

LONDON BOROUGH OF LEWISHAM

Private Sector Housing Agency

Civil Penalty Notice Policy

1. Introduction

The Housing and Planning Act 2016 amended the Housing Act 2004, introducing financial penalties for specific housing offences as an alternative to a prosecution. These penalties, Civil Penalty Notices (“CPNs”) were approved by Lewisham’s [Mayor and Cabinet](#) in January 2018

The introduction of this new tool with the potential for larger fines, is seen as necessary by Government, to address concerns that a smaller fine would not prove a sufficient deterrent for landlords who flout the law, or to prompt them to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants

CPNs enable local authorities to issue financial penalties of up to a maximum of £30,000 against landlords (defined as either the owner or manager of a privately rented property within this policy) who commit the offences set out below.

- Failing to comply with an **Improvement Notice**
- Failing to comply with an **Overcrowding Notice**
- Owning or managing an **unlicensed HMO**
- **Breach of HMO licence conditions**
- **Breach of HMO management regulations**

1.1 Government guidance

The Government¹ has provided statutory guidance that all local authorities are to have regard to, initiating the process: the criteria required, any aggravating or mitigating factors to be considered in determining the appropriate level of financial penalty to be imposed. All decisions reached culminating in the issuing of a Civil Penalty Notice, will comply with the Council’s duties, the relevant legislation and having regard to their responsibilities under the Equalities Act 2010.

The purpose of Civil Penalties is threefold:

- **Punishment** of offending landlords
- **Deterrence** of future criminality by the offending landlord and members of the wider landlord community
- **Deprivation** of the financial benefits of criminal behaviour

¹ Department for Communities and Local Government (DCLG) *Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities* [civil penalties under the housing and planning act 2016](#)

1.2 Burden of Proof

Any offence must be proved to the “criminal burden and standard of proof” (i.e. “beyond reasonable doubt”). Before a CPN can be considered for issue, it must be in the public interest to issue a Final Notice, rather than either to prosecute the landlord through the criminal courts or take alternative enforcement action. This is to be judged with reference to the Code for Crown Prosecutors - [the Full Code Test](#)

Civil Penalty Notices are an alternative to prosecution. The decision to start the process of issuing a Civil Penalty Notice will be taken in accordance with the Council’s Private Sector Housing Enforcement and Licensing Policy. The level at which the Civil Penalty will be set, is by reference to the Council’s Civil Penalty Notice Calculator.

2. Starting the Process

The Officer investigating the case, will decide when the investigation is complete and will prepare the evidence in the form of witness statements and exhibits. The Officer must include the date upon which they concluded that there was sufficient evidence of the offence, who had committed it, and whether the offence is continuing on the date that the process started. This information must be recorded on M3/Assure or other appropriate system as operated or identified by the council at the time.

A Senior Officer will assess the evidence and determine whether there is sufficient evidence to proceed. The Senior Officer will record the reasons for this decision in writing. If the Senior Officer decides to issue a Civil Penalty Notice, they will be responsible for drafting the Notice of Intent.

3. The Notice of Intent

The Senior Officer drafts the **Notice of Intent**. Issuing a Notice of Intent does not mean that a Final Notice will automatically be issued, or that any Final Notice will be for the same sum as proposed by the Notice of Intent. Any Civil Penalty Notice process must produce a proportionate and just outcome; any representations received must be properly considered. This includes personal mitigation; this may be new information affecting the level of culpability.

The Senior Officer will apply the Civil Penalty Calculator and set the level of the proposed Civil Penalty.

The Senior Officer must set out their reasons for their assessment of the following:

- That the evidence proves the case to the criminal burden and standard;
- The level of culpability;
- The level of harm.

The Senior Officer should give a full explanation, if the level of Financial Penalty is to be increased on the basis of any aggravating features they believe are present. These should be clearly identified, so that the intended recipient of the Notice knows what aspects of the evidence we say make the case so serious that the financial penalty should be increased.

The Notice must include the following information:

- The amount of the proposed Civil Penalty
- The reason for imposing the Civil Penalty
- Information about the right to make representations

4. The Decision to Prosecute or to Issue a Civil Penalty Notice

This decision will be taken with reference to the Council's Private Sector Housing Enforcement Policy. A manager designated by the Director of Housing Services will review the evidence, the Senior Officer's decision and draft Notice of Intent.

If this Manager decides the offence is proved to the required standard and it is in the public interest to proceed, they will decide whether to issue a **Notice of Intent** or refer the case to the Council's legal department for prosecution. They must endorse Senior Officer's assessment of the evidence and record their reasons for deciding to issue the CPN in writing on M3/Assure or other appropriate system as operated or identified by the council at the time.

The presumption is that most cases will be dealt with by issuing a Civil Penalty Notice. A prosecution will be appropriate in the most serious cases; for example where:

- The landlord's current and historical conduct when taken together, means they cannot be considered a "fit and proper" person to hold an HMO licence.
- The landlord's acts or omissions, have caused serious bodily harm to another person, including psychological harm.
- In the case of licence breaches, where the landlord's conduct taken as a whole make it appropriate to consider revoking an HMO licence.
- The facts of the case justify considering applying for ancillary orders that would not be available or would be more difficult to obtain without a criminal conviction (i.e. Rent Repayment Orders, Banning Orders for example)

If the decision is taken to prosecute, the matter will be referred to the Council's legal department, who will consider the case and apply the Full Code Test (see paragraph 1.2 above and link to source document).

5. Serving the Notice of Intent

The **Notice of Intent** containing written reasons for issuing a Civil Penalty Notice, along with any supporting evidence, is to be served on the defendant by the Licensing or Private Sector Housing Enforcement Officer in person or by registered post.

6. Representations

The landlord has **28 days** to make representations from the date after the day upon which the Notice of Intent is served.

The Council will only accept representations in writing. These may be made by email, or in hard copy form. Where these representations refer to other documents in support, it is the landlord's responsibility to provide documentary evidence to support their case. Representations where there is dispute as to facts, will benefit from having supporting documents or evidence.

The Council will respond to all representations within a reasonable time, and will endeavour to reply within 28 days of receipt. This may not be possible in all cases, for example in instances where representations raise issues that require further investigation or where urgent operational issues arise, such situations will take priority.

7. Reduction in Financial Penalty for Early Admissions

A landlord who admits the offence in writing at the representations stage will be given a 33% discount on the final amount.

8. Issuing the Final Notice

The Director of Housing Services or someone authorised to act on their behalf will have overall supervisory responsibility for the decision to issue the Final Notice, if the amount proposed on the Notice of Intent exceeds £5,000. Where the amount proposed is less than £5,000, this may be delegated to a Manager within this service, usually a Manager with the responsibility for Licensing and Housing Enforcement. The Director of Housing Services or any person exercising delegated responsibility on their behalf, will consider the evidence and any representations, then decide whether to:

- Issue the Final Notice as proposed
- Issue the Final Notice but reduce the financial penalty
- Issue the Final Notice but increase the financial penalty
- Decline to Issue the Final Notice

This consideration includes deciding whether it is in the public interest to proceed.

The Director of Housing Services or any person exercising delegated responsibility on their behalf, will record their reasons for concluding that the case has been proved to the requisite standard, why it was in the public interest to proceed and demonstrate how the amount of the proposed CPN has been calculated on the Final Notice.

The Officer completes the Final Notice, which must contain:

- The amount of the Financial Penalty
- The reasons for imposing the penalty
- Information on how to pay the penalty
- The period for payment of the penalty (28 days from the day after service)
- Information on appeal rights
- The consequence of failing to pay

9. Serving the Final Notice

The Licensing Officer or Private Sector Housing Enforcement Officer will serve the Final Notice in person or by registered post to the recipient's address.

10. Reduction for admission

A landlord who admits the offence and agrees to pay the Civil Penalty Notice after the Final Notice is served, will receive a discount of 10%.

11. Appeals

The person served with a Final Notice has a right to appeal to the First-tier Land Tribunal. The time limit for lodging an appeal is 28 days from the day after the date of service of the Final Notice. No enforcement action will be taken until this time has expired or until any appeal is determined.

12. Enforcement

If the person served with the Final Notice fails to appeal within 28 days, or appeals unsuccessfully and fails to pay within 28 days from the date upon which their appeal was determined, a Senior Officer will obtain a certificate from the Council's Chief Finance Officer. This certificate must:

- Be signed by the Chief Finance Officer
- State the amount owing under the Civil Penalty Notice
- State that the amount is owing on the date the certificate was signed.

The Council will enforce the Civil Penalty Notice as if it were an order of the County Court.