied with and no evidence of deliberate offence (no indication that LL intended to cause the offence)</p>			

Banding based on culpability considerations					
Extreme		Substantial	X	Moderate	
Initial assessment of civil penalty	Severity of Offence			Moderate	X
				Substantial	
				Extreme	
	Culpability			Moderate	
				Substantial	X
				Extreme	
	Initial civil penalty assessment			£5,000.00	
Track record of landlord					
<ul style="list-style-type: none"> ▪ Has committed similar offences before ▪ Experienced landlord who should know responsibilities ▪ Owns a number of properties (i.e. not a single property landlord) ▪ Period of time over which offence(s) committed ▪ High level of profit from the offence/sought profit in committing ▪ Offender is a letting agent ▪ Attempt to cover up evidence of offence (Penalty to be increased by a minimum of £1k for each aggravating factor)					
Considerations		No considerations			
		Penalty increase			
Number of considerations		£0			
No considerations		£0			
Mitigating Factors					
Any mitigating factors and whether they are relevant to the offence e.g. ill health of landlord, obstructive behaviour of third parties etc					
Penalty to be decreased by a minimum of £1k for each mitigating factor					
Considerations		No considerations			

	Penalty decrease
Number of considerations	£
No considerations	£0
Check	
<p>Check that the provisional civil penalty assessment meets the aims of the sentencing principles:</p> <ul style="list-style-type: none"> ▪ Punishment of offender ▪ Reduction of/stopping crime ▪ Deterrent for other potential offenders ▪ Reform of offender ▪ Protection of public ▪ Reparation by offender to victim(s) ▪ Reparation by offender to community <p>Check that the provisional assessment is proportionate and will have an appropriate impact.</p> <ul style="list-style-type: none"> • This step should take account of the offender's income and assets, and make adjustments within band or change band accordingly. The general presumption should be that a civil penalty should not be revised downwards simply because an offender has (or claims to have) a low income. The Crown and Courts Act 2013 expressly permits the value of an offender's assets, e.g. their rental portfolio, to be taken into account when determining an appropriate penalty • For example, if a landlord with a large portfolio was assessed to warrant a low civil penalty, the civil penalty might require adjustment to have sufficient impact, and to conform to sentencing principles above. 	
Considerations	None
Final assessment of civil penalty	£5,000.00

Appendix 4- Amendments to the Development and Regulatory Services Enforcement Policy – Statement of Principles for The Smoke and Carbon Monoxide (England) Regulations 2015

Introduction

The Smoke and Carbon Monoxide (England) Regulations 2015 require that landlords for all let properties (some exemptions exist) ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contain a solid fuel burning appliance.

and for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his/her behalf, that the alarm(s) are in proper working order on the day the tenancy starts.

Properties subject to Part 2 or Part 3 licensing are exempt from the 2015 Regulations although compliance is achieved through licensing conditions.

Regulation 8 of the Smoke and Carbon Monoxide Alarm (England) Regulations provides that where a Local Housing Authority is satisfied, on the balance of probabilities, that a Landlord on whom it has served a remedial notice under Regulation 5 is in breach of their compliance duty under Regulation 6(1), the Authority may require the Landlord to pay a penalty charge. The amount of the charge to be determined by the Authority, is up to a statutory maximum of £5,000.

Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires a Local Housing Authority to prepare and publish a Statement of Principles to be followed in determining the amount of penalty charge to be made for failure to comply with the requirements of a Remedial Notice under Regulation 5 of the regulations.

In particular the council will have regard to:-

- The nature of the breach of the Regulations
- Continued, or repeat, breaches of the Regulations.

The primary aims of any financial penalty will be to:

- Recover the Council's costs in carrying out the necessary remedial work, under Regulation 7.
- Lower the risk to tenant's health, safety and wellbeing by ensuring that the property in question benefits from basic early warning in the event of a fire.

- Promote compliance of landlords in the private rented sector.
- Eliminate any financial gain or benefit from non-compliance with regulation.
- Educate Landlords on the associated risks of non-compliance.
- Be proportionate to the nature of the breach of legislation and the risk posed.
- Aim to prevent future non-compliance.

The Council may revise its Statement of Principles at any time, but where it does so, it must publish the revised statement. The current statement of principles which is in force at the time of the commission of the offence is to be used when deciding on the amount for the penalty charge.

Remedial Works to comply with Regulations

To comply with these Regulations the type of smoke alarm deemed acceptable is either a mains powered alarm or one operated with a sealed battery with a 10 year life with one fitted on each floor.

It is important to remind landlords that a full fire risk assessment should be undertaken to ensure that this level of detection meets the risk within the premises. The Council can assess risk using the Housing Act 2004 and this may require additional detection. Such circumstances include mode of occupation, nature of tenants, property layout or height of building. Freeholders may also be required to risk assess the common ways under the Regulatory Reform (Fire Safety) Order 2005.

Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

Enforcement

Where the Council has “reasonable grounds” to believe that a landlord is in breach of one or more of the above duties, the Council **must** serve a Remedial Notice on the landlord under Regulation 5. This will list the remedial works required to be taken by the Landlord. ‘Reasonable grounds’ would include being informed by a tenant, letting agent or housing officer that the required alarms are not installed.

Regulation 5(e) makes provision for the landlord to be able to request a written review of the Remedial Notice within 28 days.

If the Landlord fails to take remedial action, within the specified timescale, a penalty charge notice may be issued. The 2015 Regulations (Regulation 7) requires the Council to carry out the works in default where the necessary consent is given by the occupier and can then reclaim all reasonable costs incurred by the builder and themselves in organising the works.

Where a penalty charge is to be imposed for non-compliance, the landlord subject to the charge shall be notified in writing by a Penalty Charge Notice. This notice shall include;

- the reason for imposing the penalty;
- the premises to which it relates;
- the number and type of alarms the Council has installed at the premises;
- the amount of the penalty (including eligibility for first offence early payment discount);
- details to make payment; and,
- details of the right to request a review and how to request it.

The purpose of the penalty charge is to:

- Protect the interests of the public
- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms in line with the Regulations and after being required to so, under notice
- Eliminate financial gain or benefit from non-compliance with the Regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Criteria for the imposition of a penalty charge

In deciding whether it would be appropriate to impose a penalty charge, the Council will take full account of the particular facts and circumstances of the regulation breach under consideration. Factors which the Council will take into consideration include, but are not limited to:-

- The extent to which the circumstances giving rise to the contravention were within the control of the landlord.
- The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach.
- The steps that the landlord has taken since being served with the Remedial Notice,
- Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred.
- The condition of the premises e.g. any Category 1 hazards, if there is overcrowding, vulnerability of the occupiers, any high fire risk, any electrical/gas risks etc
- Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).
- Any past breaches.

The expectation is that a landlord is proactive with complying with his duties to ensure that the number and type of alarms at least meets the expectations of the 2015 Regulations.

The Penalty Charge Notice will be issued where the Council is satisfied, on the balance of probabilities, the landlord has failed to comply with his duties.

To determine relevant facts the Council will try to collect evidence, including; information from a property inspection or provided by the tenant, landlord or agent on property management and whether any remedial action has been satisfactorily completed.

Landlords can demonstrate compliance with their duty to install by supplying dated photographs of alarms, together with installation records or signed confirmation by the tenant that a system is in proper working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should then test the alarm to ensure it is in proper working order.

Criteria for determining the amount of Penalty Charge

The Regulations set a maximum penalty charge of £5,000. A penalty charge will be set at a level which the council considers is proportional to the breach and will take into account all the other circumstances of the case, which will include (the list is not exclusive):-

- Costs incurred by the Council in taking remedial action following non-compliance, including officer time and the cost of contractor supervision.
- Whether or not the breach under consideration is a first-time breach.
- Where justified representations have been made to the Council to formally review the penalty charge imposed, under Regulation 10.

Barnet Council has set the penalty charge as follows:-

Offence	Fine
First-time breach depending on the facts of the case	Up to £5,000 .
An early payment of the penalty charge, within 28 days from Penalty Charge Notice service	Discount of 50% (to £2,500)

Offender books onto an accreditation course with the London Landlord Accreditation scheme within 28 days of service of the Penalty Charge Notice and subsequently completes the course on the relevant date	Penalty reduced by 10%.
If the offender undertakes the necessary work of compliance within 28 days of service of the Penalty Charge Notice	Penalty reduced by 20%.
As such, for a first time breach, if the landlord completes the works, pays within 28 days and becomes accredited the fine will be £1,500.	
Subsequent breaches by the same landlord	£5,000. No discounts will be available in this case.

Review of Penalty Charge Notice and Appeals

On receipt of a Penalty Charge Notice a landlord can, within 28 days from Notice service, make a written request to the Council to review their decision. Information on how to request a review will be on the reverse of the notice.

The Council must consider any representation and decide whether to confirm, vary or withdraw the Penalty Charge Notice. The Council in making a decision will consider the following:

1. Whether the facts of the matter supported the service of the Penalty Charge Notice
2. Whether the decision was correct having regard to the relevant laws.
3. The amount of the charge was reasonable having regard to any mitigating, aggravating or other circumstances submitted with the request for review.

Adjustments to the penalty charge will be in steps of £250.

The Council will review the facts of the case and can confirm or vary their decision, and will serve notice giving the result of their review.

A landlord can then appeal against the review decision to the First Tier Tribunal. The Tribunal can then quash, confirm, or vary the Penalty Charge Notice (but cannot increase the penalty charge). Appeals should be made within 28 days from the date of the Decision Notice served by the Council.

The operation of the Penalty Charge Notice is suspended until the Tribunal has determined the appeal.

Recovery of Penalty Charges.

If the charge is not paid, then recovery will be pursued as laid out in the 2015 Regulations, including the obtaining of a Court Order where necessary. Where landlords make an appeal to the First-tier Tribunal, recovery will commence after the appeal period has elapsed or from when the appeal is finally determined or withdrawn.