

Civil Penalty Charging Policy

Civil Penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016)

The Housing and Planning Act 2016 section 126 and Schedule 9 amended the Housing Act 2004 and introduced the ability for Local Housing Authorities to allow financial penalties (civil penalties) of up to £30,000 per offence to be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (Section 30);
- offences in relation to Licensing of Houses in Multiple Occupation (Section 72);
- offences in relation to Licensing of houses under Housing Act 2004 Part 3, (Section 95);
- offences of contravention of an Overcrowding Notice, (Section 139(7));
- failure to comply with management regulations in respect of HMOs. (Section 234).

The Council will seek to impose Civil Penalties in accordance with this Enforcement Policy for the Regulation of Housing Standards and the Licensing of Houses in Multiple Occupation.

The decision to issue a civil penalty comprises two stages:

- to determine whether a civil penalty is an appropriate sanction in accordance with this Enforcement Policy, and, if appropriate
- to determine the level of the proposed civil penalty.

If the decision is to impose a civil penalty, a notice of intent must be served stating the amount of the proposed penalty, the reasons for its imposition and information about the right to make representations.

After the expiry of the period for representations the matter must be reviewed and a decision taken whether to impose a civil penalty and if so the amount of the penalty.

Statutory guidance issued by the Ministry of Housing Communities and Local Government in April 2017 sets out the following factors which must be taken into account when deciding on the appropriate level of penalty:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant.** This is an important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

- d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that:
- (a) the local housing authority is proactive in levying civil penalties where the need to do so exists, and
 - (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The Council will determine the level of civil penalty from a review of the case and having regard to the statutory guidance will apply the following five step approach:

Step 1 – Determining the offence category

To determine the financial starting point, consider the culpability and harm factors in the lists below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

Very High

Deliberate failure to comply with legal obligations

High

Knew or ought to have known that they were in breach of their legal responsibilities, wilful blindness to the risk of offending. Non-compliance over a long period or ignoring concerns raised by regulators, tenants or others.

Medium

Offence committed through an act or omission which a person exercising reasonable care would not commit

Low

Offence committed with little fault, for example, because:

- Significant efforts were made to address the risk although they were inadequate on this occasion
- Failings were minor and occurred as an isolated incident.

Harm

High

The property conditions pose a high risk of serious adverse effects to the occupants and/or visitors.

Vulnerable individuals were put at risk.

Medium

The property conditions pose medium risk of serious adverse effects to the occupants and/or visitors.

Low

The property conditions pose a low risk of serious adverse effect to the occupants and/or visitors.

Step 2 – Starting point

Having determined the culpability and harm levels, the appropriate offence matrix should be referred to in order to calculate the starting point for the civil penalty.

		HARM		
		LOW	MEDIUM	HIGH
CU LPA BILI TY	LOW	£500	£1000	£2000
	MEDIUM	£1000	£2000	£4,000
	HIGH	£2,000	£4,000	£10,000
	VERY HIGH	£4,000	£10,000	£20,000

Step 3 – Consider factors to increase or reduce fine

The Council should then consider further adjustment from the starting point to take into account aggravating and mitigating features. Set out below is a non-exhaustive list of factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness:

Aggravating factors include:

- History of failing to comply with obligations
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Landlord or agent of multiple properties which may include licensed HMOs

Factors reducing seriousness or reflecting personal mitigation:

- Steps taken to remedy the problem
- High level of co-operation with the investigation, beyond that which will always be expected
- A history of good communication and compliance regarding work as a landlord

- 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
- Age and/or lack of maturity where it affects the responsibility of the offender

Step 4 – Case and penalty review

The level of the penalty should reflect the extent to which the offender fell below the required standard. The penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; **it should not be cheaper to offend than to take the appropriate precautions.**

The Council may increase or reduce the proposed penalty reached at the end of step three

Step 5 - Review offender's financial means – prior to any Final Notice

The level of civil penalty must be proportionate to the seriousness of the offence and the financial circumstances of the offender.

The council may conclude that the offender is able to pay any penalty imposed unless the offender has supplied financial information to the contrary. It is for the offender to disclose to the council such data relevant to his/her financial position on the representations form attached to the "Notice of Intention".

Banning Orders

The Council will in all instances consider applying for a Banning Order where a landlord or property agent has been convicted of one or more Banning Order offences as defined by regulations made under the Housing and Planning Act 2016. This will exclude him/her from letting or engaging in letting agency or property management work. When considering applying for a Banning Order, the Council will have regard of Government Guidance and evidence (if any) of housing offence(s) committed by the landlord in other Local Authority areas.

Rogue Landlord Database

The Council will make an entry on the Rogue Landlord database where a landlord or property agent has received a banning order.

The Council will have discretion to make an entry on the database where a person has:

- been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time

when the person was a residential landlord or a property agent .
In making this decision the Council will have regard to Government Guidance.

Prior to making an entry on the database, the Council will issue the person with a decision notice, specifying the period for which the entry will be maintained.