



Civil Penalties Policy

<http://www.legislation.gov.uk/ukpga/2016/22/schedule/9/enacted>

<https://www.legislation.gov.uk/ukpga/2004/34/section/249A>

(HAPA 2016 S.126 Sch9 / HA 2004 S.249A Sch13A)

Maximum Penalty: £30,000

Guidance Document:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf

Community Connections (Housing Improvement) – Civil Penalty Policy

Policy document setting out how Plymouth City Council will deliver section 249A of The Housing Act 2004 (as implemented by section 126 of the Housing and Planning Act 2016) in order to issue civil penalties as alternative to prosecution

Section 126 and schedule 9 of the Housing and Planning Act 2016 came into force on the 6th April 2017.

These provisions give the local housing authority the power to issue a financial penalty for certain Housing Act 2004 offences as an alternative to prosecution.

The civil penalties option can be used for the following Housing Act 2004 offences:

- S.30 Failure to comply with Improvement Notice
- S.72 Offences in relation to Licensing of HMOs
- S.95 Offences in relation to Licensing of houses under Part 3 HA2004
- S.139(7) Offences in contravention of an overcrowding notice
- S.234 Failure to comply with Management Regulations in respect of HMOs

The council is required to have a policy in place that details when to prosecute and when to consider a civil penalty.

The council must also provide guidance on how the fine levels will be set.

The guidance document issued by DCLG provides details on the considerations that must be taken into account as part of the fine setting process. It places particular emphasis upon the severity of the offence and the landlord's previous record of offending. A scoring mechanism has been devised to reflect the considerations set out in the DCLG guidance. This scoring mechanism is set out below.



When to prosecute and when to consider a civil penalty

The same criminal standard of proof is required for a civil penalty as for prosecution.

Plymouth City Council will firstly satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In order to do so Plymouth City Council will consider its own enforcement policy, consult the Crown Prosecution Service Code for Crown Prosecutors', and work closely our legal department.

Once satisfied that there would be a realistic prospect of conviction a decision will be taken as to whether to prosecute or to issue a civil penalty. All decisions will be taken on a case-by-case basis.

The guidance document issued by DCLG suggests that prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.

It is likely that a civil penalty will be considered as the most appropriate course of action except in the aforementioned circumstances where further consideration will be taken.

A Civil Penalty notice, or notice of intent, will only be served once reviewed and authorised by a Technical Lead (Housing Improvement), Community Connections.



Income from civil penalties

The income received will be applied in accordance with any legislation or guidance published by the government. Currently this is in accordance with

<http://www.legislation.gov.uk/ukxi/2017/367/regulation/2/made>

Application of financial penalties recovered

4.—(1) A local housing authority may apply any financial penalty recovered under section 249A of the 2004 Act(1) to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

(2) Any amount recovered as a financial penalty which is not applied in accordance with paragraph (1) must be paid into the Consolidated Fund.

Enforcement

“enforcement function” means, in relation to a local housing authority(2)—

(a)

any of its functions—

(i)

under Parts 1 to 4 of the 2004 Act; or

(ii)

under Part 2 of the 2016 Act; or

(b)

where paragraph (a) does not apply, any of its functions, conferred on it as local housing authority—

(i)

connected with an investigation of, or proceedings relating to, a contravention of the law relating to housing or landlord and tenant; or

(ii)

connected with the promotion of compliance with the law relating to housing or landlord and tenant



Levels of fine to be set

The guidance document issued by DCLG provides the following considerations when determining the level of a civil penalty;

a) Severity of the offence - *The more serious the offence, the higher the penalty should be.*

In order to measure the severity of the offence the following criteria will be used;

| | |
|-------------------------------------|--|
| S.30 Improvement Notice | Nature & Type of Hazards Category 1 hazard present – 5 points Category 2 hazard present – 2 points |
| | Number of Hazards Each hazard identified is scored to give scale to multiple hazards being more severe |
| S.72 Licensing of HMOs | Number of Occupants The greater occupancy, the greater responsibility/duty of care for the Licence Holder / HMO Manager 5 to 10 Occupants – 5 points 10 + Occupants – 10 points |
| S.95 Selective LHMOs | Number of Occupants The greater occupancy, the greater responsibility/duty of care for the LH/HMOM. 5 to 10 Occupants – 5 points 10 + Occupants – 10 points |
| S.139(7) Overcrowding Notice | Nature & Extent of Occupancy Breach Is the occupancy breach ‘intentional’ (i.e. by landlord actions) or ‘unintentional’ (i.e. by tenant actions). The % of over occupancy is taken into account in terms of the severity of the offence. Please see appendix 1A. |
| S.234 Management Regulations | Location of Breach (communal parts/unit of accommodation) Breach in communal parts – 5 points Breach in unit of accommodation – 2 points (Max 7 points) |

Improvement Notices only:

Category 1 Hazards – Serious - A serious and substantial risk to the health and safety of the occupiers, and/or community, with potentially life threatening results. Housing defects posing such a risk may be associated with hazards assessed under the Housing Health & Safety Rating System.

For each Category 1 Hazard a score of 5 will be added.



Category 2 Hazards – Less Serious – A risk of injury or disease to the occupiers potentially resulting in medical treatment. Housing defects posing such a risk may be associated with hazards assessed under the Housing Health & Safety Rating System.

For each Category 2 Hazard a score of 2 will be added.

In relation to Improvement Notice Offences only - Where offence is within a House of Multiple Occupancy (HMO).

A one-off premium of 10 points will be added where any hazard or issue would affect more than 1 household i.e. whole building issues or common parts issues in HMO's. This is to ensure that the scope of the hazard or issue is considered in addition to its ability to harm.



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.

In order to assess the culpability of the perpetrator the following factors will be considered;

| | |
|--|--|
| Portfolio of Properties | How many properties does the offender have control of as Landlord / Licence Holder / HMO Manager |
| Experience | How many years' experience does the offender have in letting properties? The longer, the more culpable. |
| Accreditation | Has the offender undertaken the landlord's accreditation scheme? If yes, he/she is informed. |
| Affiliation | Is the offender a member of a Landlord's Association? If yes – they have had access to guidance and support. |
| Rogue Landlord Database | Is the offender listed on the Rogue Landlord Database? If yes, then speak with other LA/s for more info and update with new details. |
| LA Guidance / Contact pre-offence | Has the offender received previous advice, guidance or notification from the LA in respect of this offence? |

In order to measure the culpability of the perpetrator the following criteria will be used;

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 regulations.

For Deliberate acts a score of 20 will be added

Reckless– An actual foresight of, 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 regulations.

For Reckless acts a score of 15 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 of work to an enforcement notice but failure to fully comply with all schedule items.

For Negligent acts a score of 10 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 tenant negligence.

For Low culpability acts a score of 5 will be added

A premium will be added where the requirement to licence a property under Parts 2 or 3 of the Housing Act 2004 has not been complied with.

Where a landlord or person managing fails to obtain a licence without direct contact by Plymouth City 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 Plymouth City Council requiring them to do so, a score of 15 will be added.



Track record

In order to assess the culpability of the perpetrator the following factors will be considered;

| | |
|--|---|
| Penalised or Convicted of the Same Offence Previously | A repeat of the same offence highlights a much greater culpability as the offender is aware of their obligations. |
| Penalised or Convicted of Other Offences Previously | A history of other offences can highlight an increased culpability as the offender is aware that they have obligations. |

In order to measure the culpability of the perpetrator the following criteria will be used;

1st offence – no previous conviction or civil penalty imposition for offences in relation to this policy in the previous four years irrespective of the locality to which the offence relates.

For 1st offences a score of 5 will be added

2nd subsequent offence by same person/company – any conviction or civil penalty imposition for offences in relation to this policy, within four years of the 1st offence, irrespective of the locality to which the initial offence relates.

For 2nd offences a score of 15 will be added

Ongoing non-compliance - any conviction or civil penalty for offences in relation to this, within four years of the previous instance (at least 3rd occurrence), irrespective of the locality to which the initial offence relates.

For ongoing offences a score of 30 will be added



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.*

The Authority will consider the following factors in its decision-making process:

| | |
|--|---|
| <p>Harm Outcome (Actual Harm has occurred) = 10 Points</p> | <p>Acknowledges both Physical and Mental harm caused or in some cases perceived by the tenant. Where applicable HHSRS assessment outcomes should be taken into consideration.</p> |
| <p>Vulnerable to Harm Outcome (Vulnerability identified but no Actual Harm has occurred) = 5 Points</p> | <p>Highlights an awareness of the vulnerable age group per hazard and further consideration given to an individual's propensity to harm on a case by case basis, including possible vulnerabilities. Where applicable HHSRS assessment outcomes should be taken into consideration.</p> |
| <p>Potential for Harm Outcome (Hazard/s exists but no Vulnerability identified, or, Actual Harm has occurred) = 2 Points</p> | <p>Acknowledges that hazard/s remain present in the property and that for the occupants there is the potential for harm if not resolved. This is irrespective of vulnerabilities.</p> |



The severity of harm calculation needs to reflect the types of issues encountered, however a premium score will be added for actual harm having occurred and the vulnerability of the tenant as set out in the Housing Health and Safety Rating System and in the table below;

| 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 | 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 |

Harm Occurred: A score of 10 will be added where the occupier/s have suffered harm due to the defects/hazards noted.

Harm Vulnerability: A score of 5 will be added where the occupiers have not suffered harm but are in the vulnerable age group to the hazard noted.

Harm Potential: A score of 2 will be added where the vulnerable age group are not present.



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.*

The Authority will consider the following factors in its decision-making process:

| | |
|--------------------------------|---|
| Severity of the Offence | The punishment should reflect the severity of the offence as previously determined. |
| Economic Impact | The punishment should have a sufficient economic impact on the offender. To help determine this consideration may be given to; Credit Checks, Companies House, Portfolio Income & Equity. |
| Risks | Could the offender continue to operate? Is there a risk of homelessness for the tenants? |

Following the initial scoring calculation, consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

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 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.*

The Authority will consider the following factors in its decision-making process:

| | |
|-----------------------------|--|
| Individual Deterrent | This is a review stage of the above considerations to determine if the level of penalty is appropriate to deter further occurrences? |
|-----------------------------|--|

Following the initial scoring calculation, consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.



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 Authority will consider the following factors in its decision-making process:

| | |
|------------------------|--|
| Wider Deterrent | This is a review stage of the above considerations to determine if the level of penalty is appropriate to deter others, in a similar set of circumstances, from committing offences? |
|------------------------|--|

Following the initial scoring calculation, consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

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.*

Following the initial scoring calculation, a projection of offender costs to resolve the hazard or issue identified will be produced.

An estimation of any financial benefit arising from the offence(s) will be produced.

Consideration will then be given to the initial scoring calculation as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

Consideration will be given to the use of a Rent Repayment Order as alternative or in addition to the civil penalty.



Reductions

Level of compliance by perpetrator, their attitude in doing so, and early payment – Where the decision has been taken that a prosecution is appropriate, or subsequently a civil penalty notice should be issued, it is unlikely that the perpetrator could be deemed as 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 10% may be attributed to the total.

Financial hardship - Local housing authorities should make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty. The perpetrator will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship in those representations. It will be for the perpetrator to provide sufficient documented evidence of income when relying upon such representations. The Council reserves the right to request further information to support any financial claim, and where this is incomplete, appears to be inaccurate or is not sufficiently evidenced may determine that the representation should not be considered. It is possible that financial hardship could be a factor when a perpetrator makes representations, particularly for lesser portfolio landlords, but this is not an easily predictable measure and needs to be judged on a case by case basis.



Scoring Chart

The scoring chart below is a reference index for the policy, as set out in the text above. Each offence is attributed points scoring based on the factors of; 'severity', are hazards exposed to 'multiple households', what is the level of 'culpability' for the perpetrator, is the property a 'licensable HMO', what is the perpetrators 'track record', what level of 'harm' is present, and what level of 'vulnerability' is present. Once the overall score has been calculated, this table is referred to for an 'Indicative Penalty Charge'. The officer will then give further consideration to the factors of; 'suitability of punishment', is it a 'deterrent to the offender' (and/or others) and does it suitably 'remove any financial benefit' received from the offence.

| Score | Indicative Penalty Charge |
|--------------|----------------------------------|
| 14-20 | £2,000 |
| 21-30 | £3,000 |
| 31-40 | £5,000 |
| 41-50 | £7,500 |
| 51-60 | £10,000 |
| 61-70 | £15,000 |
| 71-80 | £20,000 |
| 81-90 | £25,000 |
| 91-100+ | £30,000 |

We have produced a few example scenarios for review, and these are set out on the following pages.



Example Situations

Scenario 1 – Failure to comply with an Improvement Notice

This person has failed to comply with an improvement notice containing 4 hazards; Excess Cold, Damp and Mould, Falls on Stairs and Fire (2 x Cat 1 hazards and 2 x Cat 2 hazards). They were also previously prosecuted for failing to comply with an improvement notice 3 years ago at a different address. The occupant is a 67 year old lady who has recently been in hospital with a broken hip suffered from a fall within the home.

Scoring – Scenario 1

| <u>Factor</u> | <u>Description</u> | <u>Item Total</u> | <u>Running Total</u> |
|--|--|--|----------------------|
| Severity | 1 x Cat 1 Hazard (EC) 1 x Cat 1 Hazard (FOS) 1 x Cat 2 Hazard (D&M) 1 x Cat 2 Hazard (Fire) | 5 points 5 points 2 Points 2 Points | 14 Points |
| Multiple Households (Improvement Notices only) | N/A – Scenario 1 is a Single Family Dwelling | Nil | 14 Points |
| Culpability | Deliberate – as perpetrator failed to comply with the notice | 20 points | 34 Points |
| Licensable HMO | N/A – Scenario 1 is a Single Family Dwelling | Nil | 34 Points |
| Track Record | 2 nd offence in 4 years | 15 points | 49 Points |
| Harm | Broken Hip (relative to the hazards of excess cold / falls on stairs) | 10 points | 59 Points |
| Vulnerability | Yes – occupant/s are in the vulnerable age group for the hazards of EC/FOS/FS | 5 points | 64 Points |
| Scenario 1 - Total Points Accumulation | | | 64 Points |
| Scenario 1 – Level Of Associated Penalty Charge (for further consideration and deliberation) | | | £15,000 |



Following the initial scoring, consideration would be given to the costs of undertaking works that were assessed at £10,000 (GCH - £6000, Banisters/balustrades - £1500, Damp proofing & repair works - £2000, Servicing and repair of faults to Fire System - £500). This value is a consideration of the financial benefits the perpetrator had by undertaking the offence. The total financial benefit of £10,000 is approximately 67% of the value of the penalty following the initial scoring. It is reasonable for the officer to consider if the fine of indicative fine of £15,000 is suitable.

In this instance, we will assume that the officer does believe the penalty charge of £15,000 is sufficient. In all instances the officer will justify this with reasoning in an Enforcement Action Proposal for authorising.

In some instances the penalty may be varied in accordance with this policy.

A Civil Penalty notice, or notice of intent, will only be served once reviewed and authorised by a Technical Lead (Housing Improvement), Community Connections.

In addition to the above, Plymouth City Council could give consideration to further enforcement action available through the Housing and Planning Act 2016.



Scenario 2 – Failure to comply with an Improvement Notice in a HMO

This person has failed to comply with an improvement notice containing 4 hazards; Excess Cold, Damp and Mould, Falls on Stairs and Fire (2 x Cat 1 hazards and 2 x Cat 2 hazards). It is a licensed HMO with 8 people. They were also previously prosecuted for failing to comply with an improvement notice 3 years ago at a different address. One occupant is a 67 year old lady who has recently been in hospital with a broken hip suffered from a fall within the HMO.

Scoring – Scenario 2

| <u>Factor</u> | <u>Description</u> | <u>Item Total</u> | <u>Running Total</u> |
|---|--|--|----------------------|
| Severity | 1 x Cat 1 Hazard (EC) 1 x Cat 1 Hazard (FOS) 1 x Cat 2 Hazard (D&M) 1 x Cat 2 Hazard (Fire) | 5 points 5 points 2 Points 2 Points | 14 Points |
| Multiple Households (Improvement Notices only) | Property is a HMO with 8 persons | 10 Points | 24 Points |
| Culpability | Deliberate – as perpetrator failed to comply with the notice | 20 points | 44 Points |
| Licensable HMO | Licensed | Nil | 44 Points |
| Track Record | 2 nd offence in 4 years | 15 points | 59 Points |
| Harm | Broken Hip (relative to the hazards of excess cold / falls on stairs) | 10 points | 69 Points |
| Vulnerability | Yes – occupant/s are in the vulnerable age group for the hazards of EC/FOS/FS | 5 points | 74 Points |
| Scenario 2 - Total Points Accumulation | | | 74 Points |
| Scenario 2 – Level Of Associated Penalty Charge (for further consideration and deliberation) | | | £20,000 |



Following the initial scoring, consideration would be given to the costs of undertaking works that were assessed at £10,000 (GCH - £6000, Banisters/balustrades - £1500, Damp proofing & repair works - £2000, Servicing and repair of faults to Fire System - £500). This value is a consideration of the financial benefits the perpetrator had by undertaking the offence. The total financial benefit of £10,000 is 50% of the value of the penalty following the initial scoring. It is reasonable for the officer to consider if the indicative fine of £20,000 is suitable.

In this instance, we will assume that the officer does believe the penalty charge of £20,000 is sufficient. In all instances the officer will justify this with reasoning in an Enforcement Action Proposal for authorising.

In some instances the penalty may be varied in accordance with this policy.

A Civil Penalty notice, or notice of intent, will only be served once reviewed and authorised by a Technical Lead (Housing Improvement), Community Connections.

In addition to the above, Plymouth City Council could give consideration to further enforcement action available through the Housing and Planning Act 2016.



Scenario 3 – Failure to licence a Licensable HMO – No other offences

This person has failed to licence a licensable HMO. They were written to following an initial visit advising that a licence was necessary. The property needs some attention however, no notices have been served and it is not considered that the HMO management regulations have been breached. There is no history of non-compliance in the past.

| <u>Factor</u> | <u>Description</u> | <u>Item Total</u> | <u>Running Total</u> |
|---|--|--------------------------|-----------------------------|
| Severity | Failure to licence a licensable HMO for 8 persons. | 5 points | 5 Points |
| Multiple Households (Improvement Notices only) | N/A – No hazard/issue affecting health & wellbeing in this case | Nil | 5 Points |
| Culpability | Reckless – PCC advised HMO licence is required | 15 points | 20 Points |
| Licensable HMO | Licensable HMO for 8 persons in 8 households. A licence has not been applied for, despite direct contact on this matter. | 15 points | 35 Points |
| Track Record | 1 st Offence | 5 Points | 40 Points |
| Harm | N/A property is in good condition and no HHSRS concerns raised | Nil | 40 Points |
| Vulnerability | N/A property is in good condition and no HHSRS concerns raised | Nil | 40 Points |
| Scenario 3 - Total Points Accumulation | | | 40 Points |
| Scenario 3 – Level Of Associated Penalty Charge (for further consideration and deliberation) | | | £5,000 |



Following the initial scoring, consideration would be given to the costs of the avoided £800 HMO licence fee as a financial benefit the perpetrator had by undertaking the offence. The total penalty charge would then be assessed as £5,800. The total financial benefit of £800 is approximately 16% of the value of the penalty following the initial scoring. It is reasonable for the officer to consider if the fine of £5,000 is then a real deterrent to this or other offenders.

In this instance, we will assume that the officer does believe the penalty charge of £5,000 is sufficient given that it is a first offence and the property was in good condition. In this instance the officer will justify the charge by detailing reasons in an Enforcement Action Proposal for authorising.

In some instances the penalty may be varied in accordance with this policy.

A Civil Penalty notice, or notice of intent, will only be served once reviewed and authorised by a Technical Lead (Housing Improvement), Community Connections

In addition to the above, Plymouth City Council could give consideration to further enforcement action available through the Housing and Planning Act 2016.



Scenario 4 – Failure to licence a Licensable HMO – With Breaches of Management Regulations

This person has failed to licence a licensable HMO. They were written to following an initial visit advising that a licence was necessary. The property needs some attention and management regulation breaches have been identified. There is no history of non-compliance in the past.

| <u>Factor</u> | <u>Description</u> | <u>Item Total</u> | <u>Running Total</u> |
|--|--|--------------------------|-----------------------------|
| Severity | Failure to licence a licensable HMO for 8 persons. | 5 points | 12 Points |
| | Breaches of HMO Management Regulations identified in common parts and unit of accommodation | 7 points | |
| Multiple Households (Improvement Notices only) | N/A – No hazard/issue affecting health & wellbeing in this case | Nil | 12 Points |
| Culpability | Reckless – PCC advised HMO licence is required and regulations have been breached. | 15 points | 27 Points |
| Licensable HMO | Licensable HMO for 8 persons in 8 households. A licence has not been applied for, despite direct contact on this matter. | 15 points | 42 Points |
| Track Record | 1 st Offence | 5 Points | 47 Points |
| Harm | No actual harm has been caused, however there is the potential for harm in relation to breaches of the management regulations. | 2 Points | 49 Points |
| Vulnerability | N/A - no HHSRS concerns raised | Nil | 49 Points |
| Scenario 4 - Total Points Accumulation | | | 49 Points |
| Scenario 4 – Level Of Associated Penalty Charge | | | £7,500 |

(for further consideration and deliberation)



Following the initial scoring, consideration would be given to the costs of undertaking works to remove breaches of the management regulations that were assessed at £3,500 (Repair to internal structure and finishes). This value and the avoided £800 HMO licence fee are considerations of the financial benefit the perpetrator had by undertaking the offences. The total financial benefit of £4,300 is approximately 57% of the value of the penalty following the initial scoring. It is reasonable for the officer to consider if the fine of £7,500 is then a real deterrent to this or other offenders.

In this instance, we will assume that the officer does believe the penalty charge of £7,500 is sufficient given that it is a first offence. In all instances the officer will justify the charge by detailing reasons in an Enforcement Action Proposal for authorising.

In some instances the penalty may be varied in accordance with this policy.

A Civil Penalty notice, or notice of intent, will only be served once reviewed and authorised by a Technical Lead (Housing Improvement), Community Connections

In addition to the above, Plymouth City Council could give consideration to further enforcement action available through the Housing and Planning Act 2016.



Scenario 5 – Offences in contravention to an Overcrowding Notice

This person has a non-licensable HMO. He was written to following an initial visit where the occupancy level was identified as in excess of what would normally be permitted. The offender was issued with an overcrowding notice. The property needs some attention; however, there is no improvement notice served or management regulation breaches identified. There is a history of non-compliance in the past for overcrowding of an HMO in connection with another property.

| <u>Factor</u> | <u>Description</u> | <u>Item Total</u> | <u>Running Total</u> |
|---|---|--------------------------|-----------------------------|
| Severity | Intentional overcrowding of an HMO (i.e. not as a result of tenants actions) – 175% Occ (refer to Appendix 1) | 5 points | 5 Points |
| Multiple Households (Improvement Notices only) | N/A – no improvement notice served | Nil | 5 Points |
| Culpability | Deliberate – PCC served OC notice but no actions have been taken to comply. | 20 points | 25 Points |
| Licensable HMO | N/A – Scenario 5 is a non-licensable HMO | Nil | 25 Points |
| Track Record | 2 nd Offence | 15 Points | 40 Points |
| Harm | N/A property is in good condition and no HHSRS concerns raised | Nil | 40 Points |
| Vulnerability | N/A property is in good condition and no HHSRS concerns raised | Nil | 40 Points |
| Scenario 5 - Total Points Accumulation | | | 40 Points |
| Scenario 5 – Level Of Associated Penalty Charge (for further consideration and deliberation) | | | £5,000 |



Following the initial scoring, we can see that there were no cost benefits achieved. The officer would then give consideration to the financial benefit received by undertaking the offence. This benefit would include the additional rents received for all persons in residence above the suitable occupancy level. In this example the property is suitable for 4 person occupation but is currently occupied by 7 persons. The rental income in relation to the 3 additional persons, above what is suitable for the premises, would be considered as a financial benefit received as a result of the offence.

After taking the above factors into account, consideration will then be given to the initial scoring calculation as to whether or not the 'removing any financial benefit' element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

In this instance, we will assume that the officer does believe the penalty charge of £5,000 is sufficient. In all instances the officer will justify the charge by detailing reasons in an Enforcement Action Proposal for authorising.

In some instances the penalty may be varied in accordance with this policy.

A Civil Penalty notice, or notice of intent, will only be served once reviewed and authorised by a Technical Lead (Housing Improvement), Community Connections

In addition to the above, Plymouth City Council could give consideration to further enforcement action available through the Housing and Planning Act 2016.



Scenario 6 – Failure to comply with Management Regulations in HMOs

This person has a non-licensable HMO. They were written to following an initial visit where a number of Management Regulation breaches were identified. The offender was given an informal period of time to resolve the breaches but only partial works have been undertaken. There is no history of non-compliance.

| <u>Factor</u> | <u>Description</u> | <u>Item Total</u> | <u>Running Total</u> |
|--|--|--------------------------|-----------------------------|
| Severity | Breaches of HMO Management Regulations identified in common parts and unit of accommodation | 7 points | 7 points |
| Multiple Households (Improvement Notices only) | N/A – no improvement notice served | Nil | 7 Points |
| Culpability | Negligent – PCC advised of HMO regulation breaches and requirements to undertake works. | 10 points | 17 Points |
| Licensable HMO | N/A the property is 2-storeys and occupied by 4 persons only. | Nil | 17 Points |
| Track Record | 1 st Offence | 5 Points | 22 Points |
| Harm | No actual harm has been caused, however there is the potential for harm in relation to breaches of the management regulations. | 2 Points | 24 Points |
| Vulnerability | N/A - no HHSRS concerns raised | Nil | 24 Points |
| Scenario 6 - Total Points Accumulation | | | 24 Points |
| Scenario 6 – Level Of Associated Penalty Charge (for further consideration and deliberation) | | | £3,000 |

Following the initial scoring, consideration would be given to the costs of undertaking works to remove breaches of the management regulations that were assessed at £1,500 (Repair to internal structure and finishes). This value represents the financial benefit the perpetrator

had by undertaking the offences. The total financial benefit of £1,500 is 50% of the value of the penalty following the initial scoring.



In this instance, we will assume that the officer does believe the penalty charge of £3,000 is sufficient. In all instances the officer will need to justify this, detailing those reasons in an Enforcement Action Proposal for authorising.

In some instances the penalty may be varied in accordance with this policy.

A Civil Penalty notice, or notice of intent, will only be served once reviewed and authorised by a Technical Lead (Housing Improvement), Community Connections

In addition to the above, Plymouth City Council could give consideration to further enforcement action available through the Housing and Planning Act 2016.



Appendix 1A – Occupancy Severity Table

(Occupancy % = Points Scored)

| <u>Intended 4 persons</u> | <u>Intended 5 persons</u> | <u>Intended 8 persons</u> | <u>Intended 10 persons</u> |
|-------------------------------|-------------------------------|-------------------------------|--------------------------------|
| 5 = 125% | 6 = 120% | 9 = 112.5% | 11 = 110% |
| 6 = 150% | 7 = 140% | 10 = 125% | 12 = 120% |
| 7 = 175% | 8 = 160% | 11 = 137.5% | 13 = 130% |
| 8 = 200% | 9 = 180% | 12 = 150% | 14 = 140% |
| | 10 = 200% | 13 = 162.5% | 15 = 150% |
| | | 14 = 175% | 16 = 160% |
| | | 15 = 187.5% | 17 = 170% |
| | | 16 = 200% | 18 = 180% |
| | | | 19 = 190% |
| | | | 20 = 200% |
| | | | |
| | 2 points will be applied | 5 points will be applied | 10 points will be applied |