

# **Housing offences sentencing guidelines Consultation**

January 2026



# **Housing offences sentencing guidelines Consultation**

January 2026

---





© Crown copyright 2026

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk).

Any enquiries regarding this publication should be sent to us at [info@sentencingcouncil.gov.uk](mailto:info@sentencingcouncil.gov.uk).

# Contents

<b>Introduction</b>	<b>1</b>
<b>Equality and diversity</b>	<b>6</b>
<b>Unlawful eviction and unlawful harassment</b>	<b>8</b>
Step 1 – Harm and Culpability	8
Step 2 – Starting point and category range	11
Step 3: Compensation	19
Step 4: Confiscation	20
Step 5 – Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending	20
Remaining steps	21
<b>Houses in Multiple Occupation (HMOs)</b>	<b>24</b>
Step 1 - Determining the offence category	24
Step 2 – Starting point and category range	27
Remaining steps	32
Section 139	32
<b>Housing standards</b>	<b>33</b>
Step 1 - Determining the offence category	33
Step 2 – Starting point and category range	35
Remaining steps	37
Section 238	37
<b>Annex A: list of consultation questions</b>	<b>39</b>

## About this consultation

To:	This consultation is open to everyone including members of the public, members of the judiciary, legal practitioners and individuals who work in or have an interest in criminal justice.
Duration:	From 15 January to 9 April 2026
Enquiries (including requests for the paper in an alternative format) to:	Office of the Sentencing Council Tel: 020 7071 5786 Email: <a href="mailto:info@sentencingcouncil.gov.uk">info@sentencingcouncil.gov.uk</a>
How to respond:	Please send your response by 9 April 2026 to: Jessie Stanbrook or Ollie Simpson Email: <a href="mailto:consultation@sentencingcouncil.gov.uk">consultation@sentencingcouncil.gov.uk</a> or by using the online consultation at: <a href="https://consult.justice.gov.uk/">https://consult.justice.gov.uk/</a>
Information to help you respond:	This consultation exercise is accompanied by a resource assessment, a statistical summary and data tables which can be found at: <a href="http://www.sentencingcouncil.org.uk">www.sentencingcouncil.org.uk</a>
Response paper:	Following the conclusion of this consultation exercise, a response will be published at: <a href="http://www.sentencingcouncil.org.uk">www.sentencingcouncil.org.uk</a>
Freedom of information:	<p>We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.</p> <p>In addition, responses may be shared with the Justice Committee of the House of Commons.</p> <p>Our privacy notice sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met. It is published on our website at: <a href="http://www.sentencingcouncil.org.uk/privacy">www.sentencingcouncil.org.uk/privacy</a>.</p>





# Introduction

## What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on its proposed guidelines before they come into force and on any proposed changes to existing guidelines.

## What is this consultation about?

This consultation asks for feedback on a new package of housing related offences sentencing guidelines. These include two guidelines covering the nine offences of unlawful eviction of occupier and unlawful harassment of occupier and four guidelines covering offences related to houses in multiple occupation (HMOs) and other housing standards offences. The package includes guidelines for individuals and guidelines for organisations.

## Why housing offences?

Various stakeholders wrote to the Council between 2015 and 2024 requesting consideration of sentencing guidelines for a number of housing related offences or groups of offences. These stakeholders include prosecutors, barristers, solicitors, individuals working in enforcement teams in local councils, and officials from the Ministry of Housing, Communities and Local Government (MHCLG).

The main offences that stakeholders requested the Council consider developing pertained to the private rented sector and offences committed by “rogue landlords”, such as offences related to letting out HMOs, unlawful eviction and failing to comply with orders, including, for example, prohibition orders, improvement notices, and licensing related offences.

Two key concerns regarding the lack of guidelines for these types of offences expressed by stakeholders were:

1. Low level, inconsistent and diverging penalties imposed both at magistrates’ and Crown Courts for these types of offences, making it difficult for legal counsel to advise clients about likely outcomes, and leaving sentencers without guidance or precedent to impose consistent and proportionate sentences across the country.
2. Significant gravity of some offences with significant harm caused to victims and no guidance on sentencing, especially in regard to unlawful eviction, which could include vulnerable victims permanently losing their homes or belongings.

## Unlawful eviction and unlawful harassment

While sentencing data from the Ministry of Justice Court Proceedings Database shows low volumes of unlawful eviction and unlawful harassment cases, research in the charity sector

suggests there are a significant number of illegal eviction and harassment activities that are not being brought to prosecution through the criminal justice system (see for example, Cambridge House's 'Safer Renting' report '[Offences under the Protection from Eviction Act 1977 in England: 2022 update of the annual count](#)').

Stakeholders the Council spoke to in the development of these guidelines outlined that the high proportion of low level and inconsistent sentences for these types of offences is widely recognised as a contributing factor to the reluctance of local authorities to prosecute these offences and instead deal with them through civil means (although there may be other factors driving this as well). Stakeholders suggested that this reluctance results in low volumes of prosecutions, which means that sentencers are not able to gain experience in sentencing these offences. This may be especially apparent for offences with a maximum penalty of an unlimited fine, for example unlawful eviction committed by an organisation.

Stakeholders suggested that unlawful eviction and harassment cases are more often pursued by local authorities via civil means, when, particularly in more serious cases, a criminal penalty may be more appropriate. For example, a successful prosecution would allow the offending to be put on a landlord's criminal record, they could be served with a banning order under the Housing and Planning Act 2016, compensation could be awarded to victims, and the local authority would be able to publicise the prosecution, which they cannot do following the imposition of a civil penalty. Moreover, the harm that can be caused by this offending includes a victim losing access to their possessions or losing their home entirely, and the offending is often seen alongside violence and harassment. It seems appropriate that these harms are reflected, at least in some cases, with non-financial penalties, such as custodial sentences or community orders.

Further, the Sentencing Council's [General guideline](#) outlines, "it should not be cheaper to offend than to comply with the law." The costs associated with a landlord legally gaining possession of their home can cost up to one thousand pounds, and in more difficult situations needing legal support, run into thousands of pounds.

### **Houses in Multiple Occupation**

A further priority for those groups that contacted the Council were for guidelines for offences related to licensing and overcrowding in HMOs. Securing a licence for an HMO is a matter of showing that the property is appropriate for the number of tenants specified in the application, and that the applicant is a fit and proper person. Licence conditions for HMOs are set by local authorities, but may include matters relating to taking steps to prevent anti-social behaviour, ensuring there are suitable amenities, keeping facilities and equipment in proper working order, and ensuring the licence holder has undergone appropriate training.

Licence conditions must include the conditions set out in Schedule 4 to the 2004 Act, which include matters relating to producing gas safety certificates, ensuring furniture and

appliances are safe, putting working smoke and carbon monoxide alarms in place and, in England, ensuring electrical installations are in proper working order.

HMO management regulations place duties on HMO managers to make sure properties are safe, that there are fire escape routes, that water supply and drainage are in good condition, that gas safety certificates are produced, that the shared areas, fixtures and fittings are kept to a decent standard and that there are waste disposal facilities.

There may, therefore, be some overlap between the matters covered by licence requirements and breach of HMO regulations. Whilst the former are subject to local variation and the latter provide basic national standards, the Council believes that the consideration of harm that the courts will undertake to assess the seriousness of offending means these can be included in one overall HMO guideline.

## **Housing Standards**

There are various offences related more broadly to standards of housing: although these were not necessarily the focus of those who contacted the Council requesting guidelines, the Council recognised that there may be areas of overlap where HMO offences are prosecuted. Local authorities have a duty to take appropriate enforcement action in relation to “Category 1 hazards” (i.e. a “serious hazard” classed A to C following a score of 1,000 or more following an assessment using the Housing Health and Safety Rating System (HHSRS) which looks at the outcome and likelihood of different hazards). For all others (i.e. “Category 2 hazards”), local authorities have discretion to take enforcement action.

This enforcement action may include an improvement notice requiring the person on whom it is served to take remedial action to remove or reduce the hazard. Failure to comply is an offence carrying a maximum penalty of an unlimited fine.

Another option for enforcement action is a prohibition order prohibiting the use for some or all purposes of some or all parts of a property (a prohibition order must set out any remedial work which the authority considers would, if taken, lead them to revoke the order). Failure to comply is an offence carrying a maximum penalty of an unlimited fine but an additional fine of up to £20 a day may be imposed for each day (or part of a day) that a property continues to be used in contravention of an order.

## **Approach to the guidelines**

In preparing the guidelines, the Council has had regard to the purposes of sentencing and to its statutory duties.

## **This consultation**

Taking all these issues together, the Council considered it necessary to consult on a package of housing related offences guidelines.

This consultation includes two guidelines covering the nine offences of unlawful eviction of occupier and unlawful harassment of occupier and four guidelines covering offences related to HMOs and other housing standards offences.

The Council understands that these offences are inherently difficult to prosecute in terms of the resource and knowledge required by local authorities and the police of these offences. In addition to sentencing guidelines providing guidance to courts on the appropriate criminal penalties for these offences and factors to take into account which may result in more confidence in prosecuting these types of offences, it has been suggested by stakeholders that guidelines for these offences may also help local authorities differentiate when an offence should receive a civil penalty or be prosecuted.

The Council considered other offences related to housing in this project and is aware of the broad and complex landscape of legislation that covers the private rented sector and which gives local authorities powers to enforce landlords to meet their statutory obligations. After speaking to stakeholders and considering relevant research and data, it considered that the guidelines within scope of this consultation were most in need of sentencing guidelines. The Council is also aware that the Renters' Rights Act 2025 has introduced further duties on landlords, statutory duties to enforce housing legislation, as well as new offences, and that the civil penalty powers of local authorities have been increased from £30,000 to £40,000. Whilst these proposed guidelines would operate independently of any civil enforcement regime, the Council hopes that they will support the overall enforcement framework and assist local authorities and the courts in understanding their options for tackling housing offences.

## Responding to the consultation

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guidelines more or less serious
- the additional factors that should influence the sentence
- the fine levels, and types and lengths of sentence that should be passed
- whether there are any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address, and
- anything else you think should be considered.

We would like to hear from anyone who uses sentencing guidelines in their work or who has an interest in sentencing, and anyone who works in or has knowledge of the private rented sector. We would also like to hear from individuals and organisations representing anyone who could be affected by the proposals including:

- victims and their families
- defendants and their families
- those with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In the following sections the proposed changes are outlined in detail and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to [consultation@sentencingcouncil.gov.uk](mailto:consultation@sentencingcouncil.gov.uk) or by using the online consultation at <https://consult.justice.gov.uk/>. A summary of the consultation questions can be found at **Annex A**.

### What else is happening as part of the consultation process?

This is a 12 week public consultation. The Council has not yet planned any consultation meetings but would be happy to arrange a meeting to discuss any of the issues raised if this would be helpful. Once the results of the consultation have been considered, the updated guidelines will be published alongside a consultation response document setting out the consultation responses and the Council's response to these.

Alongside the consultation, small scale qualitative research will be conducted with sentencers on the HMO and housing standards guidelines to test how the draft guidelines may be used in practice, and to identify any potential issues with them. Similar research was conducted prior to the consultation to inform the initial development of the draft unlawful eviction and unlawful harassment guidelines.

**Question 1: What is your name?**

**Question 2: What is your email address?**

**Question 3: If you are answering as an individual, are you happy for your name to be included in the consultation response document?**

**Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.**

---

# Equality and diversity

The Public Sector Equality Duty is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not.

The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

The Council has had regard to its duty under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics.

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that the guidelines have different outcomes for different groups. The Council published the report [‘Equality and diversity in the work of the Sentencing Council’ in January 2023](#). The report covers findings of research conducted to identify and analyse any potential for the Council’s work to cause disparity in sentencing outcomes across demographic groups.

In addition, the available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines, for example because of a lack of available data or because volumes of data are too low. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

---

---

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.



# Unlawful eviction and unlawful harassment

The proposed guidelines relating to unlawful eviction and harassment cover nine offences under the Protection from Eviction Act 1977. These are all either way offences with a maximum penalty of up to 2 years' custody for individuals or an unlimited fine for organisations.

## Unlawful Eviction of Occupier

- Deprive / displace residential occupier from premises (sections 1(2) and (4)).
- Attempt to deprive residential occupier of premises (sections 1(2) and (4)).

## Unlawful Harassment of Occupier

- Harass occupier to refrain from exercising rights (sections 1(3) and (4)).
- Harass occupier to give up occupation of premises (sections 1(3) and (4)).
- Withdraw services with intent to cause occupier to leave (sections 1(3) and (4)).
- Occupier refrain from exercising any right because services withheld (sections 1(3) and (4)).
- Landlord withhold services from occupier (sections 1(3A) and (4)).
- Agent of landlord withhold services from occupier (sections 1(3A) and (4)).
- Landlord / agent harass occupier to give up premises (sections 1(3A) and (4)).

The Council is proposing two guidelines for these offences, one to cover offences committed by individuals and one to cover offences committed by organisations.

## Step 1 – Harm and Culpability

### Culpability

The first step of the guidelines require the sentencer to assess the culpability of the offender and the harm caused by the offence. These factors establish the overall seriousness of the offence and will help provide the starting point sentence, before aggravating and mitigating factors are taken into account at Step 2.

During the development of the draft guidelines, the Council engaged with relevant stakeholders and considered Crown Court transcripts for these offences from 2017 to 2023. In addition, small scale qualitative research was conducted with sentencers prior to



the consultation to test how the draft guidelines may be used in practice, and to identify any potential issues with them.

The Council originally considered two levels of culpability for unlawful eviction and unlawful harassment given the seriousness of the offending. However, some stakeholders as well as a review of Crown Court transcripts suggested that the circumstances surrounding an offence of unlawful eviction or unlawful harassment can vary greatly; from, for example, professional landlords with multiple rented homes using intimidation or violence to force tenants with legal contracts out of their homes; to individuals who informally agreed to allow an individual to stay in a spare room, and that relationship becoming sour. Similarly, sentencers who took part in research interviews suggested that there were a lot of culpability factors in the proposed draft guidelines, and that these could be separated out to allow for a greater differentiation between more serious factors such as violence, and less serious factors such as not attempting to use legal means of eviction. Sentencers suggested that three categories of culpability, as opposed to the initially proposed two, would enable for this differentiation between the presence, or lack of, violence.

The Council considered a factor of vulnerable victims, including children, being present during the commission of the offence in the culpability factors, but ultimately decided that the presence of vulnerable victims and children was more appropriate to be considered at Step 2.

Finally, the Council also considered a culpability factor relating to provocation by tenants through non-payment of rent, damage to property or other activities, but ultimately agreed that no tenant deserved to be unlawfully evicted or harassed despite what may have happened before, and that there are legal routes to addressing difficult tenants that should be followed by all landlords.

Many culpability factors proposed are standard culpability factors found across offence specific guidelines. Other culpability factors have been formed through discussions with relevant stakeholders and from factors that have been used in the court's decision making as set out in Crown Court transcripts (for example, intimidation making the offence aggravated, set out in the Court of Appeal judgment *Jahangir Khan* [2001] EWCA Crim 912).

The culpability factors proposed for the guideline for sentencing individuals for unlawful eviction and unlawful harassment are:

## Culpability

### A – High culpability

- Threat or use of harassment, intimidation or force
- Involving use of (or threat of use of) a weapon
- Leading role or significant role where offending is part of a group activity
- Stoppage or removal of property's utilities

## Culpability

- Causing damage affecting habitability of property
- Damage, retention, removal or disposal of victim's belongings

### B – Medium culpability

- Deliberate intention to impede access to or from property
- Entering property without permission to do so
- No attempt by landlord to evict tenant by lawful means
- Failed to address damage or problems affecting habitability of property, including issues with the property's utilities

### C – Lesser culpability

- No threat or use of harassment, intimidation or force
- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Landlord provided and can evidence statutory notice for legal eviction route(s)

## Guideline for Organisations

The proposed unlawful eviction and unlawful harassment guideline for sentencing organisations follows the same structure as that of the guideline for individuals. Differences only exist where a section or factor relevant to an individual is not relevant to an organisation.

Culpability factors in Step 1 of the guideline for organisations therefore largely mirror the guideline for individuals.

**Question 5: Do you have any comments on the culpability factors for the unlawful eviction and unlawful harassment guidelines for individuals and organisations?**

## Harm

The Council initially considered three levels of harm when developing these draft guidelines, however they ultimately concluded that they wished to distinguish: harm resulting in the victim being deprived of their home permanently, being caused significant distress, or being deprived of basic utilities for a significant period of time, from any other harm.

The Council is therefore proposing two levels of harm in the guidelines. The harm elements proposed are common across the individual and organisation guidelines.

## Harm

### Category 1

- Victim(s) deprived of the property permanently
- Victims(s) caused significant distress
- Victim(s) deprived of basic utilities reasonably required for the occupation of the premises as a residence for a significant period of time

### Category 2

- All other cases

**Question 6: Do you have any comments on the harm factors for the unlawful eviction and unlawful harassment guidelines for individuals and organisations?**

## Step 2 – Starting point and category range

The maximum sentence set by legislation for an offence of unlawful eviction or unlawful harassment is two years in prison.

Almost all of the Crown Court transcripts considered by the Council for unlawful eviction and harassment offences refer to the huge impact the actions of the offender had on the victim: the loss of their home and safe place, usually rendering them, at least temporarily, homeless, and causing them huge distress, through, for example, having to arrange alternative accommodation at short notice. Many sentencing remarks include reference to how serious the offence of unlawful eviction is, even if the circumstances surrounding the offence were either not intended or understood by the offender to be serious, and even if there was no force, intimidation or violence used.

The Council is therefore proposing to set the top of the offence range as the maximum sentence allowed by law in the guideline for individuals.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting Point</b> Medium level community order
	<b>Category range</b> 26 weeks – 2 years' custody	<b>Category range</b> Medium level community order – 36 weeks' custody	<b>Category Range</b> Low level community order – High level community order
Category 2	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting Point</b> Low level community order
	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Low level community order– High level community order	<b>Category Range</b> Band C fine - Medium level community order

**Question 7: Do you have any comments on the starting points and category ranges for the unlawful eviction and unlawful harassment guideline for individuals?**

### Guideline for Organisations

An offence of unlawful eviction and unlawful harassment committed by organisations carries a maximum sentence of an unlimited fine.

In most existing sentencing guidelines for organisations, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. The court should then consider further adjustment within the category range for aggravating and mitigating features. The court is then asked to consider other financial factors to ensure that the proposed fine is proportionate. The Council uses turnover to identify the category of an organisation because it is considered a clear financial indicator that can be readily identified by sentencers in accounts or annual reports, and one that is less susceptible to manipulation than other accounting measures. Courts can still use flexibility given by guidelines to tailor the sentence to the individual circumstances of the organisation concerned to address any concerns when turnover may not be an accurate indicator of the financial health of an organisation.

The Council proposes a similar approach for the unlawful eviction and unlawful harassment guideline for organisations.

The fine levels have been set bearing in mind the levels set out in other guidelines for organisations, in particular the levels in the health and safety guideline.

The Council has considered proportionality with potential fine levels in the guideline for individuals as the Protection from Eviction Act 1977 sets out at section 1(6) that both an individual and organisation can be convicted of the same offence.

### Very large organisations

Where an offending company's turnover or equivalent very greatly exceeds the threshold for large companies, courts should consider fines outside the range for large companies to achieve a proportionate sentence.

There is no precise level of turnover at which an organisation becomes "very large". In the case of most organisations it will be obvious if it either is or is not very large.

In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations.

In setting the level of fine for a very large organisation the court must consider the seriousness of the offence with reference to the culpability and harm factors above and the aggravating and mitigating factors below, the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under "General principles in setting a fine" above and at steps 5 to 7 below.

Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate punishment depending on the seriousness of the offence, and sufficient to bring home to the management and shareholders the need for regulatory compliance.

#### Large organisation – Turnover or equivalent: £50 million and over

Harm	Culpability		
	A	B	C
Category 1	<b>Starting Point</b> £1,500,000	<b>Starting Point</b> £750,000	<b>Starting Point</b> £250,000
	<b>Category range</b> £750,000 – £4,200,000	<b>Category range</b> £375,000 – £2,100,000	<b>Category range</b> £125,000 – £700,000

Category 2	<b>Starting Point</b> £750,000	<b>Starting Point</b> £375,000	<b>Starting point</b> £125,000
	<b>Category range</b> £375,000 – £2,100,000	<b>Category range</b> £185,000 – £1,000,000	<b>Category range</b> £60,000 –£330,000

**Medium – Turnover or equivalent: between £10 million and £50 million**

Harm	Culpability		
	<b>A</b>	<b>B</b>	<b>C</b>
Category 1	<b>Starting Point</b> £600,000	<b>Starting Point</b> £300,000	<b>Starting point</b> £100,000
	<b>Category range</b> £300,000 – £1,500,000	<b>Category range</b> £150,000 – £750,000	<b>Category range</b> £50,000 – £250,000
Category 2	<b>Starting Point</b> £300,000	<b>Starting Point</b> £150,000	<b>Starting point</b> £50,000
	<b>Category range</b> £150,000 – £750,000	<b>Category range</b> £75,000 – £375,000	<b>Category range</b> £25,000 – £125,000

**Small – Turnover or equivalent: between £2 million and £10 million**

Harm	Culpability		
	<b>A</b>	<b>B</b>	<b>C</b>
Category 1	<b>Starting Point</b> £150,000	<b>Starting Point</b> £75,000	<b>Starting Point</b> £25,000
	<b>Range</b> £75,000 – £375,000	<b>Range</b> £36,000 – £185,000	<b>Range</b> £12,000 – £60,000
Category 2	<b>Starting Point</b> £75,000	<b>Starting Point</b> £36,000	<b>Starting point</b> £12,000
	<b>Range</b> £36,000 – £185,000	<b>Range</b> £18,000 – £90,000	<b>Range</b> £6,000 – £30,000

Micro – Turnover or equivalent: not more than £2 million			
Harm	Culpability		
	A	B	C
Category 1	<b>Starting Point</b> £75,000	<b>Starting Point</b> £36,000	<b>Starting point</b> £12,000
	<b>Range</b> £36,000– £185,000	<b>Range</b> £18,000 – £90,000	<b>Range</b> £6,000 – £30,000
Category 2	<b>Starting Point</b> £36,000	<b>Starting Point</b> £18,000	<b>Starting point</b> £6,000
	<b>Range</b> £18,000 – £90,000	<b>Range</b> £9,000 –£45,000	<b>Range</b> £3,000 – £15,000

**Question 8: Do you have any comments on the starting points and category ranges in the unlawful eviction and unlawful harassment guideline for organisations?**

### Aggravating and mitigating factors

Having established a starting point, sentencers are asked to consider whether there are any aggravating factors present which may increase the seriousness of the offence, or any mitigating factors relating to the offence or the offender which would reduce the sentence within the range set out in the sentence table.

Many of the factors in the unlawful eviction and unlawful harassment draft guidelines are standard factors seen across sentencing guidelines, though some are unique to these and other proposed housing related offences guidelines.

Similar to culpability factors, the Council also considered whether there should be any mitigating factors in relation to a victim's prior conduct, for example, where this conduct caused distress or harm to other occupiers or neighbours. Again, the Council ultimately decided against its inclusion, agreeing that an offender was not less culpable because they felt like the victim 'deserved' it, and that there are legal routes a landlord can use in that type of situation.

The Council would like to ask respondents specifically for views on the proposed inclusion of the aggravating factors '**Victim evicted from a property they resided in for a**

**significant period of time’ and ‘Conduct intended or likely to cause maximum or additional distress (for example, offence committed in the middle of the night)’.**

### Factors increasing seriousness

#### Statutory 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
- Offence committed on bail
- Offence motivated by, or demonstrated hostility based on any of the following characteristics or presumed characteristics: race, religion, disability, sexual orientation or transgender identity

#### Other aggravating factors:

- Victim evicted from a property they resided in for a significant period of time
- Previous relevant civil or regulatory enforcement action in relation to this or other properties)
- Expectation of substantial financial gain from offending
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Intentionally sought to deceive the local authority or court etc as to facts of the case and/or documents
- Prolonged nature of offence or involved repeated acts over period of time
- Involvement of others, including through coercion, intimidation or exploitation
- Conduct intended or likely to cause maximum or additional distress (for example, offence committed in the middle of the night)
- Commission of offence whilst under the influence of alcohol or drugs
- Attempts to conceal or dispose of evidence
- Deliberate concealment of illegal nature of activity
- Child(ren) or vulnerable person resident and/or present
- Failure to comply with current court orders
- Failure to respond to warnings, advice or concerns expressed by others about behaviour
- Offence committed on licence or post sentence supervision or while subject to court order(s)

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- No previous relevant civil or regulatory enforcement action
- Positive character and/or exemplary conduct (regardless of previous convictions)



### Factors reducing seriousness or reflecting personal mitigation

- Remorse, particularly where evidenced by voluntary reparation to the victim
- Age and/or lack of maturity (which may be applicable to offenders typically aged 18-25)
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Pregnancy, childbirth and post-natal care
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

### Guideline for Organisations

Similar to Step 1, the aggravating and mitigating factors in the guideline for organisations largely mirror those in the guideline for individuals (with some amendments as appropriate, where factors do not apply to organisations).

### Question 9: Do you have any comments on the aggravating and mitigating factors for the unlawful eviction and unlawful harassment guidelines for individuals and organisations?

Do you have any comments specifically on the aggravating factors '**Victim evicted from a property they resided in for a significant period of time?**' or '**Conduct intended or likely to cause maximum or additional distress (for example, offence committed in the middle of the night)?**'

### Obtaining Financial information

The guidance to courts on obtaining financial information proposed in this guideline appears in other guidelines, such as the environmental guideline and health and safety guideline. The Council hopes that this will encourage offenders to provide accurate information about their financial circumstances, which may include, for example, a portfolio of different rented accommodation.

### Obtaining financial information

In setting a fine or compensation, the court may conclude that the offender is able to pay any fine or compensation imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the

court may compel the disclosure of an individual offender's financial circumstances pursuant to [section 35 of the Sentencing Code](#). In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court 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 fine** or compensation.

The Council believes that the inclusion of this guidance in this guideline makes it clear that the court may conclude that the offender is able to pay any fine or financial order imposed unless the offender has supplied any financial information to the contrary and that the power for courts to compel the disclosure of an individual offender's financial circumstances relates both to the imposition of fines as well as to compensation and confiscation.

### Guideline for Organisations

In line with other guidelines for organisations, the Council is proposing more comprehensive guidance on Obtaining financial information in the guideline for organisations.

#### Obtaining financial information

The offender is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court 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 fine**.

Normally, only information relating to the organisation before the court will be relevant, unless exceptionally it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

- **For companies:** annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. **Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.**
- **For partnerships:** annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. **If adequate accounts are not produced on request, see paragraph 1.**
- For local authorities, fire authorities and similar public bodies: the Annual Revenue Budget ('ARB') is the equivalent of turnover and the best indication of the size of the

organisation. It is unlikely to be necessary to analyse specific expenditure or reserves (where relevant) unless inappropriate expenditure is suggested.

**Question 10: Do you have any comments on the guidance for obtaining financial information in the unlawful eviction and unlawful harassment guidelines for individuals and organisations?**

### Step 3: Compensation

Section 133 of the Sentencing Act 2020 sets out that where an offence has resulted in loss or damage, the court must consider whether to make a compensation order and must give reasons if it decides not to order compensation. Compensation can be imposed by any court.

Most Crown Court transcripts considered by the Council refer to compensation for this type of offending due to costs to the victim resulting from being illegally evicted, such as travel expenses and having to find new accommodation at short notice, as well as the great harm and distress caused. As such, the Council is proposing guidance on compensation to be included at Step 3 of the guidelines. This guidance asks the court to take into account both the financial loss **and** the distress suffered by the victim.

#### Step 3 – Compensation

The court must consider making a compensation order requiring the offender to pay the victim(s) compensation for any financial loss or suffering resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

There is no statutory limit for compensation, and the court may make a compensation order regardless of whether there was an application for one or not. In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. **Reasons should be given if a compensation order is not made.**

When forming the preliminary view of the amount of compensation to be awarded, the court should take into account both:

1. **financial loss:** any additional costs suffered by the victim as a result of the offence
2. **suffering:** distress caused by the offence.

Where relevant information is not immediately available, it may be appropriate to grant an adjournment if it would enable it to be obtained.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

The guidelines also include a drop down to further information on [compensation orders](#).

The Council wanted to make it clear in the guidelines that there does not need to be a claim for compensation for a court to be able to make an order for it.

The Council considered including an approximate amount or range for the level of compensation within the guidelines but ultimately decided that the circumstances of each case will be so different that it would not be appropriate to specify an amount. It considered that it was more important that the guidelines are clear that compensation can be ordered both to cover financial loss as well as distress caused.

## Step 4: Confiscation

The Proceeds of Crime Act 2002 puts a duty on the Crown Court to make a confiscation order when a defendant has benefited from criminal conduct. The court determines the defendant's benefit from their offending from the financial advantage that a defendant has obtained from his criminal conduct, extending to assets other than those relating to the offence subject to certain qualifying criteria. This duty becomes a power if the court believes any victim of the criminal conduct has or will start proceedings for the loss or damage connected with the conduct.

The Crown Court will also fix a period of imprisonment (a 'default sentence') to be served if the defendant fails to pay the confiscation order. A confiscation order is payable to the magistrates' court, and His Majesty's Courts and Tribunals Service (HMCTS) is ultimately responsible for collecting the debt. Money enforced in respect of confiscation orders is shared between the agencies involved after liquidators, receivers and compensation are paid.

The Council is proposing guidance on Confiscation to be included at Step 4 of the guidelines in the form of a drop down. The contents of this drop down can be viewed in the [ancillary orders](#) page on the website.

## Step 5 – Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending

In line with the approach taken in other guidelines which include compensation, confiscation and other financial order options, the Council proposes guidance at Step 5 which asks courts to consider the combination of financial orders as a whole cost against various principles. This step ensures that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit

derived from the offending. This text is similar to that in other relevant guidelines, but with some specific text relating to unlawful eviction and harassment.

### **Step 5 – Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending**

The court should remove any economic benefit the offender has derived through the commission of the offence including:

- avoided costs;
- operating savings;
- any gain made as a direct result of the offence.

Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine arrived at in step two. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.

Economic benefit will not always be an identifiable feature of a case. For example, in some cases there may be very little obvious gain. However, there may be avoidance of cost, for example, the cost of legally evicting a tenant, including costs for a possession order, warrant for possession and any associated legal costs. Any costs avoided will be considered as economic benefit.

Where it is not possible to calculate or estimate the economic benefit derived from the offence, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

**Question 11: Do you have any comments on compensation (Step 3), confiscation (Step 4) or ‘Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending’ (Step 5)?**

## **Remaining steps**

The remaining guidance within the unlawful eviction and unlawful harassment guidelines follows a similar structure as many other offence specific guidelines.

### **Step 6 – Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an

offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**Guidance on the effect of providing assistance to law enforcement authorities on sentencing (drop down).**

### Step 7 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in sentence for a guilty plea guideline](#).

### Step 8 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

### Step 9 – Ancillary orders

In all cases the court should consider whether to make any other ancillary orders, including restraining orders and disqualification from being a company director.

**Restraining orders (drop down)**

**Disqualification (drop down)**

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court](#)

### Step 10 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

### Step 11 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

### Guideline for Organisations

The guideline for organisations contains similar steps to those set out above, except for Step 9 – Ancillary orders and Step 11 - Consideration for time spent on bail (tagged curfew) which cannot apply to organisations.

**Question 12: Do you have any comments on Steps 6-11 of the unlawful eviction and unlawful harassment guidelines for individuals and organisations?**

**Question 13: Do you have any comments on equality and diversity issues in relation to the unlawful eviction and unlawful harassment guidelines for individuals and organisations?**

**Question 14: Do you have any further comments on the unlawful eviction and unlawful harassment guidelines for individuals and organisations?**

# Houses in Multiple Occupation (HMOs)

The proposed guidelines relating to HMOs cover four offences under the Housing Act 2004, which are all summary offences with a maximum penalty of an unlimited fine:

- Fail to licence an HMO (section 72(1))
- Knowingly permit over-occupation of an HMO (section 72(2))
- Breach of licence conditions (section 72(3))
- Breach of HMO management regulations (section 234(1))

The Council is proposing two guidelines for these offences, one to cover offences committed by individuals and one to cover offences committed by organisations.

## Step 1 - Determining the offence category

### Culpability

For the proposed HMO guidelines, the Council has drawn elements from the [breach of food safety and food hygiene regulations guideline](#) which came into force in 2016. The division of culpability, in broad terms is between those offenders who deliberately and knowingly break the law, those who make an error but do make attempts to comply (or who don't take the lead in group offending), and cases that fall in between. For individuals the Council proposes the following culpability factors:

#### Culpability

##### A – High culpability

- Deliberate breach of or flagrantly disregard for the law
- Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken
- Leading role or significant role where offending is part of a group activity

##### B – Medium culpability

- Offence committed through act or omission which a person exercising reasonable care would not commit
- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C

##### C – Lesser culpability



- 
- Offence committed with little fault because, for example:
    - efforts were made to address the breach although they were inadequate on this occasion
    - there was no warning/circumstance indicating a risk to individuals
    - failings were minor and occurred as an isolated incident
  - Property (or properties) unlicensed for a short period of time
- 

The guideline for organisations requires a slightly different approach as the offending may in some instances occur through systemic failure, rather than criminal motivation. The proposed culpability factors are very similar to the guideline for food safety offences, although the Council does not propose including the high culpability factor “Failing to put in place measures that are recognised standards in the industry” as failing to meet standards is inherent in much of the offending covered, and “recognised standards in the industry” does not seem applicable in the context of the rental sector.

## Culpability

### A – High culpability

- Deliberate breach of or flagrant disregard for the law
  - Offender fell far short of the appropriate standard, for example by:
    - ignoring concerns raised by local authorities, employees or others
    - allowing breaches to subsist over a long period of time
  - Serious or systemic failure within the organisation to address breaches
- 

### B – Medium culpability

- Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘lesser’ culpability categories
  - Systems were in place but these were not sufficiently adhered to or implemented
- 

### C – Lesser culpability

- Offender did not fall far short of the appropriate standard because, for example:
    - significant efforts were made to address the breach although they were inadequate on this occasion
    - there was no warning/circumstance indicating a risk to individuals
  - Property (or properties) unlicensed for a short period of time
  - Failings were minor and occurred as an isolated incident
-

---

**Question 15: Do you have any comments on the culpability factors and categories for the HMO offence guidelines for individuals and organisations?****Harm**

The harm elements proposed by the Council are common across the individual and organisation guidelines and recognise that the harms may be caused both to tenants and potentially other individuals.

**Harm****Category 1**

- Serious adverse effect(s) on tenant(s) or other individual(s)
- High risk of a serious adverse effect on tenant(s) or other individual(s)
- Severe overcrowding
- Very poor or seriously inadequate living conditions (where this is caused by the landlord's actions or inactions)

---

**Category 2**

- Adverse effect on tenant(s) or other individual(s) (not amounting to Category 1)
- High risk of an adverse effect on tenant(s) or other individual(s) or low risk of serious adverse effect
- Poor or inadequate living conditions (where this is caused by the landlord's actions or inactions)

---

**Category 3**

- Low risk of an adverse effect on tenant(s) or other individual(s)
  - Little or no overcrowding
  - Acceptable living conditions
- 

**Question 16: Do you have any comments on the harm factors and categories for the HMO offences guidelines?**

---

## Step 2 – Starting point and category range

The offences covered by these HMO-related guidelines are punishable by a fine only. The Council therefore proposes the following fine levels for individuals (details on fine bands can be found at <https://sentencingcouncil.org.uk/supplementary-information/approach-to-fines/>):

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> Band F fine	<b>Starting point</b> Band E fine	<b>Starting point</b> Band C fine
	<b>Category range</b> Band E fine – Band F fine	<b>Category range</b> Band D fine – band F fine	<b>Category range</b> Band B fine – band C fine
Category 2	<b>Starting point</b> Band E fine	<b>Starting point</b> Band D fine	<b>Starting point</b> Band B fine
	<b>Category range</b> Band D fine – Band F fine	<b>Category range</b> Band C fine – Band E fine	<b>Category range</b> Band A fine – Band B fine
Category 3	<b>Starting point</b> Band D fine	<b>Starting point</b> Band C fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Band C fine – Band E fine	<b>Category range</b> Band B fine – Band C fine	<b>Category range</b> Discharge – Band A fine

For organisations, the fine levels have been set bearing in mind the levels set out in other guidelines for organisations, in particular the levels for food safety offences. As in other such guidelines different fine levels are proposed for large, medium, small and micro organisations. The Council proposes markedly distinguishing the levels for low culpability offenders, who may have attempted to comply with their obligations, but fallen short.

### Very large organisations

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

There is no precise level of turnover at which an organisation becomes "very large". In the case of most organisations it will be obvious if it either is or is not very large.

In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations.

In setting the level of fine for a very large organisation the court must consider the seriousness of the offence with reference to the culpability and harm factors above and the aggravating and mitigating factors below, the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under “General principles in setting a fine” above and at steps 5 to 7 below.

Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate punishment depending on the seriousness of the offence, and sufficient to bring home to the management and shareholders the need for regulatory compliance.

**Large organisation – Turnover or equivalent: £50 million and over**

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> £1,000,000	<b>Starting point</b> £300,000	<b>Starting point</b> £35,000
	<b>Category range</b> £400,000 - £2,400,000	<b>Category range</b> £100,000 - £750,000	<b>Category range</b> £18,000 - £120,000
Category 2	<b>Starting point</b> £400,000	<b>Starting point</b> £130,000	<b>Starting point</b> £18,000
	<b>Category range</b> £150,000 - £1,000,000	<b>Category range</b> £50,000 - £350,000	<b>Category range</b> £9,000 - £60,000
Category 3	<b>Starting point</b> £150,000	<b>Starting point</b> £50,000	<b>Starting point</b> £10,000
	<b>Category range</b> £80,000 - £400,000	<b>Category range</b> £25,000 - £150,000	<b>Category range</b> £6,000 - £30,000

**Medium organisation: Turnover or equivalent: between £10 million and £50 million**

Culpability			
Harm	A	B	C

Category 1	<b>Starting point</b> £400,000	<b>Starting point</b> £100,000	<b>Starting point</b> £12,000
	<b>Category range</b> £150,000 - £1,000,000	<b>Category range</b> £35,000 - £250,000	<b>Category range</b> £7,000 - £40,000
Category 2	<b>Starting point</b> £150,000	<b>Starting point</b> £50,000	<b>Starting point</b> £7,000
	<b>Category range</b> £50,000 - £400,000	<b>Category range</b> £15,000 - £130,000	<b>Category range</b> £3,500 - £20,000
Category 3	<b>Starting point</b> £150,000	<b>Starting point</b> £50,000	<b>Starting point</b> £10,000
	<b>Category range</b> £30,000 - £180,000	<b>Category range</b> £8,000 - £50,000	<b>Category range</b> £2,000 - £10,000

Small organisation: Turnover or equivalent: between £2 million and £10 million			
Culpability			
Harm	A	B	C
Category 1	<b>Starting point</b> £100,000	<b>Starting point</b> £24,000	<b>Starting point</b> £3,000
	<b>Category range</b> £30,000 - £350,000	<b>Category range</b> £10,000 - £100,000	<b>Category range</b> £1,400 - £12,000
Category 2	<b>Starting point</b> £40,000	<b>Starting point</b> £12,000	<b>Starting point</b> £1,400
	<b>Category range</b> £15,000 - £150,000	<b>Category range</b> £4,000 - £50,000	<b>Category range</b> £700 - £7,000
Category 3	<b>Starting point</b> £15,000	<b>Starting point</b> £4,000	<b>Starting point</b> £700
	<b>Category range</b> £8,000 - £70,000	<b>Category range</b> £2,000 - £15,000	<b>Category range</b> £300 - £3,000

Micro organisation: Turnover or equivalent: not more than £2 million			
Culpability			
Harm	A	B	C

Category 1	<b>Starting point</b> £50,000	<b>Starting point</b> £14,000	<b>Starting point</b> £1,200
	<b>Category range</b> £20,000 - £100,000	<b>Category range</b> £4,000 - £25,000	<b>Category range</b> £500 - £5,000
Category 2	<b>Starting point</b> £20,000	<b>Starting point</b> £6,000	<b>Starting point</b> £500
	<b>Category range</b> £8,000 - £40,000	<b>Category range</b> £1,500 - £12,000	<b>Category range</b> £200 - £2,000
Category 3	<b>Starting point</b> £8,000	<b>Starting point</b> £2,000	<b>Starting point</b> £200
	<b>Category range</b> £4,000 - £15,000	<b>Category range</b> £800 - £4,000	<b>Category range</b> £100 - £1,000

### Question 17: Do you have any comments on the fine levels for the HMO offence guidelines for individuals and organisations?

#### Aggravating and mitigating factors

Many of the proposed aggravating factors are taken from the food hygiene and health and safety guidelines, as the Council believes they could equally apply here. For example, factors relating to a poor record of compliance, cost-cutting at the expense of safety, and the obstruction of justice are included here. The Council also proposes as aggravating factors vulnerable tenant(s), failure to respond to warnings, advice or concerns expressed by others about behaviour and statutory and standard aggravating factors such as the offence being committed on licence or post sentence supervision or while subject to court orders.

Several of the mitigating factors have also been adapted from existing food safety and health and safety guidelines, although there is the need to guard against double counting where there is potential overlap with low culpability factors. For example, where there has been no previous enforcement action, steps have been taken to remedy the problem, and where the offender co-operated with the investigation. The other proposed mitigating factors are standard for guidelines where only a fine is available.

#### Factors increasing seriousness

##### Statutory 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

- 
- Offence committed whilst on bail
  - Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- 

**Other aggravating factors:**

- Poor record of compliance (including previous relevant civil or regulatory enforcement action in relation to this or other properties)
  - Failure to respond to warnings, advice or concerns expressed by others about behaviour
  - Cost-cutting at the expense of safety
  - Expectation of substantial financial gain from offending
  - Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
  - Involvement of others, including through coercion, intimidation or exploitation (where not taken into account at step one)
  - Deliberate concealment of illegal nature of activity
  - Obstruction of justice
  - Falsification of documentation
  - Vulnerable tenant(s)
  - Offence committed on licence or post sentence supervision or while subject to court order(s)
- 

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
  - No previous relevant civil or regulatory enforcement action in relation to this or other properties (where not taken into account at step one)
  - Positive character and/or exemplary conduct (regardless of previous convictions)
  - Remorse, particularly where evidenced by voluntary reparation to the victim
  - Steps taken voluntarily to remedy problem (where not taken into account at step one)
  - Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
  - Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
  - Mental disorder or learning disability
- 

The aggravating and mitigating factors for organisations are similar, but amended slightly where necessary to take into account that the offender is an organisation.

---

---

**Question 18: Do you have any comments on the aggravating and mitigating factors for the HMO offence guidelines?****Remaining steps**

The Council proposes further information, similar to that in the proposed guidelines for unlawful eviction and unlawful harassment on obtaining financial information, compensation and confiscation (at step 3) and removing the economic benefit derived from offending (at step 4) in the HMO related guidelines.

**Section 139**

There is a further offence related specifically to HMOs under section 139 of the 2004 Act. A local authority may serve an overcrowding notice where it considers that an excessive number of people is, or is at risk of, being housed. This can require the owner/manager either to limit the numbers of people resident at the property or refrain from accommodating new residents. Breach of such a notice is an offence with a maximum fine of £2,500.

Given that this is an extremely low volume offence with a lower maximum sentence, the Council is proposing a short guideline, similar to that for [certain environmental offences](#), setting out the maximum penalty and making clear that courts can use the approach in the HMO guideline, subject to the lower penalties available.

**Question 19: Do you agree with the approach of a short guideline to cover the offence of breach of an overcrowding notice?****Question 20: Do you have any comments on equality and diversity issues in relation to the guidelines covering HMO offences?****Question 21: Do you have any further comments on the guidelines for HMO related offences?**



# Housing standards

The Council is proposing two guidelines, one for individuals and one for organisations, covering sentencing for the following offences under the Housing Act 2004:

- Failing to comply with an improvement notice (section 30(1))
- Failing to comply with a prohibition order (section 32(1))

## Step 1 - Determining the offence category

### Culpability

The Council proposes broadly the same approach to culpability as for the HMO offences (see above), but without the reference to the property being unlicensed for a short period of time. The proposed culpability elements for individuals are as follows:

#### Culpability

##### A – High culpability

- Deliberate breach of or flagrant disregard for the law
- Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken
- Leading role or significant role where offending is part of a group activity

##### B – Medium culpability

- Offence committed through act or omission which a person exercising reasonable care would not commit
- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender's culpability falls between the factors as described in A and C

##### C – Lesser culpability

- Offence committed with little fault because, for example:
  - efforts were made to address the breach although they were inadequate on this occasion
  - there was no warning/circumstance indicating a risk to individuals
  - failings were minor and occurred as an isolated incident
- Performed limited function under direction

And for organisations:

## Culpability

### A – High culpability

- Deliberate breach of or flagrant disregard for the law
- Offender fell far short of the appropriate standard, for example by:
  - ignoring concerns raised by local authorities, employees or others
  - allowing breaches to subsist over a long period of time
- Serious or systemic failure within the organisation to address breaches

### B – Medium culpability

- Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘lesser’ culpability categories
- Systems were in place but these were not sufficiently adhered to or implemented

### C – Lesser culpability

- Offender did not fall far short of the appropriate standard because, for example:
  - significant efforts were made to address the breach although they were inadequate on this occasion
  - there was no warning or circumstance indicating a risk to individuals
- Failings were minor and occurred as an isolated incident

**Question 22: Do you have any comments on the culpability factors and categories for the housing standards guidelines for individuals and organisations?**

## Harm

Harm is more focused on the risk to individuals, rather than living conditions more generally, compared to the guidelines for HMO-related offences. The harm elements are the same across both individual and organisation guidelines:

## Harm

### Category 1

- Serious adverse effect(s) on tenant(s) or other individual(s)
- High risk of a serious adverse effect on tenant(s) or other individual(s)

### Category 2

- 
- Adverse effect on tenant(s) or other individual(s) (not amounting to Category 1)
  - High risk of an adverse effect on tenant(s) or other individual(s) or low risk of serious adverse effect
- 

---

**Category 3**

- Low risk of an adverse effect on tenant(s) or other individual(s)
- 

**Question 23: Do you have any comments on the harm factors and categories for the housing standards guidelines for individuals and organisations?**

## **Step 2 – Starting point and category range**

The sentence levels proposed are identical to those for HMO-related offences (see above). The Council would particularly welcome views on whether this is the right approach, or whether a distinction should be drawn between the seriousness of the different types of offending.

**Question 24: Do you have any comments on the fine levels for the housing standards guidelines for individuals and organisations?**

**Question 25: Do you agree that the fine levels should be the same for HMO-related offending and the other housing standards offences?**

## **Aggravating and mitigating factors**

The proposed step 2 aggravating and mitigating factors are similar to the HMO offence guidelines. The Council acknowledges that some mitigating factors may rarely be relied upon in the circumstances of failing to comply with an improvement or prohibition notice, for example:

- No previous relevant civil or regulatory enforcement action in relation to this or other properties (where not taken into account at step one)
  - Positive character and/or exemplary conduct (regardless of previous convictions)
  - Offender co-operated with investigation, made early admissions and/or voluntarily
-

reported offending

However, the Council notes that an offender may have changed their behaviour when faced with criminal proceedings, or in the run up to conviction. Offenders may also have a good prior record of compliance up until the present offence.

---

### Factors increasing seriousness

#### Statutory 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
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

---

#### Other aggravating factors:

- Poor record of compliance (including previous relevant civil or regulatory enforcement action in relation to this or other properties)
- Failure to respond to warnings, advice or concerns expressed by others about behaviour
- Cost-cutting at the expense of safety
- Expectation of substantial financial gain from offending
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Involvement of others, including through coercion, intimidation or exploitation (where not taken into account at step one)
- Deliberate concealment of illegal nature of activity
- Obstruction of justice
- Falsification of documentation
- Vulnerable tenant(s)
- Offence committed on licence or post sentence supervision or while subject to court order(s)

---

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
  - No previous relevant civil or regulatory enforcement action in relation to this or other properties (where not taken into account at step one)
  - Positive character and/or exemplary conduct (regardless of previous convictions)
  - Remorse, particularly where evidenced by voluntary reparation to the victim
-

- 
- Steps taken voluntarily to remedy problem (where not taken into account at step one)
  - Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
  - Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
  - Mental disorder or learning disability
- 

The aggravating and mitigating factors for organisations are similar, but amended slightly where necessary to take into account that the offender is an organisation.

**Question 26: Do you have any comments on the aggravating and mitigating factors for the housing standards guidelines for individuals and organisations?**

## Remaining steps

As with the HMO-related guidelines, the Council proposes further information in the remaining steps on obtaining financial information, compensation and confiscation, and ensuring that financial orders remove the economic benefit derived from the offending.

## Section 238

Providing false or misleading information to a local authority is an offence under section 238 of the 2004 Act. The Council considered whether this could be included under the guideline for housing standards proposed above. However, it does not necessarily involve any harm to tenants or others and is rather an offence which is likely to aggravate other offending. The Council also noted that this is a very low volume offence.

Given this, the Council is proposing the same approach as with Breach of an overcrowding notice (see above), i.e. a short guideline which makes clear that sentencers can use the approach in the housing standards guideline as analogous.

**Question 27: Do you agree with the approach of a short guideline to cover the offence of providing false or misleading information to a local authority?**

**Question 28: Do you have any comments on equality and diversity issues in relation to the guidelines covering housing standards offences?**

**Question 29: Do you have any further comments on the guidelines for housing standards offences?**

---

# Annex A: list of consultation questions

Question 1: What is your name?

Question 2: What is your email address?

Question 3: Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?

Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.

Question 5: Question 5: Do you have any comments on the culpability factors for the unlawful eviction and unlawful harassment guidelines for individuals and organisations?

Question 6: Do you have any comments on the harm factors for the unlawful eviction and unlawful harassment guidelines for individuals and organisations?

Question 7: Do you have any comments on the starting points and category ranges for the unlawful eviction and unlawful harassment guideline for individuals?

Question 8: Do you have any comments on the starting points and category ranges in the unlawful eviction and unlawful harassment guideline for organisations?

Question 9: Do you have any comments on the aggravating and mitigating factors for the unlawful eviction and unlawful harassment guidelines for individuals and organisations? Do you have any comments specifically on the aggravating factors 'Victim evicted from a property they resided in for a significant period of time?' or 'Conduct intended or likely to cause maximum or additional distress (for example, offence committed in the middle of the night)'?

Question 10: Do you have any comments on the guidance for obtaining financial information in the unlawful eviction and unlawful harassment guidelines for individuals and organisations?

Question 11: Do you have any comments on compensation (Step 3), confiscation (Step 4) or 'Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending' (Step 5)?

Question 12: Do you have any comments on Steps 6-11 of the unlawful eviction and unlawful harassment guidelines for individuals and organisations?

Question 13: Do you have any comments on equality and diversity issues in relation to the unlawful eviction and unlawful harassment guidelines for individuals and organisations?

Question 14: Do you have any further comments on the unlawful eviction and unlawful harassment guidelines for individuals and organisations?

Question 15: Do you have any comments on the culpability factors and categories for the HMO offence guidelines for individuals and organisations?

Question 16: Do you have any comments on the harm factors and categories for the HMO offence guidelines?

Question 17: Do you have any comments on the fine levels for the HMO offence guidelines for individuals and organisations?

Question 18: Do you have any comments on the aggravating and mitigating factors for the HMO offence guidelines for individuals and organisations?

Question 19: Do you agree with the approach of a short guideline to cover the offence of breach of an overcrowding notice?

Question 20: Do you have any comments on equality and diversity issues in relation to the guidelines covering HMO offences?

Question 21: Do you have any further comments on the guidelines for HMO related offences?

Question 22: Do you have any comments on the culpability factors and categories for the housing standards guidelines for individuals and organisations?

Question 23: Do you have any comments on the harm factors and categories for the housing standards guidelines for individuals and organisations?

Question 24: Do you have any comments on the fine levels for the housing standards guidelines for individuals and organisations?

Question 25: Do you agree that the fine levels should be the same for HMO-related offending and the other housing standards offences?

Question 26: Do you have any comments on the aggravating and mitigating factors for the housing standards guidelines for individuals and organisations?

Question 27: Do you agree with the approach of a short guideline to cover the offence of providing false or misleading information to a local authority?

Question 28: Do you have any comments on equality and diversity issues in relation to the guidelines covering housing standards offences?



Question 29: Do you have any further comments on the guidelines for housing standards offences?

[Please don't delete the section break beneath this text.]



The Office of the Sentencing Council, EB12–16, Royal Courts of Justice, Strand,  
London WC2A 2LL

Telephone: 020 7071 5793 | Email: [info@sentencingcouncil.gov.uk](mailto:info@sentencingcouncil.gov.uk) |  
[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk) | @SentencingCCL