

Trading Standards Service

Enforcement Policy

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1. Introduction

Trading Standards is part of Regulatory Services at Leicestershire County Council. We regulate and support a fair and safe trading environment by supporting legitimate businesses to comply and grow whilst complying with consumer protection legislation. We take appropriate enforcement action where it is required to protect consumers and to ensure commercial fairness.

Trading Standards has responsibility to enforce over two hundred pieces of legislation. This policy sets out our approach to how we enforce those laws and has been developed and reviewed having regard to the principles of good regulation set out in the Legislative and Regulatory Reform Act 2006 and the Regulators Code 2014.

1.1. The Purposes of our Enforcement Policy

- To provide transparency. By setting out our approach to non-compliance and how we enforce the law.
- To provide a principles-based framework which helps to guide us to work in equitable, proportionate and consistent ways.
- To ensure that our enforcement activities are intelligence led and targeted. By basing what we do upon evidence and risk, our resources are used effectively.
- To ensure that our regulatory activities do not impose unnecessary regulatory burdens, and where possible, are delivered in a way that supports those we regulate to comply and grow.
- To enable accountability, by providing clear information concerning how to communicate with us including how to complain and routes to appeal against the decisions we take.

1.2. Our Enforcement Activities

Within the context of this Policy, 'enforcement' means any actions taken which are aimed at ensuring that businesses comply with the law.

We monitor and achieve compliance with the law in various ways and by undertaking a range of enforcement activities. Our approaches in any case may include:

- Providing advice and guidance.
- Responding to complaints and intelligence.
- Issuing warnings.
- Monitoring the safety of products, including safety checks on imported products.
- Removal, suspension or seizure of non-compliant products from the marketplace.
- Inspections and visits.
- Sampling.
- Issuing statutory improvement notices and monitoring compliance.
- Test purchasing, including from the online marketplace.
- Investigations and Prosecution.
- Post-conviction orders including director disqualification.
- Restraint and confiscation of criminal property under the Proceeds of Crime Act 2002.
- Consultation with businesses under Part 8 of the Enterprise Act 2002. Obtaining and monitoring undertakings to comply from businesses.
- Seeking enforcement orders from the civil courts to enforce compliance with undertakings.
- Issuing financial penalty notices.
- Joint working and/or referrals to or from other regulators.

2. Our Approach to Enforcement

2.1 Targeting

We target and direct enforcement by using intelligence and relevant risk assessments. This enables us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified effectively.

2.2 Proportionality

By having regard to this policy, we ensure that our enforcement actions are proportionate to the risks involved and to the severity of the non-compliances discovered. As far as possible, we pursue sanctions that are meaningful, effective and reflective of the harm done.

2.3 Accountability

We will be accountable for the efficiency and effectiveness of our activities, as outlined in the Regulators' Code. This will include an appeal process and complaints procedure so that we can listen to those we regulate.

2.4 Fairness and Consistency

We will treat all businesses fairly. The compliance record of those we regulate will be taken into account when making a decision on appropriate enforcement action.

We will ensure that our enforcement practices are consistent whilst also taking account particular circumstances; this means that we will adopt a similar approach in similar circumstances to achieve similar ends. We will have regard to national guidelines in our decision-making processes where relevant.

2.5 Openness and Transparency

We are committed to the open provision of information and advice in a format that is accessible and easily understood. We will publish relevant information including our service standards; performance targets and information; charges; and enforcement action taken.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those which we recommend as best practice, as best practice advice is not compulsory for a business to follow.

Where businesses have acted against the law we may use publicity in order to raise awareness, to increase compliance, and to improve the monitoring of trade practices.

Where there is any non-compliance by the County Council, we will ensure that our compliance and enforcement decisions are free from any conflict of interest. The County Council cannot take enforcement action against itself. However, on rare occasions, where regulatory breaches have been identified, the matter will be pursued with the relevant Director. If any breach remains unresolved, the matter will be referred to the County Council's Monitoring Officer, to consider what further action may be appropriate.

2.6 Supporting the local economy

We recognise that a key element of our activity is to facilitate and encourage economic growth, whilst ensuring protection for consumers and legitimate businesses.

We will direct businesses to sources of advice to assist them to meet their legal obligations. When requested we can provide businesses with bespoke advice. This will be chargeable.

2.7 Equality

We will comply with the Equality Act 2010, we will not discriminate or otherwise be influenced by issues such as age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex or sexual orientation of the suspect(s), victim, witnesses or offender. Our decisions will not be influenced by improper or undue pressure from any source.

We are committed to principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, the Regulators' Code, the Food Law Code of Practice (England) 2021, the Feed Law Code of Practice 2018 and Powers of Entry Code of Practice 2014.

2.8 Sharing information with other regulators

We are obliged to share information concerning our intention to prosecute with the Competition and Markets Authority (CMA). We are also obliged to inform the CMA about the outcome of the proceedings. This is a legal requirement under Section 230 of the Enterprise Act 2002. Information is shared by updating the online Sanctions Information Database (SID) which is hosted by the National Anti-Fraud Network (NAFN) at Tameside Metropolitan Borough Council. Data is retained and is accessible to other regulators via SID for a period of 10 years from the date of conviction.

If there is a shared enforcement role with other agencies, e.g. HMRC, Office for Product Safety and Standards (Product Safety) Department for Environment, Food and Rural Affairs (Animal Health) Food Standards Agency (Food and Animal Feed standards), District Councils,

Environmental Health Officers, Fire and Rescue Service or the Police, we will consider coordinating or joint working with these agencies, as a way to minimise unnecessary overlaps, prevent time delays and to maximise our overall effectiveness.

3. Provision of Advice to Businesses

3.1 We will provide advice to businesses based in Leicestershire in accordance with our Business Advice Policy. Basic “Compliance Advice” will be offered free of charge to all businesses regardless of size, as required by the Regulators’ Code. More detailed ‘Comprehensive Advice’ may be subject to a fee.

3.2 In appropriate cases, the advice provided to businesses will be given or confirmed in writing.

3.3 We will respect any advice that has been given by another regulator or enforcement agency, which could lead to an amendment of our advice in appropriate cases. We are always prepared to open up dialogue, in order that we may try to resolve any difference in advice and/or problems being caused.

3.4 We welcome requests for advice from businesses and if you are found to be non-compliant, this will not always mean we will take enforcement action against you, although consideration will need to be given in respect to the seriousness and the effects of any non-compliance, which may mean we will need to take enforcement but your approach to us will be a mitigating factor.

4. Compliance with the Primary Authority Principle

4.1 The Regulatory Enforcement and Sanctions Act 2008 introduced Primary Authority Partnerships. A Primary Authority is a local authority registered by the Office for Product Safety and Standards (OPSS), as having responsibility for providing advice and guidance to a particular business or organisation where that business is subject to regulation by more than one local authority. More information can be found at [Local regulation: Primary Authority](#) (GOV. UK)

4.2 We will give due consideration to any business that wishes to enter into a Primary Authority Partnership arrangement with Leicestershire Trading Standards Service.

4.3 We communicate with other Primary Authorities at an early stage whenever the circumstances require it.

4.4 If we come to a decision to take enforcement action against a business that has a Primary Authority Partnership with another regulator; we will notify the Primary Authority of the action we propose to take or have taken.

4.5 The Primary Authority has the right to object to our proposed action and they or we may refer the matter to the Office for Product Safety and Standards (OPSS) for their adjudication.

5. Our objectives when dealing with non-compliance

5.1 In deciding what action to take in respect to non-compliance, our aim is to achieve one or more of the following outcomes:

- To change the behavior of the business.
- To eliminate any financial gain or benefit.
- To redress harm caused where possible and appropriate.

- To deter future non-compliance.
- To deal firmly with those that deliberately or consistently fail to comply.
- In suitable cases refer breaches to another enforcement body.

5.2 We will explain the non-compliance, we will provide an opportunity for dialogue and/or appeal in regards to any advice provided, action required, or decisions taken. We will be proportionate, when considering what is the most appropriate sanction for any non-compliance and we will consider such factors as the harm caused or the risk of harm and the size and nature of the business. We will also consider whether prior advice and warnings have been followed or ignored.

6. Conduct of Investigations

6.1 The decision to formally investigate an incident is taken by considering a set of investigations criteria which are designed to ensure that limited resources are used effectively. We receive thousands of complaints or requests for assistance each year and we cannot investigate each incident or complaint received.

6.2 Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with our statutory duties and powers and other relevant legislation (and /or relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act 1984 applicable Codes of Practice.
- Criminal Procedure and Investigations Act 1996 (CPIA) and Code of Practice.
- Regulation of Investigatory Powers Act 2000 (RIPA) and Codes of Practice.
- Investigatory Powers Act 2016 (IPA) and Code of Practice.
- Human Rights Act 1998 (HRA).
- Protection of Freedoms Act 2012 (Code of Practice Powers of Entry)

6.3 Some legislation permits our officers to seize goods and documents that may be required as evidence or liable to forfeiture. When we seize goods, we will give a receipt to the person from who they are taken. On some occasions we may ask the person to voluntarily surrender non-compliant or infringing goods to us, if this is refused, we may decide to seize the goods and apply to the court for forfeiture and destruction.

6.4 As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible:

- Be formally interviewed in accordance with the PACE codes C and E.
- Be given an opportunity to demonstrate that a statutory defence is met.
- Have the opportunity to give a full explanation or make any additional comments about the alleged breach, including any mitigation.

6.5 Before a decision concerning how a case is to be disposed of is taken, the alleged offence(s) will be fully investigated. A case summary will be compiled and reviewed along with the evidence by a Senior Trading Standards Officer within Trading Standards Service. The County Council's Legal Services section will also review the case. We will comply with statutory time limits relating to the commencement of proceedings. We will also take into account the views of any victim,

Primary Authority, injured party or relevant person, to establish the nature and extent of any harm or loss, including potential harm and loss.

6.6 Our officers have a variety of investigatory powers, which include the power to enter business premises and inspect goods, to require the production of information, documents or records (including records held electronically), the power to seize and detain such goods, information or documents, which may be required as evidence. In the case of routine inspections, such as planned visits to check or monitor compliance, we will provide at least 48 hours prior written notice of the inspection, unless such a notice will defeat the object of such a visit. Where we reasonably suspect a breach of the legislation that we enforce, we are not required to provide prior written notice of our intention to visit and enter business premises.

6.7 Officers may also take with them such other persons and/or equipment, as may be necessary when exercising powers of entry (e.g. the police, HMRC, locksmiths, other experts). In certain cases, they may exercise an entry warrant issued by a Magistrate, in order to gain access into residential premises. If individuals or businesses obstruct officers, they may be liable to prosecution for such obstruction.

6.8 Where a right of appeal against a formal action exists (other than through the courts), information on any appeal mechanism will be clearly set out in writing at the time the enforcement action is taken.

7. The range of enforcement options available to us

7.1 Indirect action

This is the referral to another Trading Standards authority and/or enforcement agency for their information or action.

As of August 2023, this includes sanctions applications by Trading Standards concerning illegal tobacco products to HM Revenue & Customs (HMRC) with respect to suspected breaches of The Tobacco Products (Traceability and Security Features) Regulations 2019 as amended by The Tobacco Products (Traceability and Security Features) (Amendment) Regulations 2023. This allows HMRC to consider the imposition of a civil penalty upon those found to be responsible for the breach. The decision to make a Sanctions Application is made by Trading Standards on a case-by-case basis with regard to a set of referral criteria. The criteria include considerations of evidence of repeat offending from a particular business premises and/ or the issue of prior advice and warnings.

In relation to business premises involved in nuisance or disorder associated with the supply of illegal tobacco, e-cigarette products and / or alcohol, including sales to the underage, Trading Standards will, on a case by case basis, make referrals and share casefile information with the Police and/ or District Councils in support of the issue of closure notices and applications to the Magistrates' Court for a closure order under Chapter 3 of the Anti-Social Behavior, Crime and Policing Act 2014.

7.2 Warning

A warning may be given where an offence has been committed but it is not appropriate to take any further action, in which case the suggested corrective action and a timescale will be given. All warnings issued are kept on file and taken into consideration should the offending continue or be repeated. Evidence of prior warnings may be shown to the Court in any subsequent legal proceedings.

7.3 Fee paid training

In relation to sales of age restricted products to children, we may request that the alleged offender undertakes training for a fee.

7.4 Penalty Notices for Disorder (PNDs)

PND's are prescribed by certain legislation, as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PND will result in the offender being pursued in the County Court for non-payment of the debt. A PND does not create a criminal record and we may choose to issue a PND without first issuing a warning.

7.5 Financial Penalties.

Recently enacted laws have enabled Trading Standards to deal with non-compliance by the imposition of financial penalties.

The Tennant Fees Act 2019 empowers local authorities to impose financial penalties for breaches of that Act. An additional policy has been created in relation to the calculation and imposition of those penalties which operates alongside and in conjunction with this enforcement policy. **(See Appendix 1).**

Trading Standards can issue a fixed financial penalty in relation to non-compliance with improvement notices served in relation to certain food legislation (for example the Calorie Labelling (out of Home Sector) (England) Regulations 2021. Trading Standards can issue a fixed monetary penalty of £2,500 where an improvement notice has not been complied with.

As of January 2024, Trading Standards can issue a fixed penalty notice of up to £5000 under the Animals (Penalty Notices) Act 2022 where the authority is satisfied beyond reasonable doubt that a person has committed a relevant offence against animal health and welfare laws such as the Animal Welfare Act 2006 or the Animal Health Act 1981. Trading Standards will have due regard to the government's statutory guidance in deciding the imposition of penalty and amount. **(See Appendix 2).**

7.6 Statutory Notice

These include improvement notices, prohibition notices and suspension notices (they usually require offenders to take specific action or to cease certain activities).

7.7 Forfeiture

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

7.8 Undertakings & Injunctive action under the Enterprise Act 2002

The range of actions under this legislation are as follows:-

- Informal Assurances
- Formal Undertakings
- Enhanced Consumer Measures
- Interim Orders
- Court Orders
- Contempt Proceedings

7.9 Tobacco Restriction Orders

Where an offender continually breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premise or a person from selling tobacco for a period of time up to one year.

7.10 Review of Licences

Where there is a requirement for a business to be licensed e.g. Licensing Act, a review of the licence may be sought where the activities and/or fitness of the licence holder is in question.

7.11 Taking animals into possession

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we may consider taking them into possession and applying for Orders for re-imbursement of expenses incurred and subsequent disposal.

7.11 Caution

To deal quickly and simply with some offences and to avoid any unnecessary appearances in criminal courts, a 'simple caution' may be issued. A written 'simple' caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction, although as with warnings it may be cited in court in a future prosecution in certain circumstances, if the offending is repeated or continues.

7.12 Prosecution in the Criminal Court

Trading Standards prosecute a wide range of offences in the Criminal Courts.

The decision to prosecute is a serious, but often necessary step, and we have due regard to this enforcement policy during the decision-making process.

We apply the Code for Crown Prosecutors which is produced by the Crown Prosecution Service (CPS). Application of the Code involves the consideration of the evidence and also the public interest in how cases should be disposed of. In accordance with the Code, a prosecution will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so.

7.13 Proceeds of Crime

Applications may be made under the Proceeds of Crime Act 2002 for the restraint and confiscation of assets in appropriate cases. The purpose is to recover the financial benefit that offender(s) obtained from their criminal conduct.

We will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

8. What You Can Expect of Us

8.1 You are entitled to expect our staff to:

- Adhere to Leicestershire County Council's published service standards, more details can be found in Appendix 3.
- Be courteous and helpful.
- Give at least two working days between the date of receipt of written notice and the date of entry, unless this defeats the object of the visit or if breaches are reasonably suspected.
- Identify themselves by name and produce identification.
- Provide a contact point for any further dealings.
- Give clear advice or signpost to other sources of information.
- Confirm advice in writing when appropriate and upon request.
- Clearly distinguish between what you must do to comply with the law and what is recommended as best practice.

- Try to minimise the cost of compliance by requiring proportionate action.
- Give you a reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost).
- Notify you if the matter is to be reported for legal proceedings.
- Advise you of the procedure for you to discuss matters further, appeal or to make a complaint.
- Maintain confidentiality (subject to exchange of information in accordance with statutory information disclosure gateways).

8.2 This Policy and all associated enforcement decisions, take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial
- Right to respect for private and family life, home and correspondence

The Enforcement Policy is freely available on request and published at [How we work.](#)

9. Complaints, Compliments, Appeals and Comments etc.

9.1 Complaints

If you feel that you have not received the standard of service you expect, you may contact us to make your complaint or discuss your concerns. If you would like more information on how to complain about our services you can ask us to send you further details, you can complete an on-line form via our website at [Complaints and appeals](#) or you can email, or write to us – using the details at paragraph 9.4 below.

9.2 Appeals

You have a right to appeal against a regulatory decision we make, or failure to act in accordance with the Regulators' Code. Appeals will be considered by a staff member who has not been involved in the case or investigation. The Regulators Code can be viewed at [Better Regulation Delivery Office: Regulators' Code](#) (PDF)

If you want to appeal against a decision we have made, please contact us by any of the methods below.

9.3 Commenting on this policy

Anyone wishing to make any comment about the content of this policy is invited to address them to us by any of the methods outlined below.

Your comments will assist us in monitoring and reviewing the effectiveness of the policy. Your comments are important, as they help us to ensure that the policy remains up to date and reflects the views of our communities and businesses. Please contact us if you require any further information on how we can carry out our work or can be of any further assistance to you.

9.4 Contacting us

By post: Leicestershire County Council, Trading Standards Service, County Hall, Glenfield, Leicestershire LE3 8RA
By e-mail: trading.standards@leics.gov.uk
Via our website: leicestershire.gov.uk/trading-standards

9.5 We want everyone to understand us

In appropriate circumstances we will arrange (so please ask):

Language interpreters, including for sign language
Translation of written materials into other languages
Materials in large print, on tape or in Braille.

9.6 Review of the Enforcement Policy

This Enforcement Policy will be reviewed annually. Amendments will be made within that period if there are any changes in legislation or in local needs.

List of Appendices

- Appendix 1 - Policy on Enforcement of Financial Penalties (Tenant Fees Act 2019)
- Appendix 2 - Statutory guidance on the use of penalty notices for animal health and welfare offences.
- Appendix 3 - Customer Service Standards
- Appendix 4 - Corporate Complaints Leaflet

Appendix 1.



Leicestershire County Council Policy on Enforcement of Financial Penalties under the Tenant Fees Act 2019.

Background

The Tenant Fees Act 2019 (TFA) came into force on 1st June 2019.

The aim of the legislation is to promote a fair private rental market where services are paid for by the individual contracting for them and it aims to protect tenants, support landlords and empower local authorities.

The Act applies to Assured Shorthold Tenancies (ASTs), student accommodation and licences to occupy in England. The Act prohibits landlords and letting agents from charging fees that are not permitted under the act, it caps the amount of deposit that can be charged and requires deposits to be protected by way of a deposit protection scheme.

Leicestershire County Council ("LCC") has adopted this policy for making decisions in relation to the imposition of financial penalties and the appropriateness of prosecution.

The policy will apply in relation to any decision made by LCC in its capacity as Weights and Measures Authority under Section 6 of the Tenants Fees Act 2019 respectively.

This Policy should be read in conjunction with both the **Statutory Guidance for TFA 2019** and the policy of the Lead Enforcement Authority, Bristol City Council and **Leicestershire County Council's Enforcement Policy**

The Policy will apply in any area where the service acts.

The Tenant Fees Act 2019 should be considered alongside other legislation giving local authorities the power to protect tenants and tackle poor practice by landlords and letting agents.

Other relevant legislation includes the following:

- Housing Act 2004.
- Client money protection regulations; The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 S.I. 2018/751,
- The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
- The Enterprise and Regulatory Reform Act 2013.
- The Consumer Rights Act 2015 and
- The Housing and Planning Act 2016.

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1. Sanctions under the Tenant Fees Act 2019

Breach	First Offence	Further breach within 5 years
Charging unlawful fees under ss1 and 2 TFA2019	Civil Breach – up to £5000 fine	Criminal Offence but financial penalties of up to £30,000 can be issued as an alternative to prosecution The criminal offence would be an unlimited fine and a banning order offence under section 14 of the Housing and Planning Act 2016.
Unlawfully retaining the holding deposit	Civil Breach -up to £5000 fine	Civil Breach – financial penalty of up to £5000 fine Not a banning order offence.

LCC will determine what is the most appropriate and effective sanction and whether it is appropriate to impose a financial penalty, to prosecute or to take informal action such as warning letters or the provision advice in an effort to secure compliance.

Officers will consider all the evidence in any relevant case having due regard to the Service's Enforcement Policy. The service is permitted to retain the money raised through financial penalties and reserve it for future housing enforcement in the private rented sector.

3. Statutory Guidance

The Ministry of Housing, Communities & Local Government ("MHCLG") has published the **Tenant Fees Act 2019: Statutory Guidance for enforcement authorities**.

This is statutory guidance to which enforcement authorities must have regard to in relation to enforcing the TFA 2019. This statutory guidance recommends certain factors that an enforcement authority should consider when deciding on the level of financial penalties under the TFA 2019 and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case.

4. Determining the level of Financial Penalty.

In accordance with the provisions of the TFA 2019 the level of financial penalties is to be determined by the Service. Although the statutory guidance recommends factors which may be taken into account, it does not go into any significant level of detail in this regard.

Officers must however be satisfied beyond reasonable doubt that a breach has been committed.

The following factors will be considered as a part of the Service's decision-making process: -

- a. The history of compliance/non-compliance
- b. The severity of the breach
- c. Deliberate concealment of the activity and/or evidence
- d. Knowingly or recklessly supplying false or misleading evidence
- e. The intent of the landlord/agent, individual and/or corporate body
- f. The attitude of the landlord/agent
- g. The deterrent effect of a prosecution on the landlord/agent and others
- h. The extent of financial gain as a result of the breach.

Although the Service has a wide discretion in determining the appropriate level of financial penalty in any case, regard has been given to the statutory guidance when making this policy.

Appendix A of this policy contains the processes that the Service will use in order to determine the level of financial penalty under the TFA 2019. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the impact of the exercise by the Landlord or Agent of the Appeal process.

APPENDIX A

The procedure used by LCC to determine the level of penalty to be applied

Step One: determining the offence category

The Service will determine the breach category using only the culpability and category of harm factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. The Service may also apply a discretionary factor to reflect consistency across England and may consider decisions within other UK jurisdictions where they contain some relevant and persuasive content.

Culpability	
Very high	Where the Landlord or Agent intentionally breached, or flagrantly disregarded the law or has/had a high public profile which may include any significant role in a trade or business representative organisation and knew their actions were unlawful.
High	Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken
Medium	Breach committed through act or omission which a person exercising reasonable care would not commit.
Low	Breach committed with little fault, for example, because: significant efforts were made to address the risk although they were inadequate on the relevant occasion <ul style="list-style-type: none">• there was no warning/circumstance indicating a risk• failings were minor and occurred as an isolated incident

Harm

The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it should do so.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business.
- High risk of an adverse effect on individual(s) – including where persons are vulnerable. A wide definition of vulnerability will be used. See Appendix 2 for a non-exhaustive list.

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1).
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
- Tenants and/or legitimate landlords or agents substantially undermined by the conduct.
- The Service's work as a regulator is inhibited.
- Tenant or prospective tenant misled.

Category 3 – Low Likelihood of Harm

- Low risk of an adverse effect on actual or prospective.
- Public misled but little or no risk of actual adverse effect on individual(s).

We will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all these categories.

The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.

In some cases, no actual harm may have resulted, and enforcement authority will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

Harm to the community

Some offences cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

Step two: starting point and category range

Having determined the category that the breach falls into, the Service will refer to the following starting points to reach an appropriate level of civil penalty within the category range. The Service will then consider further adjustment within the category range for aggravating and mitigating features.

Obtaining financial information

The statutory guidance advises that local authorities should use their powers under Schedule 5 to the CRA 2015 to, as far as possible, make an assessment of a landlord's or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The Service will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Service may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Service has obtained, or the Landlord or Agent has supplied, any financial information to the contrary. The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to the Service such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay. Where the Service is not satisfied that it has been given sufficient reliable information, the Service will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

Starting points and ranges

The tables in Appendices 4-8 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach.

- Appendix 4 First breach in respect of a Prohibited Payment and subsequent breach in respect of a Prohibited Payment.
- Appendix 5 Breach of Publication of Fees requirements.
- Appendix 6 Breach in respect of membership of a Client Money Protection Scheme.
- Appendix 7 Breach in respect of certificates in respect of a Client Money Protection Scheme.
- Appendix 8 Breach of transparency requirements in respect of a Client Money Protection Scheme.

Context

In order to determine the financial penalty, the service should consider whether there are any aggravating or mitigating circumstances in each case. The table below lists some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Service will identify whether any combination of these, or other relevant factors, should result in an

upward or downward adjustment from the starting point. Relevant recent convictions (see Appendix 3 for a list of relevant convictions) are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

	Aggravating factors increasing seriousness	Mitigating factors reducing the seriousness of the offence
1	Previous breach of the TFA 2019	No previous breach
2	Previous convictions Consider any previous convictions, its relevance to the current breach and the amount of time that has lapsed since the conviction.	No previous convictions/good character
3	Motivated by financial gain	Good record of relationship with tenants
4	Deliberate concealment of illegal nature of activity	Self-reporting, co-operation, and acceptance of responsibility
5	Obstruction of the investigation	
6	Record of poor compliance	High level of co-operation
7	Refusal of advice/training	Mental disorder or learning disability
8	Impact of the breach on the wider community	Serious medical conditions

Step three: general principals to consider in setting a penalty.

The Service will finalise the appropriate level of penalty so that it reflects the seriousness of the offence, and the Service must take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

The level of financial penalty should reflect the extent to which the conduct fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, The Service will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in step eight below.

Step four: – Issue notice of Intent The Service will issue a Notice of Intent within six months of the enforcement authority having sufficient evidence that the Landlord or Agent has breached the TFA 2019. If the breach is ongoing the six-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

While there are slight variations in the Statutory requirements according to which breach is being addressed a Notice of Intent will typically contain the following

- Date of the Notice,
- The amount of the proposed penalty,
- The reason for imposing the penalty and
- How the recipient can make representations concerning the penalty.

Step five: – consideration of representations and review of financial penalty where appropriate.

The Service should review the penalty and, if necessary, adjust the initial amount reached at step four, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below.

Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Service may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

Step six: – Reductions

The service will consider any factors which indicate that a reduction in the penalty is appropriate and in doing so will have regard to the following factors.

- The impact of the financial penalty on the Landlord or Agent's ability to comply with the law or make restitution where appropriate
- The impact of the financial penalty on employment of staff, service users, customers, and the local economy.
- The stage in the investigation or thereafter when the offender accepted liability
- The circumstances in which they admitted liability

- The degree of co-operation with the investigation.

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the breach itself.

Step seven: – Additional actions

In all cases the Service must consider whether to take additional action. Such action may include further enforcement itself or reference to other organisations where appropriate.

Step eight: – Totality of breaching conduct

In circumstances where more than one financial penalty has been issued, the Service should consider the [guidance 'offences taken into Consideration and Totality'](#) by the Sentencing Council for England and Wales' which appears to the Service to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative the Service should determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case including the financial circumstances of the Landlord or Agent so far as they are known, or appear, to the Service.

The Service should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the Service should consider how to reach a just and proportionate total financial penalty. There are a number of ways in which this can be achieved.

For example, where a landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches. Where a landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. The Service should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Service should consider whether all the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.

Where separate financial penalties are passed, the Service must take care to ensure that there is no double-counting.

Step nine: – recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Appendix B – Non-exhaustive list of vulnerable people

- Young adults and children.
- Persons vulnerable by virtue of age.
- Persons vulnerable by virtue of disability or sensory impairment.
- People on a low income.
- Persons with a drug or alcohol addiction.
- Victims of domestic abuse.
- Children in care or otherwise vulnerable by virtue of age.
- People with complex health conditions.
- People exploited where English is not their first language.
- Victims of trafficking or sexual exploitation.
- Refugees.
- Asylum seekers.
- People at risk of harassment or eviction.
- People at risk of homelessness.

Appendix C – Non exhaustive list of relevant offences/breaches

Landlord and Tenant related	Offences involving Fraud	Offences involving Violence	Other offences
The Public Health Acts of 1936 and 1961	Theft	Murder/Manslaughter	Drugs
The Building Act 1984	Burglary	Arson	Sexual offences
The Environmental Protection Act 1990	Fraud	Malicious wounding or Grievous Bodily Harm with intent /Actual bodily harm	Unlawful discrimination

The Town and Country Planning Act 1990	Benefit Fraud (particularly where tenants are in receipt of Housing Benefit	Robbery	Modern slavery /Human trafficking
The Prevention of Damage by Pests Act 1949	Conspiracy to defraud	Criminal Damage where the intent was to intimidate or was racially aggravated	
The protection from Eviction Act 1977	Obtaining money or property by deception	Common assault which is racially aggravated	
The Local Government Acts 1982 and 1976	People trafficking	Assault occasioning actual bodily harm	
The Housing Grants, construction, and Regeneration Act 1996	Being struck off as a company director	Possession of an offensive weapon	
The Local Government and Housing Act 1989		Possession of a firearm	
The Housing Act 2004			
The Consumer Protection from Unfair trading regulations 2008			

Appendix D – Financial Penalty in the case of a first breach and subsequent breach in respect of Prohibited Payments

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Service may use its discretion to reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			

Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Financial Penalty in the case of a second or subsequent breach in respect of Prohibited Payments within 5 years of a previous breach.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Appendix E – Financial Penalty in the case of a breach in respect of Publication of Fees.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Service may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix F – Financial Penalty in the case of a breach in respect of a failure to obtain membership of a Client Money Protection Scheme

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000

Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Appendix G – Financial Penalty in the case of a breach in respect of issues relating to certificates of evidence of Membership of a Client Money Protection Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix H. Financial Penalty in the case of a breach in respect of transparency issues relating to Membership of a Client Money Protection Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 2.

This guidance explains how you (the enforcement authority or constable) can use penalty notices for animal health and welfare offences under the Animals (Penalty Notices) Act 2022 ('the act').

[Statutory guidance on the use of penalty notices for animal health and welfare offences](#)
(GOV.UK)

Customer service standards

Our members of staff adhere to customer service standards. The standards apply to all the services we provide.

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