

Borough Council of
**King's Lynn &
West Norfolk**



Housing Standards

Financial penalties under the Housing Act 2004 and Housing and Planning Act 2016

Commented [GJH1]: New format and new contents page

Borough Council of King's
Lynn & West Norfolk
King's Court
Chapel Street
King's Lynn
Norfolk
PE30 1EX



Contents

Introduction	3
Financial penalties as an alternative to prosecution	3
Relevant housing offences	3
Breaches of banning orders	3
Prosecution or financial penalty	4
Burden of proof	4
Statutory guidance	4
Commencement	4
When a financial penalty is to be imposed	5
Crackdown on rogue landlords	5
Determining an appropriate sanction	5
Determining the starting point for a financial penalty	6
Severity of the offence	6
Culpability	6
Very High	6
High	6
Medium	6
Low	7
Track record	7
Significant	7
Some	7
None or negligible	8
Portfolio size	8
Risk of harm	8
Level 1	9
Level 2	9
Level 3	9
Level 4	9
Table of Financial Penalties	9
Determining whether adjustment of the financial penalty is appropriate	11
Review	11

Hardship (Landlord)	11
Hardship (Tenant)	11
Previous offences	11
Scale of exposure	11
Actual harm	12
Adjustment range	12
Decision making	12
Right to make representations	12
Notice of Intent	12
Written representations	13
Financial position	13
False or misleading information	13
Review of representations	13
Reduction of financial penalty	13
Decision making	14
Final Notice and right of appeal	14
Contents of Final Notice	14
Appeals	14
Reduction for early acceptance of guilt	15
Public interest	15
Demonstrating early acceptance of guilt	15
Unpaid financial penalties	16
County Court	16
Enforcement	16
Court bailiffs	16
Charging order - Order of sale	16
Attachment to earnings order	16
Multiple offences	16
General principle	16
Determining a just and proportionate punishment	17
Reduction of financial penalty	17
Decision not to impose a financial penalty	17

Rent Repayment Orders	17
Banning Orders	17
Help and advice	19
Making a complaint	20

Introduction

Financial penalties as an alternative to prosecution

Commented [GJH2]: New Introduction

Relevant housing offences

1. Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“the 2016 Act”) amended the Housing Act 2004 (“the 2004 Act”) to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences.
2. Under section 249A of the 2004 Act, a local housing authority may now impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person’s conduct amounts to a “relevant housing offence”.
3. The relevant housing offences are offences under the 2004 Act, namely:
 - Failing to comply with an Improvement Notice (section 30);
 - Failing to licence a house in multiple occupation (“HMO”) under Part 2 (section 72(1));
 - Knowingly permitting the over-occupation of an HMO licensed under Part 2 (section 72(2));
 - Failing to comply with the condition of an HMO licence issued under Part 2 (section 72(3));
 - Failing to licence a house subject to selective licensing under Part 3 (section 95(1));
 - Failing to comply with the condition of a selective licence issued under Part 3 (section 95(2));
 - Failing to comply with an overcrowding notice in respect of a non-licensable HMO (section 139(7)); and
 - Failing to comply with HMO management regulations (section 234(3)).
4. A person who commits any of the above-mentioned offences without reasonable excuse is liable on summary conviction to a fine of any amount in the Magistrates’ Court. A financial penalty imposed by a local housing authority as an alternative must not exceed £30,000.

Breaches of banning orders

Commented [GJH3]: New reference

5. The 2016 Act also introduced banning orders under Chapter 2 of Part 2. A local housing authority may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a “banning order offence”. A banning order offence is an offence set out in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 Acts of Parliament are listed, including those listed above as relevant housing offences.
6. A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:
 - Letting housing;
 - Engaging in letting agency work;
 - Engaging in property management work.

7. A person who breaches a banning order commits an offence under section 21(1) of the 2016 Act and is liable on summary conviction to imprisonment, or to a fine, or to both. However, a local housing authority may instead impose a financial penalty under section 23 of the 2016 Act of an amount not exceeding £30,000.

Prosecution or financial penalty

Commented [GJH4]: New for clarity

8. A local housing authority cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate.

Burden of proof

9. The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, a local housing authority must therefore be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

Statutory guidance

Commented [GJH5]: New clarification with regards Guidance

10. In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the 2016 Act. The Ministry of Housing, Communities & Local Government issued such statutory guidance in April 2018, namely: *Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*.
11. The guidance requires local housing authorities to develop and document a policy which sets out:
 - When it should prosecute and when it should impose a financial penalty; and
 - The level of financial penalty it should impose in each case.
12. The guidance states that local housing authorities should consider the following factors to help ensure that any financial penalty is set at an appropriate level:
 - Severity of the offence;
 - Culpability and track record of the offender;
 - The harm caused to the tenant (actual and potential);
 - Punishment of the offender (the penalty should be proportionate to the offence and have a real economic impact);
 - Deter the offender from repeating the offence;
 - Deter others from committing similar offences;
 - Remove any financial benefit the offender may have obtained as a result of committing the offence.
13. This policy sets out how The Borough Council of King's Lynn & West Norfolk ("the council") will impose financial penalties in accordance with relevant legislation and statutory guidance.

Commencement

14. This policy takes effect from [XXXXXXX] and applies to all relevant offences ("relevant housing offences" and breaches of banning orders) committed on or after this date.

Commented [GJH6]: Date to be inserted to reflect Council adoption

When a financial penalty is to be imposed

Crackdown on rogue landlords

Commented [GJH7]: New explanation

15. The Government announced the introduction of financial penalties for relevant housing offences with a press release entitled: "*Tougher measures to target rogue landlords - New rules will help crackdown on rogue landlords that flout the rules and improve safety and affordability for renters.*" The Government is obviously keen to see more enforcement action taken against the small minority of rogue landlords who neglect their responsibilities.
16. Significantly, these new powers allow local housing authorities to retain the income received from financial penalties to fund private sector housing enforcement activities. This is clearly intended to help local housing authorities take more enforcement action.
17. The council will use the new powers robustly whenever it is appropriate to do so.

Determining an appropriate sanction

Commented [GJH8]: New explanation as to appropriateness of sanction

18. Each offence will be assessed on a case-by-case basis. However, the starting position is that the council will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.
19. The council may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with the policy set out below may not constitute a sanction of sufficient severity in relation to some offences, as the policy has prescribed ranges and is further restricted by the statutory maximum of £30,000. If the council is of the opinion that an offence is of such serious nature that it warrants a more significant financial sanction than that which could be imposed by this policy, it will normally seek to prosecute the offender(s).
20. The breach of a banning order under the 2016 Act is a serious offence, and the council will give careful consideration to the option of prosecution in such cases, as the courts have the power to impose a prison sentence as a punishment.
21. Prosecution may also be an appropriate course of action when an offender has committed the same offence on more than one occasion in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a more significant deterrent in some circumstances.
22. Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by the council and local media. Such publicity in respect of an offender may be in the public interest in certain circumstances. Naming and shaming also helps to deter others from committing similar offences. If an offender is subject to a financial penalty, their personal information will not be available in the public domain.
23. There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, the council will carefully review the merits of prosecution for every offence before making a final decision as to an appropriate sanction.

Determining the starting point for a financial penalty

Severity of the offence

Commented [GJH9]: New wording to provide clarity as to how the penalty will be calculated

24. A financial penalty may be of any amount up to the statutory maximum of £30,000. However, local housing authorities are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.
25. Having due regard to the statutory guidance published by Government, the council has developed the Table of Financial Penalties set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following factors:
- Culpability;
 - Track record;
 - Portfolio size;
 - Risk of harm
26. The following paragraphs set out how each determinant is assessed.

Culpability

27. Culpability is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium. There are four culpability categories, namely:
- Very High;
 - High;
 - Medium;
 - Low

Very High

28. This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium.

High

29. This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take appropriate and/or timely action. This category is subject to a 80% culpability premium.

Medium

30. This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium.

Low

31. This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This category is subject to a 40% culpability premium.

Track record

32. The council would expect a good landlord or agent to have very little contact with the council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition.
33. The second step in determining the amount of financial penalty relates to the offender's track record. A historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.
34. The council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:
- Any previous convictions for housing related offences;
 - Whether previously subject to a financial penalty for a housing related contravention; • Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
 - The number of genuine housing condition complaints received in respect of properties associated with the offender.
35. Following the review, the offender's track record will be classed as one of the following categories:
- Significant;
 - Some;
 - None or negligible.

Significant

36. Where there is evidence of multiple enforcement interventions by the council's Private Sector Housing Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

Some

37. This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

Commented [GJH10]: More detailed explanation as to how the track record of a landlord is important to consider

None or negligible

38. This category will be used if, following a review of the council's records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. The council may also exercise its discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales.
39. The descriptor "Negligible" has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in Thanet, this category will be used.

Portfolio size

Commented [GJH11]: New factor to consider

40. The size of an offender's portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such the penalty should have regard to their ability to pay.
41. Taking into account the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.
42. The third step in determining the amount of financial penalty requires the council to allocate a portfolio size. There are four size categories which relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories are:
- One unit of accommodation;
 - Two to four units of accommodation;
 - Five to 19 units of accommodation;
 - 20 or more units of accommodation.
43. A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a combination of 3 rooms or bedsits (including common parts) within a house in multiple occupation ("HMO").
44. Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.
45. The council will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment.
46. If the council cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

Risk of harm

Commented [GJH12]: A clearer explanation as to the how to assess harms

48. The fourth step in determining the amount of financial penalty concerns the risk of harm associated with the offence. The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence.

49. The council will make an assessment of the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. The offence will be placed into one of the following four categories:

- Level 1;
- Level 2;
- Level 3; • Level 4.

50. To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high.

Level 1

51. This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories.

52. Any offence associated with the operation of an unlicensed premises under the HMO and selective licensing regimes will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.

Level 2

53. The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

Level 3

54. The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.

Level 4

55. The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

Table of Financial Penalties

56. Having made the four-step assessment described above, the council will determine the starting point for the financial penalty using the Table of Financial Penalties set out on the next page.

Commented [GJH13]: Complete new table and calculation matrix, clearer for officers, landlords and RPT's to understand

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,500
		20 +	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500

		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20 +	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,500
		20 +	£12,500	£15,000	£17,500	£25,000
High (80% Premium)	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20 +	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20 +	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20 +	£10,000	£12,000	£14,000	£20,000
Medium (60% Premium)	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20 +	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20 +	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500
		20 +	£7,500	£9,000	£10,500	£15,000
Low (40% Premium)	Significant	1	£3,000	£4,000	£5,000	£8,000
		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20 +	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20 +	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20 +	£5,000	£6,000	£7,000	£10,000

Determining whether adjustment of the financial penalty is appropriate

Commented [GJH14]: A new section to provide clarity for officers when considering adjustments

Review

57. The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, the council will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be taken into account when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties.
58. Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and the council may take into account any factor deemed to be relevant.

Hardship (Landlord)

59. If at this stage of the process, the council is aware of the offender's personal situation and financial position, and is of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.

Hardship (Tenant)

60. If, owing to the imposition of a financial penalty on a landlord, the tenant will - through no fault of their own - experience hardship, the council may consider reducing the amount of financial penalty, but only in exceptional circumstances.

Previous offences

61. While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences require a more robust approach to punishment.
62. For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a *Significant* track record category is already in use for a certain offender, repeated offences where the *Culpability* is very high would be restricted owing to the *Risk of Harm* categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, the council may consider increasing the amount of financial penalty.

Scale of exposure

63. The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, it does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons exposed is higher than average, the council may consider increasing the amount of financial penalty.
64. A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

Actual harm

65. If actual harm has occurred, the council may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely the council will seek to review the financial penalty upwards.

Adjustment range

66. The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500.
67. The council will not, under any circumstances, vary the financial penalty by more than 50%, and is restricted by the statutory maximum of £30,000.

Decision making

68. If the council decides to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, it will notify the offender of the reasons for that decision.
69. To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by an Assistant Director. In the first instance, the variation will be proposed by the Housing Standards Manager. The proposal will be reviewed by a relevant Assistant Director, or an officer of similar or higher seniority, and a final decision made by the Assistant Director.

Right to make representations

Commented [GJH15]: New wording to make it clearer for landlords

Notice of Intent

70. Before imposing a financial penalty, the council must first give the offender notice of its intention to impose such a penalty. This type of notice is known as a "Notice of Intent".
71. The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased.
72. For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, the council may at any time while the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, the council will still have the option to serve a Notice of Intent, but if it chooses to do so, it must serve the Notice of Intent within six months of the date the valid licence application was made.
73. The Notice of Intent must set out:
- The amount of the proposed financial penalty;
 - The reasons for proposing to impose the financial penalty, and
 - Information about the right to make representations.

Written representations

74. Any person served with a Notice of Intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served.
75. Written representations may be made in respect of any matter.

Financial position

76. The offender may wish to submit information as to their financial position. If the council was aware of the financial position of the offender before serving the Notice of Intent, the council may have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make the council aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty.

False or misleading information

77. It is important to note that any person who supplies information to the council that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates' Court to an unlimited fine.

Review of representations

78. The council will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but the council will seek to make a decision as to its proposed course of action as soon as possible.
79. The council will take one of the following courses of action:
- Withdraw the proposal to impose a financial penalty;
 - Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
 - Impose the financial penalty proposed in the Notice of Intent;
 - Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.
80. If the council decides to withdraw the proposal to impose a financial penalty, it will confirm its decision in writing. If the council decides to impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, it will serve a Final Notice.
81. If the offender has provided written representations that increase the severity of the offence committed, the council may seek to impose a higher financial penalty. If the council decides to take that course of action, it will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

Reduction of financial penalty

82. A reduction in the amount of financial penalty to be imposed may arise from the council altering the starting point on the Table of Financial Penalties.

83. Whether the council decides to alter the starting point or not following any written representations, the council will not reduce the financial penalty by more than 50% of the finalised starting point.

84. If the council decides not to alter the starting point after its review of any written representations received, and it has already used its discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

Decision making

85. To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager of the council. In the first instance, the imposition of a financial penalty will be proposed by the Housing Standards Manager, who will provide an assessment of any written representations received. The proposal will be reviewed or amended and authorised by the relevant Assistant Director, or an officer of similar or higher seniority.

Final Notice and right of appeal

Commented [GJH16]: Again, new wording so that landlords can be clear as to the process

Contents of Final Notice

86. If the council decides to impose a financial penalty following its review of any written representations received, it will serve a "Final Notice" on the offender.

87. The Final Notice will set out:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

88. The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date the Final Notice was served.

Appeals

89. A person on whom a Final Notice has been served may appeal to the First-tier Tribunal against:

- The decision to impose the financial penalty; or
- The amount of the financial penalty.

90. Appeals should be made within 28 days of the date the Final Notice was served.

91. Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn.

92. The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.

93. The address and contact details of the First-tier Tribunal (Eastern Region) are:

First-tier Tribunal - (Property Chamber) Residential Property
Cambridge County Court 197 East Road
Cambridge
Cambridgeshire
CB1 1BA

Email: rpeastern@hmcts.gsi.gov.uk | Tel: | 01223 841 524 Fax: 01264 785 129

94. The address of the First-tier Tribunal changes from time to time, but the latest address will be detailed on any Final Notice served and can be found at:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Reduction for early acceptance of guilt

Commented [GJH17]: A new policy element to permit a reduction

Public interest

95. As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

Demonstrating early acceptance of guilt

96. An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 21 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

97. A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.

98. If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal. If an offender makes an early payment at the reduced rate, but then decides to appeal at a later date, the council will seek the full finalised amount during the appeal proceedings.

Unpaid financial penalties

Commented [GJH18]: Again, all new for clarity for landlords

County Court

99. The council will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served.
100. An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer of the council stating that the financial penalty (or part thereof) has not been paid will be accepted by the court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to the 2004 Act (relevant housing offences) and Paragraph 11 of Schedule 1 to the 2016 Act (breaches of banning orders).
101. In taking court action, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

Enforcement

102. If an offender does not comply with an order of the court, the council will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

Court bailiffs

103. A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

Charging order - Order of sale

104. The council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the council.

Attachment to earnings order

105. If the offender is in paid employment, the council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the council has been fully discharged.

Multiple offences

Commented [GJH19]: A new section to make it clear as to how multiple offences will be considered

General principle

106. When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, the council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.
107. Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by the council does not constitute an unjust and disproportionate punishment.

Determining a just and proportionate punishment

108. The council will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. The council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.
109. If the council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each offence.
110. However, if the council considers the cumulative total to be unjust and disproportionate, it will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.

Reduction of financial penalty

111. The council may use its discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether or not there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration.

Decision not to impose a financial penalty

112. The council may use its discretion to not impose a financial penalty in respect of every offence under consideration. If the council decides to take this course of action, the offence or offences disregarded will usually be of a lower severity.

Rent Repayment Orders

Commented [GJH20]: Affords the BC to seek RRO's

113. In consideration of totality, the council may also take into account any requirements or proposals to pursue a Rent Repayment Order (RRO) in respect of the same behaviour.
114. A RRO may be pursued where there is a statutory duty to do so and where such information is available to proceed with an RRO. Where an RRO is sought by a tenant the council will seek to provide that tenant with the relevant information so as to assist that tenant in the application.
115. Where the council seeks to pursue an RRO it will do so in accordance with the statutory guidance issued under section 41 of the Housing & Planning Act 2016 and with reference to any relevant case law.
116. Any income received by the council arising from a RRO will be retained and used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in the Regulations.

Banning Orders

Commented [GJH21]: All new and allows the BC to seek BO's where appropriate

117. In consideration of totality, the council will also take into account any requirements or proposals to pursue a Banning Order in respect of the same behaviour.

118. When a landlord of a property in the council's area has been convicted of a housing related offence, as recommended by the MHCLG guidance, the council will consider the following factors when deciding whether to apply for a banning order and when recommending the length of any banning order:

- **The seriousness of the offence.**

All banning order offences are serious. When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court in respect of the banning order offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made.

- **Previous convictions/rogue landlord database.**

The Council will check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may 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 aware of their legal obligations.

- **Upper Tribunal Decisions**

The Council will refer to Upper Tribunal decisions. In particular, the decision contained in *Hussain & Ors v London Borough of Waltham Forest (HOUSING – licensing)* (2019) UKUT 339 (LC) and the evidence that may or may not be considered by tribunals in relation to the circumstance, taking account of the Rehabilitation of Offenders Act 1974.

119. The Council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order. These factors should include;

- **The harm caused to the tenant.**

This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud).

- **Punishment of the offender.**

A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

- **Deter the offender from repeating the offence.**

The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal

responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.

- **Deter others from committing similar offences.**

An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

120. The Council may also have regard to other relevant matters deemed appropriate to the case.
121. Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by a Private Housing Manager/Service Manager who will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a banning order, including the recommended duration of the ban.
122. The decision will be recorded.
123. Subject to the MHCLG guidance and guidance provided by the Ministry of Justice details of all banning order offences will be published and held on a national register. Also subject to legal advice, the Council will consider publishing details of successful banning orders including the names of individual landlords/any business (managing or lettings agency).
124. The Council will also consider making information on banned landlords available to a tenant where it is in the public interest to do so.

Help and advice

125. If you would like further advice or clarification, the Private Sector Housing Team can help. Please ring us on 01553 616301 and speak to one of our officers. We can also be contacted by email on: housingstandards@west-norfolk.gov.uk
126. Alternatively, you can write to us at:
Housing Standards
Borough Council of King's Lynn & West Norfolk
King's Court
Chapel Street
King's Lynn
PE301EX

Making a complaint

127. The Housing Standards Team aims to provide the best possible service. However, if you are not happy with the service you receive you can make a formal complaint.
128. If, after having gone through the council's formal complaints process, you believe that the council has not handled your complaint properly, you have the right to request an independent investigation by the Local Government and Social Care Ombudsman. The Ombudsman Service will review your complaint and decide if it is appropriate to carry out an investigation. The service is free of charge.
129. You can make a complaint by phone or online at:

The Local Government and Social Care Ombudsman

Telephone: 0300 061 0614 | Website: www.lgo.org.uk.