

SPELTHORNE BOROUGH COUNCIL

Banding the Offence and Determining Appropriate Sanctions Procedure

Setting Civil Penalties Procedure

- the Housing Act 2004
- the Housing and Planning Act 2016
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Scope

A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004 and a breach of a banning order under the Housing and Planning Act 2016.

This procedure sets out the way in which an officer determines the best course of action for dealing with offences that occur in relation to the Housing Act 2004, the Housing and Planning Act 2016 and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. It also sets out the processes for determining the civil penalty.

In applying this procedure full consideration will be given to the Sentencing Act 2020 and its parts that form the “Sentencing Code¹”, and DCLG’s statutory guidance for local housing authorities’ ‘Civil penalties under the Housing and Planning Act 2016, and other guidance that maybe applicable.

List of abbreviations used in this document.

BO – Banning Order
 RRO – Rent Repayment Order
 FTT – First Tier Tribunal
 LBO - Landlord Banning Order
 LHA – Local Housing Authority
 PO – Prohibition Order
 RLD - Rogue Landlord Database

Relevant housing offences

This procedure can be used in relation to the following offences: -

- Housing Act 2004
 - section 30 (failure to comply with improvement notice)
 - section 72 (licensing of HMOs)
 - section 95 (offences in relation to licensing of houses under Part 3)
 - section 139(7) (failure to comply with overcrowding notice)

¹ The Sentencing Council provides guidance to the Sentencing Code <https://www.sentencingcouncil.org.uk>

- section 234 (management regulations in respect of HMOs)
- Housing and Planning Act 2016
 - section 21(1) (breach of a landlord banning order, including sanction for continued breach)
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
 - section 11 (breach of duties)

A banning order offence is an offence as specified in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. Landlords convicted of a banning order offence must be placed on the rogue landlords database.

Note: For a breach of section 3 of the ESSPRS regulation, this must be will be dealt with by way of remedial notice and following non-compliance with a remedial notice a financial penalty no greater than £30,000 can be issued.

Financial Penalties as an alternative sanction to taking a prosecution.

The Government has introduced the civil penalty as part of its campaign to clamp down heavily on criminal landlords. Ministers have made it very clear that they expect this power to be used robustly and is not a lighter option to a prosecution, and the same criminal standard of proof is required for a civil penalty as for prosecution; that is beyond reasonable doubt that the offence has been committed.

In respect of offences, Local Housing Authorities (LHA) have been given the authority to determine whether to prosecute or whether to impose a civil penalty. If the LHA makes the determination to issue a civil penalty they will need to determine the level of civil penalty to impose (the maximum civil penalty is £30,000). The level of financial penalty in the Magistrates Court is now unlimited for all offences where a financial penalty could also be issued. All monies collected following the issue of a civil penalty can be retained by the LHA to further its statutory functions in relation to private housing enforcement work.

The Housing and Planning Act 2016 has also introduced the “Landlord Banning Order” (LBO) for the most serious and prolific offenders, and the “Rogue Landlord Database” (RLD) which lists the landlords and property agents convicted of certain offences.

The decision whether to prosecute will be considered for each offence. Spelthorne Borough Council will regard prosecution as the preferred option for the higher banded offences, and for offences that we determine as falling at the threshold where it is proportionate to look to seek further redress; ultimately through the RLD and BO penalties. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

Banding the Offence and Determining the Sanction (using scoring matrix)

The first of five stages of ‘Setting the Civil Penalty’ provides a means of ‘Banding the Offence’ based on the seriousness of the offence, the culpability of the landlord, and impact on the tenant(s) and community.

The five stages allow for a wide review of the appropriateness of the civil penalty chosen, including the means, and the table below acts as a guide.

In reviewing whether to prosecute, the LHA should consider the scope for working together with other LHAs where a landlord has committed breaches in more than one local authority area.

The initial scoring of the offence acts as a guide to the most suitable sanction, whether a simple caution, a civil penalty, or prosecution in the magistrate's court. Table 1 below covers the links between the stage 1 assessment (banding the offence) and the civil penalty.

Table 1: Banding the offence															
Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
		Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)													
					Prosecution and Rent Repayment Order Banning Order Offence – register on Database										
									Consider -application to Ban Landlord						

Note: the term "financial penalty" used in the above table means "civil penalty" as used in the remainder of the document.

Factors to be considered when deciding on the most appropriate civil penalty for the landlord who has committed an offence: -

1. If a single civil penalty is issued the landlord cannot be placed on the Government Rogue Landlord Database unless a second civil penalty is issued within a 12-month period.
2. A civil penalty is not a "Banning Order Offence". By issuing a civil penalty the LHA will be precluded from seeking to apply to a First Tier Tribunal (FTT) for a Landlord Banning Order.
3. The LHA cannot issue a simple caution, a civil penalty, and prosecute for the same offence. The LHA must determine which route is the best to follow for each offence. Similar offences can be considered within the Stage 5 "Totality Principal" of "Determining the Civil Penalty" (see below).
4. The Statutory Guidance says that a prosecution may be the most appropriate option where an offence is particularly serious, or where the offender has committed similar offences in the past.
5. Has the landlord committed offences in other LHA areas? Where the LHA decides to prosecute, when a landlord has committed breaches in more than one LHA area the LHA should consider the scope for working together with other LHAs.
6. Stage 1 (the first of five stages) 'Determining the Civil Penalty' provides a means of Banding the Offence that is based on the seriousness of the offence, the culpability of the landlord, and the impact on tenant(s) and community. 'Banding

the Offences' sees the Council scoring the culpability of landlord and the level of harm to the levels in Table 2

7. Generally, the Council should determine the civil penalty after carrying out the 'Banding the Offence' exercise after Stage 1.
8. A civil penalty will be issued where the offence is judged to 'meet the criteria'. That is, assessed as a Band 2 (or Band 1 with penalty score of 4) or greater.
9. Band 1 offences (scores 1 or 2) will generally be considered for simple caution.
10. Band 4 offences will generally be considered for a prosecution. Additionally, offences in Band 2 or 3 will generally be considered for prosecution where there is one SIGNIFICANT factor or where both are assessed as HIGH.

Prosecution will also be the preferred option for offences that the LHA determine fall at the threshold where it is proportionate to seek further redress, ultimately through publicity on the Rogue Landlords Database and Banning Order penalties. This approach will meet the Government's aim of clamping down heavily on a criminal landlord or letting agents.

11. The scoring after Stage 1 sets the initial banding for the offence. It concentrates predominately on the intent of the offender and the impact this has made with regards to the tenant, community, industry, and regulator. In making this assessment it is inevitable that reference will be made to past actions, responses, events, wider compliance and physical standards and conditions. Understanding all information and representations will allow the LHA to make a judgement at each of the five stages of Determining the Civil Penalty.
12. Where information and representations can be considered at both the Stage 1 and future stages, there is a need to avoid duplicity. The general principle is that for a representation or information to be considered as an aggravating factor, it is to be deemed of a sufficiently aggravating nature that is not covered directly or implicitly within the landlord culpability and harm banding factor assessments.
13. When using any information or representations made, the LHA must be sure that it is admissible and that it helps achieve the burden of proof to 'beyond all reasonable doubt', and not the lesser 'balance of probabilities'.

14. Level of cooperation from landlord. Attending PACE interview, offering action to rectify and prevent other breaches.

Penalty for Landlord		Banding the Offence Penalty Score	Offender [level of culpability]	Offender [level of harm to tenant or community]
Financial Penalty	Simple Caution	Band 1 offence – <u>score of 1</u> (both factors low) or <u>score of 2</u> (where one of the factors is moderate)	LOW committed with little fault, (significant effort to mitigate, minor failing, little indication of risk)	LOW Low risk of an adverse effect on individual(s). Public misled but little or no risk of actual adverse effect on individual(s)
		Band 1 offence – <u>score of 4</u> (both factors moderate)	MODERATE committed through act or omission which a landlord exercising reasonable care would not commit	MODERATE Moderate risk of an adverse effect on individual(s) (not low). Public misled but little or no risk of actual adverse effect on individual(s)
	Prosecution	Band 2 offence – <u>score of 6</u> (where 1 factor is moderate) <u>score of 8</u> (where one factor is moderate and other is significant)		
	Application for Banning Order (where prosecution achieved)	Band 3 offence – <u>score of 9</u> (both factors high) or <u>score of 12</u> (where one of factors is significant)	HIGH actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.	HIGH Serious adverse effect on individual(s) (not significant) (assess vulnerabilities). (Tenant /consumer mislead) Regulator and/or legitimate industry substantially undermined by offender's activities
		Band 4 offence – <u>score of 16</u> (both factors significant)	SIGNIFICANT deliberately or intentionally breached, or flagrantly disregarded, the law.	SIGNIFICANT Serious adverse effect(s) on individual(s) (assess vulnerabilities) and/or having a widespread impact. Significant disregard of Regulator with significant deceit.

Matters to consider when determining whether to issue Civil Penalty.

- Previous offences (convicted and sanctions imposed) can be considered as part of the Stage 1 assessment. First known offence for landlord will generally see the sanction capped with a civil penalty.
- Has the landlord complied with legislative requirements? What was the level of Council involvement to seek compliance? If a licence application was made what was the date? How does the date of compliance compare with the date of inspection, knowledge of offence, warning letters(s), invitation to PACE interview, date of and issuing of summons or notice of intention for a civil penalty?
- How long was the period of non-compliance? What period does the evidence support?
- Did the landlord adopt an approach to part compliance that could be interpreted as 'avoiding meeting legislative requirements'? What evidence is available to support this?
- Previous compliance with legislation. Balance offence with quality and reliability of evidence. Is there is a wider history of non-compliance with legislative requirements for the property in Spelthorne.

- f) What representations and further information have been received prior to decision date. When they have been duly considered is there an impact on the decision to proceed.
- g) Has the case 'review officer' put forward any views that need to be acted upon?
- h) Is there any scale to this action? Are multiple offences at one address or similar offences but at multiple locations being pursued? Will the scale of action require several different sanctions, and if a single course of action, can offences be combined into one sanction.
- i) What parties have a level of responsibility with the offence(s). Has the level of responsibility been assumed or determined. Are several parties culpable and do some have mitigating circumstances? How does the person responsible fit in with the Housing Act definitions: - person managing, having control, owner, licence holder (as well as his / her role). Is the person a company (limited by guarantee), etc?
- j) Was the Council obstructed; what support has the Council provided with ensuring compliance?
- k) How have the responsible parties acted following receipt of warning letters?

THE FIVE STAGES IN ‘DETERMINING THE LEVEL OF CIVIL PENALTY’

Stage 1: Banding the offence. The initial civil penalty band is decided following the assessment of two factors: -

- Culpability of the landlord; and
- The level of harm caused by the offence.

The scores are multiplied to give a penalty score which sits in one of four penalty bands.

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Civil Penalty Review. To review the civil penalty to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. Consideration is given to whether the enforcement action being considered is for one offence or multiple offences, whether recent related offences have been committed, and to ensure the total penalties are justified and proportionate to the offending behaviour.

All consideration works for Stages 1-5 must be carried out in the civil penalty calculation sheet.

Stage 1: Banding the Offence

There are two factors to assess here.

Banding The Offence	
<p>Factor 1. Culpability of Landlord (seriousness of offence and culpability)</p> <p>To be considered as part of assessment:</p> <ul style="list-style-type: none"> • The scale and scope of the offences, • What length of time did the offence continue for or repeat over? • What was the legislation being breached? • To what extent was the offence premeditated or planned, • Whether the landlord knew, or ought to have known, that they were not complying with the law, • The steps taken to ensure compliance, • Whether the landlord has previous relevant unspent housing offence related convictions (source National Landlord database), 	<p>Assessment:</p> <p><i>The landlord is to be assessed against four levels of culpability (low, moderate, high, or significant)</i></p>
	<p>Significant</p> <p>Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p>
	<p>High</p> <p>Landlord had actual foresight of, or willful blindness to, risk of offending but risk nevertheless taken.</p>
	<p>Moderate</p> <p>Offence committed through act or omission which a landlord exercising reasonable care would not commit.</p>
	<p>Low</p> <p>Offence committed with little fault, for example, because: -</p>

<ul style="list-style-type: none"> • The likelihood of the offence being continued, repeated, or escalated. • The responsibilities the landlord had with ensuring compliance in comparison with other parties 	<ul style="list-style-type: none"> • Significant efforts were made to address the risk although they were inadequate on this occasion. • There was no warning / circumstance indicating a risk. • Failings were minor and occurred as an isolated incident.
<p>Factor 2</p> <p>Level of Harm (for tenant(s), community)</p> <p>To consider as part of assessment</p> <ul style="list-style-type: none"> • Circumstances or vulnerabilities of the tenant/s (age, illness, ability to communicate, language, young children, or disabilities). • Tenant/s' views about the impact that the offence has had on them. • The extent to which other people in the community have been affected. For example, because of anti-social behaviour, excessive noise, and damage to adjoining properties. • Is more than one household affected? • The level of actual or potential physiological or physical impact on tenant/ and third parties? • What regulation, legislation, statutory guidance, or industry practice governed the circumstances of the offence? • Has the level of trust been breached and have landlord actions impacted on sector? 	<p>Assessment:</p> <p><i>The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</i></p>
	<p>Significant</p> <ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact. • Significant risk of an adverse effect on individual(s) – including where persons are vulnerable. • Significant disregard of Regulator or legitimate industry role with significant deceit.
	<p>High</p> <ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to significant) • High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. • Regulator and/or legitimate industry substantially undermined by offender's activities. • Consumer/tenant misled
	<p>Moderate</p> <ul style="list-style-type: none"> • Moderate risk of an adverse effect on individual(s) (not amounting to low risk) • Public misled but little or no risk of actual adverse effect on individual(s)
<p>Low</p> <ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s) • Public misled but little or no risk of actual adverse effect on individual(s) 	

Scoring Matrix:

Scoring Matrix for Financial Penalty					
LEVEL OF CULPALABILITY (SERIOUSNESS OF OFFENCE)	Significant	4	8	12	16
	High	3	6	9	12
	Moderate	2	4	6	8
	Low	1	2	3	4
		Low	Moderate	High	Significant
FACTORS	IMPACT, LEVEL OF HARM				

The score for each factor is multiplied to determine the score and then the financial penalty band (smaller penalty points)

Stage 2: Amending the penalty band due to aggravating factors.

Objective: - to consider the aggravating factors of the offence that may influence the civil penalty. A significant aggravating factor may allow the civil penalty to be increased by a penalty point.

Examples aggravating factors: -

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction (is conviction spent)?
- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation.
- Established evidence of longer-term impact on the (wider) community as a consequence of activities.
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to LHA advice regarding responsibilities, warnings of breach, or learned experience from past action, or involvement of LHA or other Regulatory Body (e.g., Surrey Fire and Rescue, Trading Standards).
- Any further factor that can be deemed to be of a sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

Stage 3: Amending the penalty band based on mitigating factors.

Objective: - to consider any mitigating factors and whether they are relevant to the offence. A significant mitigating factor may allow the civil penalty to be decreased by a penalty point.

Example mitigating factors: -

- No evidence of previous convictions, or no relevant/recent convictions.

- Steps voluntarily taken to remedy problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good record of maintaining property and compliance with legislation, statutory standards, and industry standards.
- Self-reporting, co-operation, and acceptance of responsibility.
- Mental disorder or learning disability, where linked to the commission of the offence.
- Serious medical conditions requiring urgent, intensive, or long-term treatment, where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender.
- Any further factor that can be deemed to be of a sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

Stage 4: A review of the civil penalty to ensure that the case can be made and that the chosen approach is proportionate.

This is done by the case officer.

Step 1: to check that the provisional assessment, and the proposed civil penalty meets the aims of the Crown Prosecutions sentencing principles:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent of offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

Step 2: to check that provisional civil penalty assessment, and the proposed civil penalty is proportionate, and will have an appropriate impact.

- Local authorities should use their existing powers , as far as possible, to assess a landlord's assets and any income (not just rental income) they receive when determining an appropriate civil penalty by making an adjustment to the penalty band. The general presumption should be that a civil penalty should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low civil penalty, the civil penalty might

require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6, Schedule 16 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlord(s), eg rental property portfolio, to be taken into account when making an assessment and setting the level of civil penalty. Section 125 of the Code and the Sentencing Council's guidelines² provide guidance in the determination of appropriate level of civil penalty.

The civil penalty is meant to have an economic impact on the landlord, removing rewards for criminal activities, and acting as a deterrent to bad practice.

In setting a civil penalty, the LHA may conclude that the offender is able to pay any civil penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any civil penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a civil penalty notice.

Stage Five: Totality principle³

Objective: - Where the offender is issued with more than one civil penalty, the LHA should consider the Sentencing Council's guidance from the Totality Guideline. Where separate financial penalties are passed, the LHA must be careful to ensure that there is no double-counting. Section 249A of the Housing Act 2004 (amended) states that 'only one civil penalty under this section may be imposed on a person in respect of the same conduct'.

"The total civil penalty is inevitably cumulative". The LHA should determine the civil penalty for each individual offence based on the seriousness of the offence and considering the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LHA. The LHA 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 LHA should consider how to reach a just and proportionate civil penalty. There are several ways in which this can be achieved.

² [General guideline: overarching principles – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/totality/)

³ <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/totality/> (Totality Guideline)

Examples:

- Where an offender is to be penalised for two or more offences that arose out of the same incident, or where there are multiple offences of a repetitive kind (management offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose for the most serious offence a civil penalty which reflects the totality of the offending behaviour where this can be achieved within the maximum civil penalty for that offence. No separate sanction should be imposed for the other offences.
- Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each of the offences. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the LHA should consider whether all the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- Where the LHA has determined that it will apply for a RRO within the 12-month deadline, the civil penalty should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The civil penalty may be adjusted accordingly knowing that, if successful, the RRO award will be the maximum.

Summary of Decision: The Council's proposed decision is to impose a civil penalty.

Example text for civil penalty notice: -

Considering the factors considered following the five-stage process, the Council intends to impose a civil penalty. In reaching this decision, the Council has considered the following:

- a) The Landlord's failure was a (serious) contravention(s) of section 95 (1) of the Housing Act 2004
- b) The Landlord level of culpability has been scored as high – score of 3-penalty points.
- c) The level of tenant detriment was significant, and a positive decision has been taken to act against the efforts of the Council to improve the private rented sector. The harm has been scored as moderate – score of 2-penalty points. The penalty point score at this stage is 6-penalty points.
- d) The civil penalty has been increased by 1-penalty point because of several aggravating factors (see stage 2). The new score is 7-penalty points.
- e) The Landlord has provided a few small mitigating factor(s) (see stage 3) but noting the seriousness of the breach and the actual rationale behind the cooperation this was not felt sufficient to allow a decrease in the proposed penalty score. The penalty score is maintained at 7-penalty points.
- f) After consideration of the proportionality of the civil penalty it was decided to reduce the penalty score by 1-penalty point with the resultant penalty score still considered significant for the offence committed. Penalty score reduced to 6-penalty points.

- g) When reviewing the totality of the fines it felt appropriate to maintain this civil penalty. The Council has considered the totality by choosing to investigate separately further offences and issue further financial penalties as appropriate.
- h) The Council considers that a [significant] civil penalty is necessary to create an incentive to ensure compliance and to deter future breaches by landlords. A civil penalty of £6,000 is below the achieved rental income and significantly higher than the standard property licensing fee payable.

Setting the Civil Penalty for a Landlord

Penalty band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2,000	£4,000	£6,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

Penalty Banding Grid	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
S30(1) – IN HA 2004 (£5,000) By completion time	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
S30(1) – IN HA 2004 (£5,000) Start on time	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
S32 (1)– PO HA 2004 (£5,000) Breach of Order																
S32 (1)– PO HA 2004 (£20 daily) Continuing offence																
Section 72 (1) – not licence HMO (£20,000)	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 72(2) –HMO overcrowding (£5,000)	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 72(3) –HMO licence conditions (£5,000)	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 95 (1) – not licence PRP (£20,000)	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 95 (2) – PRP licence condition. (£5,000) per condition	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 139 – HA 2004 O/C (£2,500)	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 234 – HMO Regulation (£5,000) per breach	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 21(1) Housing Planning Act 2016. Breach of Banning Order (imprisonment)	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
Section 6(1) Criminal Law Act 1977; (£5,000 or Imprisonment)																
Section 1 92) (3) or (3A) Protection from Eviction Act 1977 (fine or imprisonment)																
Breach of a banning order made under section 21 of the 2016 Act;	£250	£500	£750	£1000	£2,000	£4,000	£8,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

Note: the term “financial penalty” used in the above table means “civil penalty” as used in the remainder of the document.

Offence	Subject to FP and RRO
Offence	Subject to FP only
Offence	Subject to RRO only

Note: the term “FP” used in the above table means “civil penalty (CP)” as used in the remainder of the document.

Setting the Rent Repayment Order (RRO) for a landlord.

See separate RRO procedure for more information on this: -

A tenant or the LHA may individually apply to a FTT for a RRO award in respect of their rent payments within 12-months of an offence. Under section 73 (7 iii) and section 96 (7iii) of the 2004 Act, and section 42 (2b) of the 2016 Act; the LHA is required to stipulate in the notice of intended proceedings how much the order for repayment of rent is. The level of rent relates to a defined period of 12-months in the period leading up to the offence, or during the 12-month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. The LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it considers the: - punishment of the offender, the recipient of any recovered rent, deterring the offender from repeating the offence, deterring others from committing similar offences, and removing any financial benefit the offender may have obtained as a result of committing the offence. The LHA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved, the LHA will apply to the FTT for the maximum rent repayment; within a 12-month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or the LHA where the landlord has been convicted or a civil penalty issued in relation to that offence. In these cases, there is no discretion within “Determining the Civil Penalty”.

If no conviction or civil penalty is issued, or no civil penalty can be issued, and a RRO is applied for, Spelthorne Borough Council will apply to the FTT for the maximum rent repayment. If a civil penalty is to be issued, the penalty point/ banding first determined will be reviewed under Stage 5 to ensure the Totality Principle is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a RRO with the FTT in line with section 74 and 97 of the 2004 Act, and the tables in section 44 and 45 of the 2016 Act. The FTT must consider: - the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4) applies. It is also felt that not making the application for the maximum award would undermine the discretion of the FTT.

A person aggrieved by the decision of the FTT may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.