

LONDON BOROUGH OF LEWISHAM CIVIL PENALTY CALCULATOR

Setting the Level of Financial Penalty

Calculating the Civil Penalty amount is a five stage process:

- Set the “starting point” using the Culpability and Harm Grid-this gives the starting point”.
- Adjust the amount within the bracket to take into account any aggravating features
- Adjust the amount within the bracket, to take into account the offender’s personal financial circumstances and any personal mitigation.
- Review and adjust the amount to take into account the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.
- Subtract any reduction due, for any admission and willingness to pay by the offender.

Step 1- The Level of Culpability

There are 4 levels of culpability. The landlord’s behaviour must be compared with **Table 1** to determine the level of culpability.

Note: The level of culpability must be assessed for each offence as it may vary between offences, even within the same investigation into the same landlord.

Table 1

Very High	Deliberate breach or flagrant disregard for the law
High	<ul style="list-style-type: none"> • Landlord fell far short of complying with legal duties: for example, by: <ul style="list-style-type: none"> ○ Failing to put in place measures to comply with legal requirements or regulations ○ Ignoring warnings raised by the Council, by tenants or by others ○ Failing to make changes or put in place measures after being made aware of risks, breaches or offences ○ Allowing risks, breaches or offences to continue over a long period of time. ○ Acted dishonestly during the course of the council’s involvement, where the dishonesty was intended to disguise wrongdoing or the offender’s connection to a particular property or properties. • Serious and/or systemic failure by the landlord to comply with legal duties
Medium	<ul style="list-style-type: none"> • Landlord’s responsibility for offence falls between the descriptions at “high” and “low” culpability. • The landlord had put systems in place to manage risk and/or comply with the law but these had not been sufficiently or properly implemented or adhered to.
Low	<ul style="list-style-type: none"> • The landlord did not fall far short of his/her legal duties. For example, by: <ul style="list-style-type: none"> ○ Significant but inadequate measures taken to address risk or to comply. ○ The landlord has a good explanation for the offence, breach or risk that falls short of a reasonable excuse. • The offence is minor and part of an isolated incident.

Step 2 - Assessing the Level of Harm:

Harm can be both real and potential. The definitions of Class 1, 2, 3 and 4 Harm Outcomes in the Housing Health and Safety Rating System imposed by the Housing Act 2004 have been adopted to define the “levels of harm” indicators.

Guidance on the level of harm is found at [Annex C Housing Health and Safety Rating System Operating Guidance](#)

Level 1 - Class I Harm Outcome

Class I

This Class covers the most extreme harm outcomes including death from any cause; Lung cancer; Mesothelioma and other malignant lung tumours; permanent paralysis below the neck; regular severe pneumonia; permanent loss of consciousness; 80% burn injuries.

Level 2-Class II Harm Outcome

Class II

This Class covers severe harm outcomes, including Cardio-Respiratory disease; Asthma; non-malignant respiratory diseases; Lead poisoning; Anaphylactic Shock; Cryptosporidiosis; Legionnaires Disease; Myocardial Infarction; mild stroke; chronic confusion; regular & severe fever; loss of a hand or foot; serious fractures; serious burns; loss of consciousness.

Level 3-Class III and/or Class IV Harm Outcomes

Class III

This Class covers serious harm outcomes, including eye disorders; rhinitis; hypertension; sleep disturbance; neuro-psychological impairment; sick building syndrome; regular and persistent dermatitis, including contact dermatitis; allergy; gastro-enteritis; diarrhoea; vomiting; chronic severe stress; mild heart attack; malignant but treatable skin cancer; loss of a finger; fractured skull and severe concussion; serious puncture wounds to head or body; severe burns to hands;

Serious strain or sprain injuries; regular and severe migraine.

Class IV

This Class includes moderate harm outcomes which are still significant enough to warrant medical attention. Examples are pleural plaques; occasional severe discomfort; Benign tumours; occasional mild pneumonia; broken finger; slight concussion; moderate cuts to face or body; severe bruising to body; Regular serious coughs or colds.

Level 4

This is reserved for offences in which there is no potential or actual harm caused, or where the potential or actual harm would not require any medical intervention. An example of this might be failing to display a notice giving the landlord's name and contact details in a licensed HMO.

The level of harm is calculated using **Table 2:**

Table 2

Very Serious (level 1)	HHSRS class 1 harm outcome
Serious (level 2)	HHSRS class 2 harm outcome
Moderate (level 3)	HHSRS class 3 or 4 harm outcome
Lesser (level 4)	No actual or potential harm or where the level of harm at risk would not require medical intervention.

Setting the Starting Point

The proposed starting point is set using the Culpability/Harm grid

Adjusting within the bracket

Once the bracket and starting point are established, the proposed **Civil Financial Penalty** can be altered to take into account, aggravating features particular to the case. These may include:

- Actual harm caused to any person.
- Persons outside the occupier and their immediate household were also exposed to a risk of harm. This includes neighbours and professional visitors such as delivery staff, home helps etc.
- Previous record of non-compliance
- Previous convictions for housing offences
- Provision of falsified documents.
- Dishonest conduct, i.e. lying about identity as landlord or nature of property, putting pressure on tenants to refuse admission or provide incorrect information.
- Cost cutting at the expense of safety
- General poor standards of accommodation- HHSRS score E-A for any hazard in the premises where the hazard is not the basis of the offence.
- Unlicensed HMO where the offence does not relate to licensing
- Significant breaches of licence conditions or management regulations in HMO property where the offence does not relate to breach of licence conditions

Note for guidance

Aggravating features have to be considered in their totality. One very serious aggravating feature, for example providing a false electrical report, that continues to expose residents to significant risk of serious harm, may increase the penalty. This may be deemed more serious than a number of relatively less serious aggravating features, such as spent housing offence convictions combined with historical

incidences of non-compliance and a category 1, trip/fall on stairs hazard, caused exclusively by a missing balustrade.

Aggravating features may take the level of financial penalty to the top of the bracket. This should not be exceeded unless the case is exceptional and authorisation is given by a manager.

Once the proposed amount has been calculated, this can be entered on the **Notice of Intent**.

Representations

Any person who has been served with a **Notice of Intent** has the right to make representations about both the decision to impose a Civil Penalty Notice itself, and the amount the council proposes.

Once the representation period expires, and a decision to issue a Final Notice has been taken, the council will consider the following:

Financial Information

Landlords will be encouraged to provide information about their financial circumstances. A statement of means for will be sent to all persons against whom the council is proposing to issue a **Civil Penalty Notice**. There is no power to compel anyone to provide this information. In the absence of specific information about the landlord's financial situation, the council will deal with the issues of deprivation of the proceeds of offending conduct, deterrence and punishment with the following principles in mind:

- **There should be no 'double counting'**. If the tenants are applying or considering applying for a Rent Repayment Order, then the council should not take rental income over the preceding 12 months into account when calculating a **Civil Penalty Notice**.
- **We will use an average or specimen cost**. Where the offender has declined to provide evidence of the cost of works that would allow compliance with an **Improvement Notice**, then an estimate may be obtained and used to set the level of civil penalty notice. Similarly, if there is no evidence of the level of rent and the tenants are not applying for a Rent Repayment Order, an amount that is paid by tenants in similar properties in the ward, can be used.

Personal Mitigation

This is information about the landlord and their personal circumstances that is or may be relevant to considering the level of financial penalty. This may include such factors as:

- Absence of previous housing convictions
- Absence of history of providing poor quality housing or housing management
- Good history of compliance with orders, notices and requirements
- Property otherwise of high standard
- Voluntary steps taken to resolve issue
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical condition requiring urgent, intensive or long term treatment.
- Sole or primary carer for dependant relatives

The level of culpability can be reassessed in the light of further information provided by the landlord at representations stage. This can both increase as well as decrease the seriousness. For example, representations that contain an admission of a deliberate rather than an accidental breach or one caused by a lack of knowledge of the law, or a dishonest denial can increase the culpability. Evidence that the landlord has a good explanation that falls short of a reasonable excuse may reduce culpability.

Once the final culpability/harm level has been set in the light of any representations, the level of the **Civil Penalty Notice** can be adjusted within the bracket in the light of aggravating features, financial circumstances and personal mitigation. At this stage, the level of financial penalty must remain within the parameters of the culpability/harm bracket.

Final Review

The level of **Civil Penalty Notice** should reflect the extent to which the offender 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 offence; it should not be cheaper to offend than to take the appropriate precautions.

The final step is to take a step back and review the level of the Financial Penalty to ensure that it fulfils the general principles set out above. This may include increasing or decreasing the level of penalty, and moving between brackets if appropriate.

Reduction for admissions

- If the offender accepts responsibility and agrees to pay a **Civil Penalty** at the representations stage, and before a Final Notice is issued, then the Civil Penalty will be reduced by 33%.
- If the offender accepts responsibility and agrees to pay a **Civil Penalty** after the **Final Notice** has been issued, then the **Civil Penalty** will be reduced by 10%

All admissions and agreements must be in writing.