

# **The Housing Act 2004 Section 249a Financial penalties as alternative to prosecution**

## **Financial penalties as alternative to prosecution**

### **1.0 Introduction**

1.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences.

1.2 The list of offences under this law that that may be dealt with by way of a financial penalty are as follows:

- Failure to comply with improvement notice (Section 30)
- Licensing of HMOs under Housing Act 2004 Part 2 (Section 72)
- Licensing of houses under Housing Act 2004 Part 3, (Section 95)
- Failure to comply with overcrowding notice, (Section 139(7))
- Management regulations in respect of HMOs. (Section 234)

### **2.0 Financial Penalties**

2.1 The law allows a maximum financial penalty of £30,000 to be imposed per offence.

2.2 In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil penalties under the Housing and Planning Act 2016 has been incorporated into the charging table adjustments set out in Appendix 1.

2.3 In determining the financial value of an imposed penalty, this Council shall have regard to the charging table and guidance notes in Appendix 1.

### **3.0 Process for imposing penalty charges**

3.1 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.

3.2 A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:

- a. The amount of any proposed financial penalty
- b. The reasons for proposing the financial penalty
- c. Information about the right to make representation to the Council.

- 3.3 The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 3.4 Following the 28 day period the Council will decide:
- a. Whether to impose a financial penalty on the person, and
  - b. The value of any such penalty imposed.
- 3.5 If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
- a. the amount of the financial penalty,
  - b. the reasons for imposing the penalty,
  - c. information about how to pay the penalty,
  - d. the period for payment of the penalty,
  - e. information about rights of appeal to the First tier Tribunal
  - f. the consequences of failure to comply with the notice.

#### 4.0 **Consequences of non-compliance and miscellaneous provisions**

- 4.1 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.
- 4.2 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.
- 4.3 The Council may, at any time:
- a. Withdraw a notice of intent or final notice
  - b. reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either action, it will write to the person to whom the notice was given.

- 4.4 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

## APPENDIX 1 Charging tables for determining value of Financial Penalties

The following tables present the starting values, aggravating and mitigating factors that are to be considered in determining the value of a financial penalty issued for the following offences:

- Failure to comply with an Improvement Notice (Page 4)
- Failure to licence houses under Housing Act 2004 Part 2 or Part 3 (Page 5)
- Failure to comply with licence conditions under Housing Act 2004 Part 2 or Part 3, (Page 6)
- Failure to comply with an overcrowding notice, (Page 7)
- Failure to comply with management regulations in respect of HMOs. (Page 8)

<b>General principles (to be applied to all financial penalties made for offences under Housing Act 2004)</b>
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No penalty charge shall be issued above the statutory maximum of £30,000
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No penalty charge shall be less than 20% of the starting value after all aggravating and mitigating factors are considered and after perpetrator income has been taken into account.
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Mitigating factors will be considered based on evidence submitted by the landlord or their agent to the Housing Standards Team including any information provided following inspection and any representations that the landlord provides following service of a Notice of Intent to issue a Financial Penalty
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In recovering the value of any financial penalty, The Council will consider the incomes, savings and assets of the perpetrator and where appropriate a payment plan considered.
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<b>Failure to comply with an Improvement Notice (Housing Act 2004 Section 30)</b>	
<b>Starting value of penalty charge (note 1)</b>	<b>£</b>
1 <sup>st</sup> offence	6000
2nd subsequent offence by same person/company	15000
Subsequent offences by same person/company	24000
<b>Aggravating Factors (note 2)</b>	
Acts or omissions demonstrating high culpability. (note 4)	3000
Large housing portfolio (note 5)	3000
Multiple Category 1 or high Category 2 Hazards (note 6)	3000
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 7)	3000
<b>Mitigating Factors (note 3)</b>	
Evidence of Low culpability (note 11)	-3000
Rapid action taken to address failings (note 12)	-3000

<b>Offences relating to the licensing of HMOs under Part 2 of the Act (Section 72(1) and 72(2))</b>	
<b>Offences relating to failure to licence within a Selective Licensing Area defined by Part 3 of the Act Section 95(1))</b>	
<b>Starting value of penalty charge (note 1)</b>	<b>£</b>
1 <sup>st</sup> offence	6000
2nd subsequent offence by same person/company	15000
Subsequent offences by same person/company	24000
<b>Aggravating Factors (use all that apply) (note 2)</b>	
Acts or omissions demonstrating high culpability (note 4)	3000
Large housing portfolio (note 5)	3000
Evidence of management failings leading to antisocial behaviour affecting residents of wider neighbourhood of property. (note 8)	3000
Property not licenced for 12 months or longer. (note 9)	3000
<b>Mitigating Factors (use all that apply) (note 3)</b>	
Evidence of Low culpability (note 11)	-3000
Rapid action taken to address failings (note 12)	-3000

<b>Offences relating to failure to comply with conditions, restrictions or obligations provided by licences issued under Part 2 and Part 3 of the Act (Section 72(3)) and Section 95(2)) (Note 10)</b>		
<b>Starting value of penalty charge (note 1)</b>	<b>Tier 1 (£)</b>	<b>Tier 2 (£)</b>
1 <sup>st</sup> offence	6000	1200
2nd subsequent offence by same person/company	15000	3000
Subsequent offences by same person/company	24000	4800
<b>Aggravating Factors (use all that apply) (note 2)</b>		
Acts or omissions demonstrating high culpability (note 4)	3000	600
Large housing portfolio (note 5)	3000	600
Evidence of failure to comply with three or more licence conditions. (note 6)	3000	
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 7)	3000	600
<b>Mitigating Factors (use all that apply) (note 3)</b>		
Evidence of Low culpability (note 11)	-3000	-600
Rapid action taken to address failings (note 12)	-3000	-600

<b>Offences of contravention of an overcrowding notice (section 139) (note 1)</b>	
<b>Starting value of penalty charge (note 1)</b>	<b>£</b>
1st relevant offences	6000
2nd subsequent offence by same person/company	15000
Subsequent offences by same person/company	24000
<b>Aggravating Factors (use all that apply) (note 2)</b>	
Acts or omissions demonstrating high culpability (note 4)	3000
Vulnerable occupant and/or significant harm occurred as result of overcrowding. (note 6)	3000
<b>Mitigating Factors (use all that apply) (note 3)</b>	
Evidence of Low culpability (note 11)	-3000
Rapid action taken to address failings (note 12)	-3000

<b>Failure to comply with management regulations in respect of HMOs (Section 234)</b> <i>(Note 10)</i>		
<b>Starting value of penalty charge</b> <i>(note 1)</i>	Tier 1 (£)	Tier 2 (£)
1st relevant offences	6000	1200
2nd subsequent offence by same person/company	15000	3000
Subsequent offences by same person/company	24000	4800
<b>Aggravating Factors (use all that apply)</b> <i>(note 2)</i>		
Evidence of failure to comply with three or more regulations within this statute. <i>(note 6)</i>	3000	
Acts or omissions demonstrating high culpability <i>(note 4)</i>	3000	600
Large housing portfolio <i>(note 5)</i>	3000	600
Vulnerable occupant and/or significant harm occurred as result of failure to comply with regulations <i>(note 7)</i>	3000	600
<b>Mitigating Factors (use all that apply)</b> <i>(note 3)</i>		
Evidence of Low culpability <i>(note 11)</i>	-3000	-600
Rapid action take to remedy failings <i>(note 12)</i>	-3000	-600



## **Notes to accompany charging table.**

Notes 1-3 set out the overall process for determining the value of a given financial penalty. Notes 4-12 give detail on specific other issues.

### **Note 1 Determining the starting value of a financial penalty.**

The starting point for a financial penalty is based on the number of:

- Previous convictions, and
- Final Notices of a Financial Penalty as per Housing Act 2004 schedule 13a

issued to the same person or corporate entity for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

### **Note 2 Aggravating factors.**

After the starting point as per note 1 has been determined any relevant aggravating factors are considered and where appropriate to do so, the given value is added to the starting point to provide the maximum level of financial penalty.

At this stage it is possible for the notional penalty to be above the statutory maximum, but once mitigation and income are considered, if the value is still above the statutory maximum it will be capped as per the “general principles”.

### **Note 3 Mitigating factors.**

After aggravating factors are considered and applied where appropriate, mitigating factors are considered and where there is sufficient and compelling evidence the relevant value will be discounted from the Financial Penalty.

In considering whether it is appropriate to include a mitigating factor, evidence shall be considered that has been gathered by the inspecting officer in the course of the investigation into the offence as well as any representations that have been provided following a Notice of Intent as per Housing Act 2004 Schedule 13a.

### **Note 4 Acts or omissions demonstrating high culpability.**

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

**Note 5**      **Large housing portfolio.**

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

**Note 6**      **Multiple failings**

This factor is to recognise multiple failings within the same legal notice, licence condition or piece of law. The following note details how this is determined

**Multiple Category 1 or high Category 2 Hazards**

To be included where an Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this factor, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

**Evidence of failure to comply with three or more licence conditions.**

To be included where there is evidence of failure to comply with three or more separate licence conditions issued with a licence under Housing Act 2004 Parts 2 or 3 irrespective of whether they are defined as “Tier 1” or “Tier 2”.

**Evidence of failure to comply with three or more regulations within this statute.**

To be included where there is a evidence of a failure to comply with three or more regulations, irrespective of whether they are defined as “Tier 1” or “Tier 2”.

For the avoidance of doubt, multiple failures of the same offence do not apply, it is based on evidence of failure of duties under separate provisions within the regulations.

**Note 7**      **Vulnerable persons.**

This note applies to the following aggravating factors:

- Vulnerable occupant and/or significant harm occurred as result of housing conditions .
- Vulnerable occupant and/or significant harm occurred as result of failure to comply with regulations.
- Vulnerable occupant and/or significant harm occurred as result of overcrowding.

This factor will be applied if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For offences relating to failure to comply with an Improvement notice a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Act 2004 Section 9 Operating Guidance for the Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

At the time of publication this document can be found at [www.gov.uk](http://www.gov.uk) and a summary table is below.

<b>Hazard</b>	<b>Vulnerable age group (age of occupant)</b>
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

For all other purposes a vulnerable person is defined as:

*A person who suffers, or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering due to age, disability or severe financial insecurity”*

This factor applies where an occupant is vulnerable and, due to the underlying failure to comply with the relevant legislation is placed at additional risk or harm compared with a non-vulnerable resident.

For purposes of this factor, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm as recorded in Housing Act 2004 Section 9 Operating Guidance for the Housing Health and Safety Rating System.

**Note 8      Evidence of management failings leading to antisocial behaviour affecting residents of wider neighbourhood of property.**

This factor will be applied where there is evidence that, in addition to the underlying failure to licence under Part 2 or Part 3 of the Act, that there is compelling evidence to indicate that during the period that the property was not licenced when it should have been the perpetrator failed to take adequate steps to manage the relevant property in such a way as to mitigate antisocial behaviour stemming from residents or from the property as a whole.

Without prejudice to the generality of this point this includes:

- Direct antisocial behaviour stemming from the actions of residents of the relevant property affecting the local neighbourhood.
- Indirect nuisance on neighbouring properties caused by inaction to address the condition of the property such as rubbish in gardens or overgrown vegetation.

**Note 9      Property not licenced for 12 months or longer.**

This factor will be applied where there is evidence that the relevant property has been operating as either of the following for 12 months or more prior to the offence date by the same person or corporate entity but without a licence application being properly submitted.

- A property requiring a licence under Housing Act 2004 Part 2
- A property within an area of selective licencing under Housing Act 2004 Part 3

**Note 10      Tier 1 and Tier 2 Offences**

Where the relevant offence lists separate penalty values for Tier 1 and Tier 2 offences, further detail is provided in the tables below.

<b>The Management of Houses in Multiple Occupation (England) Regulations 2006</b>	<b>Offence Tier</b>
3.Duty of manager to provide information to occupier	Tier 2
4.Duty of manager to take safety measures	Tier 1
5.Duty of manager to maintain water supply and drainage	Tier 1
6.Duty of manager to supply and maintain gas and electricity	Tier 1
7.Duty of manager to maintain common parts, fixtures, fittings and appliances	Tier 1
8.Duty of manager to maintain living accommodation	Tier 1
9.Duty to provide waste disposal facilities	Tier 2
10.Duties of occupiers of HMOs	Tier 2

<b>Licence Conditions (Housing Act 2004 Part 2)</b>	<b>Offence Tier</b>
<b>Conditions relating to:</b>	
Managing Antisocial Behaviour.	Tier 1
Compliance with statutory duties.	Tier 1

Reporting changes in circumstances relating to ownership/usage/layout/no. of occupants.	Tier 1
Safety of electrical appliances or installation.	Tier 1
Provision of Carbon Monoxide alarms where required.	Tier 1
Requirement for remedial works to be completed within specified timescale.	Tier 1
Room size requirements.	Tier 1
Other - Safety/Nuisance to residents or others.	Tier 1
Provision of information/documents on demand to the Council.	Tier 2
Providing required information to tenants.	Tier 2
Other – non-safety/information/documentation	Tier 2

**Note 11      Low culpability.**

This factor will apply where the perpetrator provides sufficient evidence that they only marginally fell short of their legal obligations, for instance:

- significant efforts were made to address the risk, breaches or offences, although they were inadequate to mitigate the underlying cause to issue the penalty;
- they have offered a reasonable defence for why they were unaware of the risk, breach or offence.
- Failings were minor and occurred as an isolated incident.

It will not be sufficient to claim not to have known of the legal requirement or deficiency that forms the underlying reason for the financial penalty in order to benefit from this factor.

It will also not apply where the underlying failure was due to the inaction of the perpetrator in properly managing rented properties, responding to complaints of poor standards, carrying out routine visits, instruct others to assist where necessary etc.

**Note 12      Rapid action take to remedy failings.**

This factor will apply where, on notification of the offence, the perpetrator took rapid action to remedy the underlying failings which could mean:

- Undertaking remedial works to address the deficiencies noted
- Making a full and complete licence application for the relevant property

In order to benefit from this factor, it is the responsibility of the perpetrator to provide sufficient evidence of compliance. It will not be sufficient to simply claim works have been completed, but photographs, videos, arrangements with Housing Standards officers to visit are all appropriate measures to demonstrate compliance.

In assessing whether “rapid action” was taken, Stafford Borough Council will take into account the extent of the remedial works or actions required and the time taken from receipt of any requirement to action. This could be evidence of quotes for works, agreed start dates from contractors etc.