

Housing

Civil Penalties Policy



September 2018

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Introduction

The councils are committed to improving standards in private sector housing and ensuring that all private rented accommodation is well maintained, safe and habitable.

This policy sets out the criteria for using a civil penalty as an alternative to prosecution, the use of rent repayment orders and the methodology to be used in setting civil penalty fines. It takes into account the statutory guidance that has been issued by the Government under schedule 9 and Section 41 of the Housing and Planning Act 2016.

- Department for Communalities and Local Government (DCLG) guidance document, 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities'.

1.2 Background

The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords.

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences currently enforceable.
- Extension of rent repayment orders to cover additional specified, enforceable offences including illegal eviction and breach of a banning order.
- Database of rogue landlords and property agents convicted of certain offences.
- Banning orders for serious and prolific offenders.
- Regulations for landlords to ensure that a qualified person has checked that the electrical safety standards are met in private rented properties, and
- Further clarification of abandonment.

1.3 Civil Penalties



A civil penalty of up to £30,000 can be imposed on a landlord for committing certain offences under the Housing Act 2004. Such penalties can be used as an alternative to prosecution and the amount of the penalty must be determined on an individual basis.

The power to impose a civil penalty as an alternative to prosecution was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016 which came into force on 6th April 2017. Local Authorities are expected to use the new powers as a means to deter 'rogue landlords'. The offences under the Housing Act 2004 that civil penalties can be considered for are:

- Failure to comply with an improvement notice (Housing Act 2004 s30)
- Licensing of HMO's under Housing Act 2004 Part 2 (Housing Act 2004 s72)
- Licensing of houses under Housing Act 2004 Part 3 (Housing Act 2004 s95)
- Failure to comply with overcrowding notice (Housing Act 2004 s139(7))
- Management regulations in respect of HMO's (Housing Act 2004 s234)
- Breach of a banning order (section 21, Housing and Planning Act 2016)

The use of civil penalties will act as a deterrent to unscrupulous and irresponsible landlords, whilst providing additional funding for the councils to increase their enforcement presence. The councils must spend any income from civil penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument 367 (2017).



1.4 Civil Penalty Burden of Proof

The burden of proof for a civil penalty is the same as that required for a criminal prosecution. There is a need to demonstrate 'beyond a reasonable doubt' that an offence has been committed. The council will have consideration to the 'Crown Prosecution Service Code for Crown Prosecutors' published by the Director of Public Prosecutions.



Prosecution may be appropriate for the most serious offences. The decision on which course of action is most appropriate will be made by the Housing Services Manager or the Head of Service in conjunction with legal services.

The legislation does not permit the council to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted the council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot be convicted of an offence for the same conduct.

Where the council decides to prosecute, regard will be taken in respect of the scope for working together with other local housing authorities where a landlord has committed breaches in more than one local authority area.

1.5 Civil Penalty Process and Criteria

The Government has laid out statutory guidance as to the process and the criteria that needs to be considered when determining civil penalties.



These are:

- **Severity of the offence** – the more serious offence the higher the penalty should be
- **The 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.

- **The level of harm caused to the tenant** – this is a very 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.
- **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.
- **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.
- **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.
- **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 guidance indicates a council should ensure that the civil penalty acts as a punishment, takes into account any previous patterns of offending and no offender should benefit as a result of committing the offence.

The process for imposing a civil penalty is set out in Schedule 13A of the Housing Act 2004 and summarised in the statutory guidance for civil penalties. There is no scope to deviate from this procedure. Refer to Appendix 1.

1.6 Civil Penalty Charges

For all offences a number of penalty levels have been specified in the policy which reflects varying degrees of seriousness. The starting point for any penalty is the lowest defined position within the penalty band which can then be adjusted taking other factors into account, such as aggravating and mitigating factors.



The legislation allows a maximum financial penalty of £30,000 to be imposed per offence.

In determining whether to impose a financial penalty the Councils will have regard to any relevant local enforcement policy and any relevant government guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil Penalties under the Housing and Planning Act 2016 (also detailed in section 1.4 of this policy) has been incorporated into the charging table adjustments set out in Appendix 2.

1.7 Rent Repayment Orders

Section 40 of the Housing and Planning Act came into force on 6th April 2017. This confers a power on the First-tier Tribunal to make a rent repayment order where a Landlord has committed one of a number of offences.



The Housing Act 2004 introduced rent repayment offers to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)). Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences including;

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;

- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;3
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977;
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

Rent repayment orders can be granted to either the tenant where they paid the rent themselves or the local housing authority where the rent was paid through Housing Benefit or Universal Credit or a combination of both.

A local housing authority can impose a civil penalty or prosecute for the offence and apply for a rent repayment order for certain offences. Both sanctions are available 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 of Multiple Occupation (s72(1));
- Offences in relation to licensing of houses under Part 3 of the Act (s95(!))

If a local housing authority becomes aware that a person who is a landlord has been convicted of any of the offences listed and the offence was committed in their area, it must consider applying for a rent repayment order.

The First-tier Tribunal must order that the maximum amount of rent (up to 12 months) is repaid where the landlord has been convicted of the offence to which the rent repayment order applies. This is regardless of whether or not the local housing authority or tenant has applied for a lesser amount. Where the landlord has not been convicted, the First-tier Tribunal will determine the amount to be repaid in accordance with section 44 (tenants) or section 45 (local housing authorities) of the Housing and Planning Act 2016.

Where a landlord has been convicted of any of the offences and the rent repayment order, or part of it, is being made in favour of the local housing authority (because rent was paid through Housing Benefit/Universal Credit), the First-tier Tribunal must require the landlord to repay all of the rent paid to the landlord by the local housing authority up to a maximum of 12 months, provided the conditions in s26 of the Housing and Planning Act 2016 are met.

Appendix 1

Process for imposing penalty charges

- 1.0** Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Councils will follow the following process.
- 1.1** A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:
 - a.** The amount of any proposed financial penalty
 - b.** The reasons for proposing the financial penalty
 - c.** Information about the right to make representation to the Council
- 1.2** The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 1.3** Following the 28 day period the Council will decide:
 - a.** Whether to impose a financial penalty on the person, and
 - b.** The value of any such penalty imposed
- 1.4** If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
 - a.** The amount of the financial penalty,
 - b.** The reasons for imposing the penalty,
 - c.** Information about how to pay the penalty,
 - d.** The period for payment of the penalty,
 - e.** Information about rights of appeal to the First-tier Tribunal,
 - f.** The consequences of failure to comply with the notice.
- 1.5** Consequences of non-compliance and miscellaneous provisions.
- 1.6** A landlord receiving a final notice of a civil penalty may appeal to the First-tier Tribunal against the decision to impose a penalty or the penalty amount. The appeal has the effect of suspending the notice and requirement to pay until determined.
- 1.7** If after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.
- 1.8** Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.
- 1.9** The Council may, at any time:
 - a.** Withdraw a notice of intent or final notice
 - b.** Reduce the amount specified

Where the Council decides to take either action, it will write to the person to whom the notice was given.
- 1.10** If the council decides to withdraw a civil penalty, it has the right to pursue a prosecution against the landlord for the original offence for which it was imposed. Each case will be considered on its merits and be in the public interest.
- 1.11** Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

Appendix 2

Charging table for determining value of Financial Penalties

Failure to comply with an Improvement Notice (Section 30)		£
1st offence	(note 1)	5000
2nd subsequent offence by same person/company	(note 2)	15000
Subsequent offences by same person/company	(note 7)	25000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 8)	+2500
Large housing portfolio (10+ units of accommodation)	(note 3)	+2500
Multiple Category 1 or high Category 2 Hazards	(note 4)	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	(note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)		£
Failure to obtain property Licence (section 72(1))	(note 1)	10000
2nd subsequent offence by same person/company	(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach		5000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)		£
Failure to Licence (section 95(1))	(note 1)	10000
2nd subsequent offence by same person/company	(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach		5000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences of contravention of an overcrowding notice (section 139)		£
1st relevant offences	(note 1)	5000
2nd subsequent offence by same person/company	(note 2)	15000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 8)	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding	(note 3)	+2500
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Failure to comply with management regulations in respect of HMOs (Section 234)		£
1st relevant offences	(note 1)	1000/offence
2nd subsequent offences by same person/company for the same offence		3000/offence
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 8)	+2500
Large housing portfolio (10+ units of accommodation)	(note 3)	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding	(note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Notes

Note 1

Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000.

Note 2

2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3

Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4

Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

Note 5

Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.



For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

At the time of publication this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
Falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment – low headroom	16 or over
Position and operability of amenities, etc.	60 or over

Note 6

Perpetrator demonstrates income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7

Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8

Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.



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