

Rugby Borough Council

Private Sector Housing Civil Penalties Policy

1. Introduction

- 1.1 Rugby Borough Council's Neighbourhood Services Team is committed to ensuring good quality, healthy housing for all, by improving standards within the private housing sector.
- 1.2 The Borough's private rented sector has grown substantially over recent years. The majority of private landlords operate within the law, providing a high standard of rented accommodation. The Neighbourhood Services Team work with landlords where necessary to provide advice and guidance to support them to achieve compliance. However, in cases where landlords put their tenants health and safety at risk and fail to comply with their statutory obligations we will take enforcement action in accordance with the Private Sector Housing Enforcement Policy.
- 1.3 The Housing and Planning Act 2016 introduced civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

2. Purpose

- 2.1 The purpose of this policy is to ensure transparency, consistency and fairness in how and when civil penalties are imposed. In setting a framework for determining the level of civil penalty in any particular case the Neighbourhood Services Team has consulted with the other Warwickshire local authorities to ensure consistency in its approach.
- 2.2 The application of a civil penalty will be made in accordance with the Private Sector Housing Enforcement Policy as part of the enforcement options available to the Neighbourhood Services Team to achieve safe and healthy private sector housing. It will assist us to deal with those criminal and irresponsible landlords who put tenants at unacceptable risks.

3. Legislative Background

- 3.1 The Housing and Planning Act 2016 came into force on 6 April 2017 and introduced provisions for local authorities to impose civil penalties of up to £30,000 as an alternative to prosecution for certain housing offences. Those offences for which a civil penalty may be applied are;
 - Failure to comply with an improvement notice (Housing Act 2004 section 30)
 - Offences relating to licensing of houses in multiple occupation (HMOs) (Housing Act 2004 section 72)
 - Offences relating to licensing of houses under Part 3 of the Housing Act 2004 (Housing Act 2004 section 95)

- Failure to comply with an overcrowding notice (Housing Act 2004 section 139)
- Failure to comply with management regulations in respect of houses in multiple occupation (Housing Act 2004 section 234)
- Breach of a banning order (Housing and Planning Act 2016 section 21)

3.2 A civil penalty may only be imposed if the Neighbourhood Services Team is satisfied, beyond reasonable doubt, that the offence has been committed and civil penalties can only be used as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for a particular offence cannot be issued with a civil penalty for the same offence.

3.3 Only one civil penalty may be imposed on a person for the same offence. However, in respect of breaches of the HMO management Regulations, a civil penalty can be imposed for the breaching of each separate Regulation.

3.4 Statutory guidance has been issued under the Housing and Planning Act 2016 which the Council must have regard to in the exercise of its functions in respect of civil penalties and Schedule 9 of the Housing and Planning Act 2016 covers the procedure for imposing civil penalties, their appeal and enforcement.

4. Determining the Level of Civil Penalty

4.1 The Council has the power to impose a maximum civil penalty of £30,000. Generally, this will be reserved for the worst offenders. To ensure the civil penalty is set at an appropriate level, the Council will consider the following factors:

- Severity of the offence – the more serious the offence, the higher the penalty.
- 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 harm caused to the tenant – the greater the harm or the potential for harm, the higher the penalty.
- Punishment of the offender – A civil penalty should be set at a high enough level to help ensure it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- Whether the penalty will deter the offender from repeating the offence – the level of penalty should be set at a high enough level that it is likely to deter the offender from repeating the offence.
- Whether the penalty will deter others from committing similar offences – the penalty should be high enough so that, should other landlords become aware of a civil penalty having been imposed, other landlords will be deterred from committing offences.

- Whether the penalty will remove any financial benefit the offender may have obtained as a result of committing the offence – the penalty imposed should ensure the offender does not benefit as a result of committing the offence.

4.2 All income received from a civil penalty will be retained by the Council's Regulatory Services to be used to further its statutory functions in relation to their enforcement activities covering the private rented sector, as specified within the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

5. Procedure for Imposing Civil Penalties

5.1 The procedure for imposing a civil penalty is set out in Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016.

5.2 At the point the Neighbourhood Services Team has sufficient evidence of the conduct to which the penalty relates, or at any time the conduct is continuing, a Notice of intent has to be issued to the person within 6 months. This notice of intent must set out:

- The amount of the proposed civil penalty;
- The reasons for proposing to impose the civil penalty; and
- Information about the right of the landlord to make representations to the Council.

5.3 A person who is given a notice of intent may make written representations to the Council about the proposal to impose a civil penalty with 28 days from the date of the notice. After the 28 day period the Council will consider any representations made and decide whether to impose the civil penalty and, if so, the amount of the penalty.

5.4 If the Council decides to impose the civil penalty a Final Notice shall be issued requiring the civil penalty to be paid within 28 days. This final notice must set out:

- The amount of the civil penalty;
- The reasons for imposing the civil penalty;
- Information about how to pay the civil penalty;
- The period for payment of the civil penalty;
- Information about the right of appeal to the First-tier Tribunal;
- The consequences of failure to comply with the Final Notice.

5.5 The Council may at any time:

- Withdraw the notice of intent or final notice; or
- Reduce the amount specified in a notice of intent or final notice at any time.

Where the Council decides to take either action, it will give written notice to the person to whom the notice was given.

- 5.6 On receipt of a final notice a landlord may appeal to the First-tier Tribunal against the decision to impose a civil penalty and/or the amount of penalty. This appeal must be made within 28 days of the date the final notice was served. Upon any appeal, the final notice is suspended until the appeal is determined or withdrawn.
- 5.7 The First-tier Tribunal has the power to confirm, vary (increase or decrease) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

6. Enforcement of Civil Penalties

- 6.1 Where the landlord or property agent fails to pay the full civil penalty, the Council will recover the amount by order from the County Court. Where appropriate, the Council will further seek to recover those costs incurred in taking this action from the person to which the civil penalty relates.
- 6.2 Where a landlord receives two or more civil penalties over a 12 month period the Council will consider whether it is appropriate to include the persons details in the database of rogue landlords and property agents. In doing so, this will ensure other local authorities in England are made aware that formal action has been taken against the landlord.
- 6.3 If a landlord receives a civil penalty, the Neighbourhood Services Team will, where appropriate, take this fact into account when considering whether the landlord is a fit and proper person to be the licence holder for a house in multiple occupation.

7. Penalty Charging Table

- 7.1 The following table will be used by the Neighbourhood Services Team to calculate the level of civil penalty. The financial penalty to be imposed is on a scale, starting at an initial level which will be increased if there are aggravating factors

Charging table for determining value of Financial Penalties

| <i>Failure to comply with an Improvement Notice (Section 30)</i> | <i>£</i> |
|---|-----------------|
| <i>1st offence (note 1)</i> | <i>5000</i> |
| <i>2nd subsequent offence by same person/company (note 2)</i> | <i>15000</i> |

| | |
|--|-------|
| 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 (note1) 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) | £ |
| 1 st relevant offences (note1) | 1000/offence |
| Second 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 housing conditions (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

1. 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.
2. After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed
3. 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)

1. The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.
2. 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

1. 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.
2. 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

1. 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.
2. 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.
3. 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.
4. 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

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

2. To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.
3. The figure of £440/week is to be calculated after omission of income tax and national insurance.
4. 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

1. 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.
2. 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.