

Divisions Affected – All

CABINET - 16 MARCH 2021

Tenant Fees Act 2019 (and Associated Legislation) - Financial Penalty Enforcement Policy

Report by Director for Community Safety and Chief Fire Officer

RECOMMENDATION

1. **The Cabinet is RECOMMENDED to approve a new mechanism for the Trading Standards Service to take action against property agents for breaches of relevant housing legislation by means of civil financial penalties, as outlined in the supporting Enforcement Policy (adopted from the model implemented nationally by the National Trading Standards Estate and Lettings Agency Team).**

Relevant housing legislation means the Tenant Fees Act 2019 (which prohibits certain fees charged by property agents), the Consumer Rights Act 2015 (which requires the display by property agents of fees, together with details of memberships of redress and client money protection schemes) and the Housing and Planning Act 2016 (under which Regulations mandate membership of a client money protection scheme).

Executive Summary

2. Legislation governing the activities of lettings agents and other businesses in the property sector provides for financial penalties as the main formal means of dealing with non-compliance. The issuing of financial penalty notices to non-complaint traders in Oxfordshire is therefore the most appropriate response to the legislation, where informal advice has not resolved the non-compliance. National guidance would be adopted to ensure that penalties are proportionate, evidence-based and consistent. Adopting this national guidance as a local policy requires a cabinet decision.

Financial penalties will be levied only at the end of a graduated enforcement process which includes providing initial written advice, conducting an on-site audit and issuing trader guidance for potential breaches. There is an established appeals mechanism to ensure that natural justice is achieved for those subject to controls.

Background information

3. The number of households in the private rental sector in the UK rose from 2.8 million in 2007 to 4.5 million in 2017, an increase of 63%. Lettings issues have been identified as a priority in the national trading standards strategic assessment, just below mass marketing scams and above doorstep crime and cold-calling. The tenancy controls legislative landscape itself is a mix of criminal and civil sanctions.
4. Bristol City Council, in its statutory role as the National Trading Standards lead authority for lettings legislation, has adopted an enforcement policy, on which the annexed *Oxfordshire County Council policy for determining civil penalties under the Tenant's Fees Act 2019 and other private housing sector legislation* is based. Bristol City Council has recommended the policy to other Weights and Measures Authorities (who have a duty to enforce the Tenant Fees Act 2019) in order to promote a uniformity of approach. The policy is designed to give guidance on establishing the level of penalty to be applied for non-compliance, broadly based on the severity of any breach, the receptiveness of the business to advice and the impact of the breach on competitors and consumers who are potential or actual victims.
5. The proposed civil penalties framework would operate alongside the existing criminal regime. The Consumer Protection from Unfair Trading Regulations 2008 and Business Protection from Unfair Marketing Regulations 2008 apply to letting agents and to landlords, as does the Fraud Act 2006. The Tenant Fees Act 2019 is itself hybrid legislation as, although civil penalties up to £5,000 will be levied in the first instance, if a further breach is committed within five years, this may be treated as a criminal offence, as an alternative to the prosecuting authority imposing a further financial penalty of up to £30,000. The way this legislation works means that investigations will need to be conducted to a criminal standard from the outset.
6. The Tenant Fees Act requires any penalties to be ring-fenced for housing enforcement purposes. If the proposed policy is adopted, businesses will be enabled to remit any penalty direct to the Trading Standards Service's account by BACS. This will allow the penalties to be re-invested in the activity at the discretion of the Trading Standards Service, with further resources being committed to this area of work, if developing intelligence warrants it.
7. There is a complex (and sometimes overlapping) division of responsibilities in two-tier authority areas in enforcing legislation in the private renting sector. It is therefore necessary to look beyond traditional models of separation of powers to get to the optimum outcome. Initial discussions have taken place with Cherwell District Council about their possible enforcement of the Tenant Fees Act (a discretionary power), and it is anticipated that they would adopt any enforcement policy we put in place to achieve a coherent approach. Identifying a lead officer for this area of work, has already seen an increase in the sharing of knowledge between all authorities in Oxfordshire and opportunities for more closer working.

8. Within the county council, there is the potential for a cross-team approach. Inspections of letting agents are a valuable opportunity to disseminate information about fire safety risk assessments and discuss with letting agents what steps they take to check the diligence of landlords in providing housing which complies with health and safety requirements.

Corporate Policies and Priorities

9. The County Council's corporate plan includes a vision of a thriving Oxfordshire, based on the key foundation elements of thriving people, thriving communities and a thriving economy. Good regulation that is appropriately and proportionately enforced supports all of these ambitions. Ensuring a high level of compliance with consumer protection legislation in an area leads to well informed and confident consumers, who are more likely to spend within their community – whilst also avoiding consumer harm and detriment. Equally, the ability to deal with any non-complaint businesses efficiently, promotes a level playing field for businesses to compete within and allows honest businesses to thrive.

Financial Implications

10. There are no new or additional implications. A Principal Trading Standards Officer has been tasked with the day to day delivery of this workstream. In addition, the expenditure was offset in 2020/21 by the securing of national funding. Operational costs of implementing the policy are anticipated to be recoverable, via the financial penalties being retained by the Trading Standards Service.

Legal Implications

11. Internal policies and working instructions are being developed to guide officers on the issuing of financial penalties, in relation to breaches of relevant housing legislation. These documents will deal with the process by which notices are issued, appeals handled and penalties collected and enforced if unpaid. It also provides a scheme of delegation to allow the Head of Trading Standards to take the appropriate decisions in relation to the statutory appeals process. The Trading Standards Service receives appropriate Legal advice and support via Legal Services

Staff Implications

12. There are no new or additional implications. A Principal Trading Standards Officer (0.6FTE) has been tasked with the day to day delivery of this workstream and has been in post since December 2019. It is anticipated that most of the operational work in this area will remain with that officer, with

support from other officers, managers and support staff as part of normal day to day work allocation.

Equality & Inclusion Implications

13. A separate assessment has been carried out. No groups are expected to be disadvantaged. The changes in enforcement policy and processes necessitated are purely administrative from a consumer / renter's point of view and will therefore not impact on service delivery. The outcomes should be to the advantage of groups currently disproportionately affected by poor trading practice in the lettings market.

Risk Management

14. The main risk is that traders (who would ordinarily have been exposed to the threat of criminal prosecution) might perceive the move to a civil sanctions regime as a softening of approach. However, in providing guidance and advice, it will be made clear that where financial penalties fail to bring about compliance improvements, recourse to criminal action remains. This message will be reinforced in communications with the public.
15. There are risks that an unfamiliar route to achieving compliance will provide challenges to enforcement staff in terms of training, and to staff in Legal in terms of the burden of calculating penalties, issuing Notices and engaging with businesses to secure payment. These risks have been minimised (learning from other authorities' experiences) by delegating responsibility to one officer initially who will then cascade down lessons learned. All Trading Standards Officers are members of the Chartered Trading Standards Institute's Continuous Professional Development Scheme and must maintain a level of training and development each year. For relevant officers, this includes this area of work.

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Annex: Oxfordshire County Council policy for determining civil penalties under the Tenant's Fees Act 2019 and other private housing sector legislation

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ANNEX: Oxfordshire County Council policy for determining civil penalties under the Tenant's Fees Act 2019 and other private housing sector legislation

As the Lead Enforcement Authority under the Tenant Fees Act 2019 ("TFA"), Bristol City Council has issued an enforcement policy for enforcement authorities, who are in turn expected to develop and document their own policy on determining the level of penalty or when to prosecute and when to issue a civil penalty in relation to breaches of the TFA and other relevant housing legislation. Trading Standards recommends that Oxfordshire County Council should fully adopt the Bristol City Council policy, except in those matters for which county councils do not have enforcement responsibility¹

The policy (reproduced "re-badged" for Oxfordshire below, for ease of reference) can also be found by following this link:

<https://www.bristol.gov.uk/documents/3368713/3492947/Tenant+Fees+Act+Penalty+Notice+Policy.pdf/789145a2-0b15-5542-2851-63d3bc47d57b>

Oxfordshire County Council ("the Council") has adopted this policy on deciding financial penalties and the appropriateness of prosecution as an alternative to imposing financial penalties under the relevant letting agency legislation.

It applies in relation to any decision made by the Council in its capacity as Enforcement Authority and Lead Enforcement Authority under Section's 7 and 24 of the Tenants Fees Act 2019 respectively.

For clarity, "relevant letting agency legislation" means:-

1. The Tenant Fees Act 2019, "the TFA 2019"
2. Part 3, Chapter 3 of the Consumer Rights Act 2015
3. Sections 133 – 135 of the Housing and Planning Act

1. Legal Reference

1.1 The TFA prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted and amends other relevant letting agency legislation as follows:

- a. in respect of the duty of letting agents to publicise fees etc under Section 87 of the Consumer Rights Act 2015.
- b. in relation to the meaning of 'Lead Enforcement Authority'; under Section 135 of the (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016.

2. TFA Sanctions

2.1. The TFA provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

¹ Currently this relates only to Section 83(1) and 84(1) of the Enterprise and Regulatory Reform Act which mandates membership of a redress scheme. This measure is enforced by unitary authorities, and in two-tier authorities at district council level.

- a. In respect of Prohibited Payments under sections 1 and 2 of the TFA a financial penalty not exceeding £5,000 for a first breach.
- b. Under section 12 of the TFA a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

The Council will determine what is the most appropriate and effective sanction, whether it is appropriate to impose a financial penalty or prosecute in any relevant case having due regard to this Enforcement Policy.

2.2. In appropriate circumstances, consideration will be given to informal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with the relevant Enforcement Policy.

3. Consequential Amendments brought about by the TFA

3.1 Additionally the TFA amends the legislation referred to in paragraph 1 above and which separately provide that penalties may be imposed as follows:

- a. In respect of a failure of Letting Agents to publicise their fees as required by s83(3) of the CRA 2015 a financial penalty not exceeding £5,000.
- b. In respect of a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £30,000.
- c. In respect of a failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.
- d. In respect of a failure by a property agent to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.

4. Statutory Guidance

4.1. The Ministry of Housing, Communities & Local Government has published statutory guidance² to which enforcement authorities must have regard. It recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalties under the TFA and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level

² <https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

of financial penalty in a particular case.

5. Determining the level of the financial penalty

5.1 In accordance with the provisions of the TFA the level of financial penalties is to be determined by the Council. 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. Each of those factors will be considered as a part of the Council's decision making process and they are:

- a. The history of compliance levels.
- b. The severity of the breach.
- c. Any deliberate concealment.
- d. Supplying false evidence.
- e. The intent of the landlord/agent.
- 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.

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

5.3 Appendix 1 of this policy contains the processes that the Council will use in order to determine the level of financial penalty under the TFA. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the impact off the exercise by the Landlord or Agent of the Appeal process.

Appendix 1 – The Council’s process for determining the level of penalty to set:

STEP ONE – Determining the offence category

The Council 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 Council may also apply a discretionary factor in order to reflect consistency across England and may consider decisions in 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, if unsuccessful, efforts were made to address the risk.
- 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 does.

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 vulnerable³.

Category 2 – Medium Likelihood of Harm

- adverse effect on individual(s) (not amounting to Category 1).

³ Indicative list of vulnerability: Young adults and children, students and the financially inexperienced, older people, those with disability or sensory impairment, people on a low income, persons with a drug or alcohol addiction, victims of domestic abuse, children in care, people with complex health conditions, people for whom English is not their first language, victims of trafficking or sexual exploitation, refugees and asylum seekers, people at risk of harassment or eviction, people at risk of homelessness.

- 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 Council's work as a regulator is inhibited.
- the tenant or prospective tenant is misled or deceived.

Category 3- Low Likelihood of Harm

- low risk of an adverse effect on actual or prospective tenants.
- wider public misled but little or no risk of actual adverse effect on individuals.

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 each of 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.

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, reputational damage to public or private institutions or interference with the administration of justice.

STEP TWO - Starting point and category range

Having determined the category that the breach falls into, the Council will refer to the following starting points to reach an appropriate level of civil penalty within the category range. The Council 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 Council will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council 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 Council such data relevant to his/her financial position to facilitate an

assessment of what that person can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council 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

Tables 1 - 7 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach .

- Table 1 First breach in respect of a Prohibited Payment.
- Table 2 Second and subsequent breach in respect of a Prohibited Payment.
- Table 3 Breach of Publication of Fees requirements.
- Table 4 Breach in respect of membership of Client Money Protection Scheme.
- Table 5 Breach in respect of certificates for Client Money Protection Scheme.
- Table 6 Breach of transparency requirements for CMP Scheme.

Context

Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent 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.

Factors increasing seriousness

Aggravating factors:

1. Previous breaches of the TFA.
2. Previous convictions, having regard to the nature of the offence to which the conviction relates, its relevance to the current breach; and the time that has elapsed since the conviction. For an indicative list of relevant convictions, see Appendix 2.
3. Conduct motivated by financial gain.
4. Deliberate concealment of illegal nature of activity
5. Established evidence of wider/community impact
6. Obstruction of the investigation
7. Record of poor compliance including refusal of advice or training or to become a member of an accreditation scheme.

Factors reducing seriousness

Mitigating factors

1. No previous or no relevant/recent breaches.
2. No previous convictions or no relevant/recent convictions.
3. Steps voluntarily taken to remedy problem.
4. High level of co-operation with the investigation, beyond that expected.
5. Good record of relationship with tenants.
6. Self-reporting, co-operation and acceptance of responsibility.
7. Good character and/or exemplary conduct.
8. Mental disorder or learning disability, where linked to the commission of the breach.
9. Serious medical conditions requiring urgent, intensive or long-term treatment.

STEP THREE - General principles to consider in setting a penalty

The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council 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 Council 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 Council will issue a Notice of Intent within 6 months of the enforcement authority having sufficient evidence that the Landlord or Agent has breached the TFA. If the breach is ongoing the 6-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 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

The Council 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 Council 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 Council will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- the impact on the business's ability to comply with the law or make restitution.
- the impact on employment, service users, customers and the local economy.

The following factors will be considered in setting the level of reduction.

- the stage in the investigation 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 level of discount, or none. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaches.

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

STEP SEVEN - Additional actions

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

STEP EIGHT – Totality of breaching conduct

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality which appears to the Council to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative, the Council 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 Council.

The Council 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 Council 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 Council 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 Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.

Where separate financial penalties are passed, the Council 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 2 – Non exhaustive list of relevant offences /breaches

Housing law or landlord and tenant related offences:

- The Public Health Acts of 1936 and 1961.
- The Building Act 1984.
- The Environmental Protection Act 1990.
- The Town and Country Planning Act 1990.
- The Prevention of Damage by Pests Act 1949.
- The Protection from Eviction Act 1977.
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976.
- The Housing Grants, Construction and Regeneration Act 1996.
- The Local Government and Housing Act 1989.
- The Housing Act 2004

Offences involving fraud:

- theft, burglary.
- fraud, including benefit fraud (particularly where tenants receive Housing Benefit).
- conspiracy to defraud.
- obtaining money or property by deception.
- people trafficking, money laundering or terrorist financing.
- being disqualified as a company director.

Offences involving violence to people or property:

- actual or grievous bodily harm, murder or manslaughter.
- arson.
- malicious wounding.
- robbery.
- criminal damage where the intent was to intimidate or was racially aggravated.
- common assault, including where racially aggravated.
- possession of an offensive weapon including a firearm.

Offences involving drugs⁴:

Offences involving sexual offences:

- an offence contained in schedule 3 of the Sexual Offences Act 2003.

Unlawful discrimination:

- unlawful discrimination can include findings of a tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act.

Other relevant offences:

- modern slavery/ human trafficking.
- offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation is likely to attach a lower level of culpability.

⁴ Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agent's business. The nature, quantity, purity and class of drugs should be taken into account. In addition where an offence of possession with intent to supply is involved, regard should be had to the role of the subject in the supply chain

TABLE 1 – Financial Penalty for first breach of Prohibited Payments⁵.

	Starting point (£)	Range	
		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

TABLE 2 – Financial Penalty for second or subsequent breach of Prohibited Payments (within 5 years of initial breach).

	Starting point (£)	Range	
		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

⁵ In all tables, in exceptional circumstances the Council may reduce the minimum penalties further but may not increase them above the statutory maximum.

TABLE 3 – Financial Penalty for breach of Publication of Fees.

	Starting point (£)	Range	
		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

TABLE 4 – Financial Penalty for failure or inability to obtain membership of a Client Money Protection Scheme

	Starting point (£)	Range	
		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

TABLE 5 – Financial Penalty for issues relating to certificates of Membership of a Client Money Protection Scheme.

		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

TABLE 6 – Financial Penalty for breach of transparency issues relating to Membership of a Client Money Protection Scheme.

Starting point (£)	Range	
	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