

## **Isle of Wight Council**

### **Housing Renewal Section Financial guide for civil penalties**

**1. Investigative charges** will be accounted in each civil penalty and calculated by measuring eligible officer time spent on a case, using the average hourly rate for officers, and will be added to any other appropriate ancillary costs (such as paid mileage, consultant fees, obtaining warrants, cost of locksmith, etc.).

**2. Punitive Charge-** primarily based on Culpability and actual or potential Harm which officers will use as a starting point for determining on a case by case basis the level of civil penalty to impose when added to the investigatory charge.

The punitive charge will be ascertained by scoring the situation in regard to the Severity or the offence, the Culpability of the offender, the Track-Record of the offender, and the actual or potential Harm to the occupiers based on reasoned objective measures, and then using a table of penalty levels for consistency.

Each case can then be reviewed further to either raise or lower the penalty taking into account further factors for which the reasoning must be evidenced.

**2.1. Severity of the offence.** The more serious the offence, the higher the penalty should be. This element is used to calculate the punitive charge. There are many factors that could influence this element, such as the number or seriousness of hazards or regulations being breached, the number of people potentially affected, or the impact upon the community and neighbours. These and any other relevant factors to the case will be taken into account.

#### **2.1.a. Scoring for Level of Severity;**

**Level 1 – Serious Impact.** The nature of the offence causes serious risk to the health and safety of the occupiers/potential visitors/community/public, with potential life-threatening results, paralysis, cancer, permanent loss of consciousness, extreme burn injuries or loss of major limbs, potential poisoning or disease causing results, stroke, regular fevers, serious burns or fractures, or loss of minor limbs. Housing defects or matters posing such a risk may be associated with carbon monoxide exposure, fire, explosions, structural collapse, falling elements, electrical hazards, collision and entrapment issues, falls, asbestos, biocides or lead exposure, excessively cold or hot conditions, radiation or hot surfaces. They may be associated with Category 1 matters under the HHSRS, conditions of a HMO licence, or be a failure to comply with HMO Management Regulations. These examples do not represent an exhaustive list.

**For each Level 1 issue a score of 2 will be added.**

**Level 2 – Minor Impact.** The nature of the offence is causes a lower risk to the health and safety of the occupiers/potential visitors/community/public, with potential risk of minor injury or illness resulting in treatment by a GP. Housing defects or matters posing such a risk may be associated with damp and mouldy conditions, hygiene or food safety, overcrowding, lack of provision of HMO landlord information. They may be associated with Category 2 matters under the HHSRS, conditions of a HMO licence, or be a failure to comply with HMO Management Regulations. These examples do

not represent an exhaustive list. Failure to comply with the HMO Management Regulation of provision of information to occupiers shall be a level 2 impact score.

**For each Level 2 issue a score of 1 will be added.**

### **2.1.b. Severity Premiums.**

**A premium of 5 points will be added** where the offence causes risk to more than 1 household; e.g. a HMO, or the matter causes risk to the general public. This is to ensure the scope of the hazard or issue is considered in addition to its ability to harm.

This premium will not be added where the issue relates to HMO Management Regulations as in those cases each regulation breach will be calculated as an individual offence, and therefore the scope of the hazard will already be accounted for.

**2.2. 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. This element is used to calculate the punitive charge. An assessment will be based on evidenced previous interventions in this and other local authorities, as well as consideration to the extent of the knowledge the offender should have when operating in the business, and efforts made by the offender to comply with matter in question.

### **2.2.a. Scoring for Levels of Culpability;**

**Deliberate-** An intentional breach by a landlord or property agent, or flagrant disregard for the law, for example by failing to comply with a notice or HMO management regulations or failing to licence and licensable HMO after being informed of the issues by the authority.

**For deliberate acts a score of 15 Will be added.**

**Reckless-** An actual foresight or, or wilful blindness to the risk of offending but decides to take the risk nevertheless, for example failing to comply with a strict liability in the HMO management regulations, or failing to licence a licensable HMO when the offender should be aware of the need to comply.

**For Reckless acts a score of 10 will be added.**

**Negligent-** The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence, for example partial compliance with a schedule or work to an enforcement notice but failure to fully comply.

**For Negligent acts a score of 5 will be added.**

**Low or no culpability-** The offence committed has some fault on the part of the landlord or property agent, but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by the tenant.

**For Low Culpability acts a score of 1 will be added.**

### **2.2.b. Culpability Premiums.**

**A premium** will be added where the requirements for a property to be licensed under Parts 2 or 3 of the Housing Act 2004 and has not been complied with.

Where a landlord or person managing **fails to obtain a licence without direct contact** by the Isle of Wight Council requiring them to do so a **score of 5 will be added**.

Where a landlord or person managing **fails to obtain a licence despite direct contact** by the Isle of Wight Council requiring them to do so a **score of 10 will be added**.

### **2.3. Track Record.**

**1<sup>st</sup> offence-** no previous conviction or civil penalty imposition for the same type of offence in the previous four years irrespective of the locality to which the offence relates a score of **5 will be added**.

**2<sup>nd</sup> and subsequent offences by the same person/company-** any conviction or civil penalty imposition for the same type of offence within four years of the first offence, irrespective of the locality to which the initial offence relates a score of **15 will be added**.

**Ongoing non-compliance-** any conviction or civil penalty imposition for the same type of offence within four years of the first offence (at least 3<sup>rd</sup> occurrence, irrespective of the locality to which the initial offence relates a score of **30 will be added**.

**2.4. 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. Actual harm will be measured higher than potential harm, and the seriousness of the harm (whether actual or potential) will be accounted for based on the HHSRS operating guidance.

Hazard	Vulnerable age group (Age of occupant)
Damp and Mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide, nitrogen dioxide, sulphur dioxide	any
Lead	Under 3 years

Personal hygiene, sanitation and drainage	Under 5 years
Falls associated with baths etc.	60 or over
Falls associated with level surfaces	60 or over
Falls associated with stairs	60 or over
Falls 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	60 or over
Asbestos	Any
Biocides	Any
Radiation	60 – 64
Uncombusted fuel gas	Any
Volatile organic compounds	Any
Overcrowding, space	Any
Entry by intruders	Any
Lighting	Any
Noise	Any
Domestic hygiene, pests, refuse	Any
Food safety	Any
Water supply	Any
Explosions	Any
Structural collapse and falling elements	Any

#### **2.4.a. Scoring for Levels of Harm;**

A score of 10 will be added where the **occupiers have suffered** harm due to the defects noted. Add 10 for each occupier/visitor harmed.

#### **2.4.b. Harm Premiums;**

A score of 3 will be added for each hazard or issue noted where the **vulnerable age group are present**.

#### **3. Score and Punitive Charge Chart.**

Score	Punitive charge range £	Starting point before additions or reductions. £
1-9	1 – 250	125
10-19	251 – 500	375
20-29	501 – 1,000	750
30-39	1,001 – 2,000	1,500
40-49	2,001 – 5,000	3,500
50-59	5,001 – 10,000	7,500
60-69	10,001 – 15,000	12,500
70-79	15,001 – 20,000	17,500
80-89	20,001 – 25,000	22,500
90-100+	25,001 – 30,000	27,500

**4. Punishment of the offender. Check.** 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.

Following the initial scoring calculation at point 3 consideration will be given as to whether or not this element has been suitable met. If necessary, the final charge may be more than the charge set out in the scoring chart. If there is a decision to increase the level of the penalty charge the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

**5. Deter the offender from repeating the offence. Check.** 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 level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

Following the initial scoring calculation at point 3 and checking whether the level is a suitable punishment, consideration will be given as to whether or not this element has been suitable met. If necessary, the final charge may be more than the charge set out in the scoring chart. If there is a decision to increase the level of the penalty charge the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

**6. Deter others from committing similar offences. Check.** 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 Council 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.

Following the initial scoring calculation at point 3 and the checks for punishment and deterrence consideration will be given as to whether or not this element has been suitable met. If necessary, the final charge may be more than the charge set out in the scoring chart. If there is a decision to increase the level of the penalty charge the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

**7. Remove any financial benefit the offender may have obtained as a result of committing the offence. Check.** 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.

Following the initial scoring calculation and the checks above consideration will be given as to whether or not this element has been suitable met. In particular **the penalty charge level must not be less than it would cost to undertake any necessary works contributing to the initial offence.** The inspecting officer will evaluate the cost of rectifying the deficiencies based upon their knowledge and experience of the local building industry. A costing sheet will be produced and supported where appropriate with evidenced estimates from suppliers. For a 1<sup>st</sup> offence any penalty must be at least 25% greater than this total up to a limit of £30,000. For second and subsequent offences any penalty must be at least 50% greater than this total up to a limit of £30,000. In such circumstances the final penalty charge may be more than the charge set out in the scoring chart.

If there is a decision to increase the level of the penalty the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

## **8. REDUCTIONS**

**8.1. Level of compliance by perpetrator, their attitude in doing so and early payment-** Where a decision has been taken that a civil penalty should be issued, it is unlikely that the perpetrator could be deemed compliant. However if there is a clear behavioural change and a will to ensure future

compliance, followed by a payment within the prescribed 28 days a reduction of 25% may be attributed to the total.

**8.2. Financial hardship-** The Council will use 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. The Council may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied suitable and sufficient financial information to the contrary. The offender will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship. It is for the offender to disclose to the Council all relevant data reflecting his/her financial situation to enable the Council to determine what can reasonably be paid. Where the Council is unsatisfied with the information provided it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds.

## **9. Transparency**

The calculation will be undertaken in a transparent manner, with officer hours and costs explained along with the supporting justification for the level of punitive charge in a statement of reasons. The final amount of civil penalty will be the investigatory charge plus the punitive charge, plus any increases considered appropriate, less any amount considered reasonable in respect to the offender's ability to pay having undertaken an assessment of means.

AB/17Aug2021

Isle of Wight Council, Housing Renewal Section

**Officer civil penalty calculation form.**

Case reference;

Offender;

Address of offending property;

Notes/summary of circumstances;

Item	Score	Any reasoning
Investigative charge (4.1)	£	*explanation of investigative charge..  Officer Hours      x £      /hr  Travel costs  Any materials cost..  Any commissioned/legal costs..  Total=£
Severity (4.2.a)		
Multiple household (4.2.a.i)		
Culpability (4.2.b)		
HMO Licensing (4.2.b.i)		
Track record (4.2.c)		
Harm (4.2.d)		
Vulnerability (4.2.d.i)		
Total score=		
(4.2.e) Charge starting point	£	
Add investigative charge	£	
<b>Possible increases</b>		
Punishment check (4.2.f)		



Repeat deterrence (4.2.g)		
Deter others (4.2.h)		
Financial benefit (4.2.i)		*any penalty must be at least 25% (1 <sup>st</sup> offence or 50% 2 <sup>nd</sup> offence) greater than this total up to a limit of £30,000.
<b>Possible reductions</b>		
Compliance (4.2.j)		<i>Yes or no.</i>
Early payment (4.2.j)		<i>4.2.j Compliance must be yes to allow reduction</i>
Financial hardship (4.2.k)		
Final charge	£	
Final charge with 25/50% off	£	<i>If paid in 28 days</i>

Housing Renewal Officer

Signed

Date

Commissioner of Housing Renewal

Signed

Date

Isle of Wight Council, Housing Renewal Section

**Officer civil penalty Financial Benefit calculation form for item 4.2.i.**

Case reference;

Offender;

Address of offending property;

Notes/summary of circumstances;

Schedule Item	Cost £	Any reasoning
Total=		
Minimum penalty (Total + 25% 1 <sup>st</sup> offence or 50% 2 <sup>nd</sup> offence)=		Use this figure to make any necessary adjustments to the civil penalty charge.

Housing Renewal Officer

Signed

Date

Commissioner of Housing Renewal

Signed

Date

