



GUIDE TO APPLYING THE CIVIL PENALTIES FEE MATRIX

HOUSING ACT 2004

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INTRODUCTION TO RELEVANT LEGISLATION

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.

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

- Failure to comply with an Improvement Notice (Housing Act 2004 Section 30)
- Licensing of HMOs under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)
- Licensing of houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)
- Failure to comply with an Overcrowding Notice, (Housing Act 2004 Section 139(7))
- Management Regulations in respect of HMOs. (Housing Act 2004 Section 234)

In order to enforce the legislation Cambridge City council have introduced a fee Matrix. The following guidance will assist officers with regards to determination of the appropriate penalty to be issued in each case.

APPLYING THE MATRIX

The financial penalty should be fair and proportionate, with the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

The following guide is to assist with the use of the matrix it is however important to ensure that when deciding a fine you also make reference to government guidance <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

The matrix can be found as Appendix A
 A work example can be found as Appendix C

FINDING A STARTING POINT

Stage 1

The starting point for a financial penalty is based on the number of previous penalty notices for the same type of offence has been committed in the previous four years. These are marked along the top of the matrix (highlighted in green)

Penalty Notice Charges for noncompliance of Improvement Notices / Management Regs / Breach of Licence Conditions

	1 st Offence	2 nd Offence	Subsequent Offence
Low Culpability			
Severity Level 3	£675	£1,350 (See note on 1)	£3250+50% of previous fee levels from all additional Culpability levels up £30K
Severity Level 2	£1,350	£2,700 (See note on 1)	£3250+50% of previous fee levels from all additional Culpability levels up £30K
Severity Level 1	£2,700	£5,400 (See note on 1)	£3250+50% of previous fee levels from all additional Culpability levels up £30K
Medium Culpability			
Severity Level 3	£1,350	£2,700 (See note on 1)	£7500+50% of previous fee levels from all additional Culpability levels up £30K

After the starting point has been determined, relevant Premiums can be added to the starting amount to determine the full financial penalty to be imposed .This is done by taking into account the

- culpability
- Severity level
- number of hazards or breaches of regulations to which the action relates

DETERMINING CULPABILITY

Stage 2

The guidance requires that we take into account culpability

“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.”

The criteria below will help guide you. The Cambridge matrix has three levels of culpability Low, Medium, High (highlighted in blue) to help ensure that we that we will apply the same criteria in each case.

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High

- Where the offender intentionally breached, or flagrantly disregarded, the law.
- Where the offender knew their actions were unlawful.
- Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Medium

Offence committed through act or omission which a person exercising reasonable care would not commit.

- An example of this may be an agent or landlord that has attended training or you have previously supported through visit and advice. The majority of cases will generally fall within this category.

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

DETERMINING SEVERITY

Stage 3

Under each culpability level there three levels of severity.

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These levels of severity should be considered into relation to the offences of

- Failure to comply with an improvement notice
- Failure to comply with management regulations
- Failure to comply with licence conditions

The severity level categories below contain factors relating to both actual harm and risk of harm. When deciding the severity level it is important to take into account the relevant piece of legislation associated with the intended action.

Severity Level 1 – Highly Likely to Result in Harm

- The offence committed is highly likely/ is having a serious adverse effect(s) on individual(s) and/or resulting in a widespread impact.*

**When considering action in relation to the offence of failure to comply with an Improvement Notice it is important to take into account where persons are within the vulnerable age group for the associated hazard (Appendix B)*

Severity Level 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) not amounting to Severity Level 1
- Where there is a medium risk of an adverse effect on individual(s) or low risk of serious adverse effects

Severity Level 3 - Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Little or no risk of actual adverse effect on individual(s)

ADDING COSTS

Stage 4

A file should be prepared in the same way as for prosecution. A CPIA18 costs sheet should be created as cost need to be added to the final total.

REDUCTIONS

Stage 5

Reduction for early admission of guilt

The Council may take into account a potential reduction in penalty for an admission of guilt on a first offence. The following factors should be considered in setting the level of reduction:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

No reduction will be offered in relation to a second offence or for serious high culpability offences.

A maximum of 30% reduction can be made but this may be reduced if not all factors have been met.

Reduction with regard to offender's ability to pay

The guidance requires that

“Local housing authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

Gathering of this information therefore needs to be considered as part of as part of an ongoing investigation.

DETERMINING SUBSEQUENT OFFENCES

The legislation allows us to take into account the number of times someone has committed an offence.

Use the Subsequent offences Column on the table

- Always start with the worst offence even if it is not the most recent.

- Then add + 50% of the total value with regard to the next highest level offence from the subsequent offence column within the matrix

- Then add + 50% of the total value with regard to the next highest level offence from the subsequent offence column within the matrix

- Then CPIA18 file preparation cost fees from the current offence.

- The total amount should be capped at maximum level of £30,000

Example

An agent has previously had a civil penalty notices for two low culpability offences and one high culpability offence.

Culpability High £15000 (use the whole of this figure as the worst offence)
Culpability Low £7500 (Use 50% of this figure as a lower offence)
Culpability Low £7500 (Use 50% of this figure as a lower offence)

Cost for final file preparation £720

So the sum would be

$£15,000 + £3250 + £3250 + £720 = \text{Total fine } £22,220$

FAILURE TO LICENCE

Failure to license is an offence that can be dealt with via Civil Penalty Notice. This will be dealt with by a fixed fee based on the local housing allowance level. The levels can be found on the Cambridge City Council Website

<https://www.cambridge.gov.uk/local-housing-allowance-and-rates-we-pay>

The fine is worked out

1st Offence

Local Housing Allowance Level x Number of rooms + CPIA18 file costs = fine

2nd Local Housing Allowance Level x Number of rooms x 2 + CPIA18 file costs = fine
To the maximum level of £20,000.

APPENDICIES

Appendix A

Penalty Notice Charges for noncompliance of Improvement Notices / Management Regs / Breach of Licence Conditions

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Note One – If more than one offence one hazard, breach of regulations or licence condition was on the notice/letter this figure can be doubled.

Note Two – Add preparation of file costs to the final amount must not total more than £30,000. (See stage 4 of guide)

Note Three - Early Omission of Guilt - 30% 1st Offence only (see stage 5 of guide)

Note Four – Financial resources of the perpetrator must be taken into account

APPENDIX B

Vulnerable age groups re different hazards

(age of occupant)

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

WORKED EXAMPLE

- The agent of a property has had no previous civil penalties served making it a **first offence (Stage One)**.
- They have previously sent a plumber and have not properly followed up to see if the problem has been resolved so this could be considered **medium culpability (Stage Two)**.
- The flat is in otherwise good condition; the occupants are not in the vulnerable age group and can get some heat from the electric fire. So this may be considered **Severity level two (Stage Three)**
- They have failed to repair a heating system resulting in a breached Improvement Notice. They have admitted that they have been slow to resolve the problem but not they are guilty of the offence so **No early omission of guilt (Note three)**
- There is no evidence to reduce the fine due for financial resources (**Note four**)

Civil Penalty Notice Charges for noncompliance of Improvement Notices / Management Regs / Breach of Licence Conditions

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Severity Level 1	£2,700	£5,400 (See note on 1)	£3250+50% of previous fine levels from all additional Culpability levels up £30K
Medium Culpability (2)			
Severity Level 3	£1,350	£2,700 (See note on 1)	£7500+50% of previous fine levels from all additional Culpability levels up £30K
Severity Level 2	£2,700 (3)	£5,400 (See note on 1)	£7500+50% of previous fine levels from all additional Culpability levels up £30K
Severity Level 1	£5,400	£10,800 (See note on 1)	£7500+50% of previous fine levels from all additional Culpability levels up £30K
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Note Two – Add preparation of file costs to the final amount must not total more than £30,000

Note Three - Early Omission of Guilt - 30% 1st Offence only

1. It's a first offence
2. Medium Culpability
3. Severity Level 2
 - No early omission no discount
 - No financial resources reduction

The fine level would be £2700 + cost of preparing file (CPIA18) cost £960 = **£3660**

