

# **Civil Penalties Policy**

## **1. Introduction**

- 1.1.** The Council is committed to improving the housing standards within West Lindsey and ensuring that properties within the private rented sector are well managed, free from hazards and safe for those that occupy them.
- 1.2.** The Council recognises that the majority of landlords operate in a legal and professional manner and work to ensure that their properties meet the required standards.
- 1.3.** However, alongside this, there are criminal and irresponsible landlords who poorly manage and maintain property and in some cases knowingly flout the regulations and laws that they are due to abide by.
- 1.4.** The Government is continuing in its efforts to crack down on rogue landlords and the measures within the Housing and Planning Act 2016 have been put in place to enable local authorities to enhance their abilities to deal with them. Within the Act the following provisions have been made:
  - Civil penalties of up to £30,000 as an alternative to prosecution for certain offences (came into force on 6 April 2017)
  - Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017)
  - Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties
  - Banning orders for the most serious and prolific offenders
- 1.5.** In order for the Council to issue civil penalties it must have a policy in place. This policy sets out our approach to issuing penalties and provides guidance on how the level of fine will be set.

## **2. Expectations**

- 2.1.** Guidance issued by Government makes clear that it expects local housing authorities to use their new powers robustly in order to clamp down on rogue landlords.
- 2.2.** The maximum penalty of £30,000 has been set at a level to ensure that it is significant enough for those landlords who flout the law to think seriously about their behaviours in relation to property standards and management. The guidance is also clear that the maximum penalty of £30,000 should only be reserved for the very worst offenders.
- 2.3.** In determining whether to prosecute or issue a civil penalty the Council will need to ensure that the same criminal standard of proof is obtained. The Council will satisfy itself that if the case were to be prosecuted in the magistrate's court that there would be a realistic prospect of conviction. In order to do so the Council would take into consideration it's Corporate

Enforcement Policy and its Housing Enforcement Policy, alongside seeking legal advice and other guidance. If either of these sanctions are not appropriate then in line with the Corporate Enforcement Policy other measures may be considered.

**2.4.** Government guidance suggests that prosecution should be the appropriate option for the most severe cases or for those that are repeat offenders. The Council will generally look to issue a civil penalty except in these aforementioned circumstances and each case will be determined on its own merits.

**2.5.** It should be noted that for certain offences within the Housing Act letting agents, property agents and managing agents can also be prosecuted and therefore under this policy can be issued with a civil penalty. The term “landlord” within this policy refers to all of these groups. The level of civil penalty issued can be different for each party in regards to the same offence and will consider the circumstances specific to the individual party.

### **3. Offences**

**3.1.** There are only certain offences, relating to certain sections of the Housing Act 2004, where the use of a civil penalties will be permitted. These are as follows:

Section 30 – Failure to comply with an Improvement Notice

Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)

Section 95 – Offences in relation to licensing of houses under Part 3 (inc. Selective Licensing)

Section 139 – Offences of contravention of an overcrowding notice

Section 234 – Failure to comply with management regulations in respect of HMOs

### **4. Considerations**

**4.1.** The Government recommends that the Council consider the following to ensure that the level of civil penalty given is appropriate:

- **The severity of the offence:** the more serious the offence the higher the penalty should be
- **The culpability and track record of the offender:** a history of non-compliance or deliberate action should increase the penalty amount
- **The harm caused to the tenant:** the greater the harm or potential for harm, the higher the penalty should be
- **The punishment of the offender:** the penalty should be set at a level to reflect that offence could be dealt with in a court of law and should have an impact upon the recipient

- **Whether it will deter the offender from repeating the offence:** the level of the penalty should be set as to help ensure that the offender does not offend again
- **Whether it will deter others from committing the offence:** the civil penalty will not be in the public domain. However, there is a likelihood that there will be an awareness of penalties issued through informal channels. The level of the penalty should seek to demonstrate that impact that non-compliance can have.
- **Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence:** the offender should not benefit as a result of committing an offence i.e. it should not be cheaper to offend, than to properly manage and maintain a property.

## 5. Level of Civil Penalty to be Issued

5.1. Any penalty issued must consider the above factors in the determination of its level. If it is determined that a civil penalty should be issued then the Council will determine the level of the penalty based on

- the cumulative sum of penalties for each offence (Table 1)
- plus the sum of penalties for any additional offences (Table 2)
- plus a level of penalty determined by an impact scoring matrix (Table 3)

5.2. All 3 tables referred to are shown in appendix 1. The final penalty amount is calculated using table 1, once consideration has been given to tables 2 and 3.

5.3. Table 2 gives offence specific penalties, which would be the minimum penalty amount for that offence (column A). Columns B and C enable additional penalties to be added depending on the specific offence.

5.4. Table 3 adds an additional penalty for impact in regards to the offence, based on the factors set out by the Government in considering the level of fine to be issued. The additional amount attributed to this score is shown in Table 1, column 3.

5.5. The maximum penalty that can be issued will not exceed £30,000.

### Worked Examples

Example A - a landlord has breached an improvement notice which sought to address 1 Category 1 Hazards. Landlord A has had no previous enforcement action taken and is not known to be a poor landlord. There is no reason to believe that they will repeat the offence and the tenant is not vulnerable

Example A	Penalty Amount (£)	Cumulative Amount (£)
Non-compliance with an improvement notice	£2,000 (Table 2, column A)	£2,000

Impact Score = 60 Severity = Low No of properties managed = 1-2 Enforcement history – none Financial Incentive – little or no income Deterrence and prevention – High Confidence	£1,000	£3,000
<b>Total Penalty</b>		<b>£3,000</b>

Example B – a landlord is non-compliant with an improvement notice which seeks to address 3 Category 1 Hazards. The landlord owns 5 properties and has had previous enforcement action taken against them. The tenant is elderly and vulnerable.

Example B	Penalty Amount (£)	Cumulative Amount (£)
Non-compliance with an improvement notice	£2,000 (Table 2, column A)	£2,000
2 or more Category 1 Hazards	£3,000 (Table 2, column B)	£3,000
Impact Score = 140 Severity = Moderate No of properties managed = 5-8 Enforcement history – 1 previous notice Financial Incentive – Moderate Deterrence and prevention – Medium confidence	£5,000	£10,000
<b>Total Penalty</b>		<b>£10,000</b>

Example C – a landlord has been identified as having an unlicensed property in an area designated for selective licensing. The property is not in a poor condition and the tenants are not vulnerable. The landlord has a very large property portfolio and has previously been served with a notice.

Example C	Penalty Amount (£)	Cumulative Amount (£)
Failure to obtain a property licence	£10,000 (Table 2, column A)	£10,000
Impact Score = 140 Severity = Low No of properties managed = 8+ Enforcement history – 1 previous notice Financial Incentive – Moderate	£5,000	£15,000

Deterrence and prevention – Medium confidence		
<b>Total Penalty</b>		<b>£15,000</b>

## 6. Additional Factors

- 6.1.** Once the Council has decided to issue a civil penalty the recipient will be notified and given 28 days to make representations about the matter. After this period of time the Council will consider any representation and decide whether to impose a penalty and, if so, the amount of the penalty. A final notice is then issued giving the recipient 28 days to make payment.
- 6.2.** The Council can, following representations withdraw a notice or reduce the amount specified for payment within the notice. Any decisions made in this regard will be considered on a case by case basis and reflect the considerations set out within Government guidance and this policy.
- 6.3.** In determining the level of penalty the financial position of the landlord will be considered. This will include a review of any income they receive and any assets they own. It is the responsibility of the offender to disclose information to the Council if they wish for this to be taken into consideration to enable the Council to review its decision.
- 6.4.** In many cases landlords own more than one property or asset, which they may be able to sell or borrow against. Subject to consideration of individual mortgages and other financial matters the Council is unlikely to consider claims of financial hardship from those landlords with multiple properties or assets.
- 6.5.** Where a civil penalty is issued, the Council will give consideration to the pursuit of a rent repayment order in the circumstances for which it applies.
- 6.6.** Any person issued with a civil penalty has a right of appeal to the First Tier Tribunal. The tribunal can determine whether to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued. Where an appeal is made and is unsuccessful the Council will seek to recover the costs incurred by the appeal and will increase the penalty charge by a minimum of £2,000 (amount to be determined in line with costs incurred).

## Appendix 1

**Table 1: Civil penalty level for Housing Act 2004 offences**

**(Column 1 + Column 2 + Column 3 = Column 4)**

- 1	2	3		4
<b>Offence specific penalties</b>	<b>Further penalties (if any)</b>	<b>Table 3 impact matrix score</b>	<b>Level of penalty</b>	<b>Cumulative total</b>
<i>Total for each penalty shown in <b>Table 2, column A</b></i>	Total for each penalty shown in <b>Table 2, columns B and / or C</b>	60 - 110	£1,000	Level of civil penalty to be applied (maximum £30,000)
		120 - 170	£5,000	
		180 - 230	£10,000	
		240	£20,000	

**Table 2: Offence specific penalty and other penalties**

Housing Act 2004 offence(s)	A		B		C	
<b>s.30</b>	Non-compliance with improvement notice.	<b>£2,000</b>	There are 2 or more category 1 hazards.	<b>£3,000</b>	Where there are 3 or more high scoring category 2 hazards. <sup>1</sup>	<b>£1,000</b>
<b>s.72</b>	Failure to obtain a property licence.	<b>£10,000</b>				
	Breach of conditions – The HMO is licenced under this section and there is a breach of licence conditions (penalty per breach).	<b>£1,000</b>				
<b>s.95</b>	Failure to obtain a property licence.	<b>£10,000</b>				
	Breach of conditions – The property is licenced under this section and there is a breach of licence conditions (penalty per breach)	<b>£1,000</b>				
<b>s.139</b>	Non-compliance with an overcrowding notice.	<b>£500</b>	Penalty added for every person the property is overcrowded by.	<b>£200</b>		
<b>s.234</b>	Failure to comply with management regulations in respect of HMOs (penalty per breach).	<b>£500</b>				

<sup>1</sup> A high scoring category 2 hazard is defined as a hazard achieving a score rating of D or E under the HHSRS

**Table 3: Impacts scoring matrix**

Answer each of the questions 1 – 5 below and apply the score shown in the column header.

Score	10	20	30	40
1	<p><b>Severity of harm or potential harm caused x 2</b>  (the relevant column score is double)</p> <p><b>Low</b> Low level of harm Potential harm unchanged in HHSRS assessment. Previous/current occupant not in vulnerable category.</p>	<p><b>Moderate</b> Moderate level health risk(s) to relevant persons. Previous/current occupant in vulnerable category.</p>	<p><b>High</b> High level health risk(s) to relevant persons. Potential harm outcome increased in HHSRS assessment. Previous/current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.</p>	<p><b>Severe</b> High level of health risk(s) to relevant persons. Previous/current occupant in vulnerable category. Multiple occupants at risk. Potential harm outcome increase in HHSRS assessment. Occupants are severely and/or continually effected.</p>
2	<p><b>Number of properties owned/managed</b></p> <p>1-2</p>	<p>3-4</p>	<p>5-8</p>	<p>8+</p>
3	<p><b>Enforcement history</b></p> <p>No previous enforcement history.</p>	<p>1 previous enforcement notice served. Moderate severity.</p>	<p>1 or more enforcement notice served previously. Moderate to large severity.</p>	<p>Serial offender. Multiple enforcement notices served previously. Moderate to large severity.</p>
4	<p><b>Removal of financial incentive</b></p> <p>Little or no income received</p>	<p>Low income received</p>	<p>Moderate income received</p>	<p>High income received</p>
5	<p><b>Deterrence and prevention</b></p> <p>High confidence that penalty will deter repeat offence.</p>	<p>Medium confidence that penalty will deter repeat offence.</p>	<p>Low confidence that penalty will deter repeat offence.</p>	<p>No confidence that penalty will deter repeat offence.</p>