

Appendix 1

Civil Penalty Enforcement Policy

Civil penalties under the Housing and Planning Act 2016

A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004 and a breach of a banning order under the Housing and Planning Act 2016.

Local housing authorities are able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004 and the Housing and Planning Act 2016:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004)
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004)
- Breach of a banning order (section 21 of the Housing and Planning Act 2016).

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by sections 23 and 126 and Schedule 9 of the Housing and Planning Act 2016.

The powers relating to housing offences under the Housing Act 2004 came into force on 6 April 2017. The offence of a breach of a banning order under the Housing and Planning Act 2016 will come into force on 6 April 2018. They are not retrospective and will not apply to offences committed before that date.

Civil penalties and other sanctions

A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the local housing authority cannot impose a civil penalty in respect of the same offence.

Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.

A civil penalty can be issued as an alternative to prosecution for each separate breach of the Houses in Multiple Occupation management regulations.

Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Hence, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

Only one civil penalty will be issued for failing to comply with an Improvement Notice and not for each hazard specified in that improvement notice.

Only one civil penalty can be imposed for a single offence. However, where a landlord fails to comply with an Improvement Notice and subsequently receives a civil penalty as a result, a further Improvement Notice may then be issued if the work still hasn't been carried out.

Where both a letting agent and landlord can be prosecuted for failing to obtain a licence for a licensable property, then a civil penalty can also be imposed on both the landlord and agent as an alternative to prosecution. The amount of the civil penalty may differ depending on the individual circumstances of the case.

Where both a landlord and a letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case.

Determining an appropriate sanction

What burden of proof is required?

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, Derbyshire Dales District Council (hereinafter referred to as "the Council") should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In order to achieve a conviction in the magistrates' court, the Council would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the Council would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

3.4 How does the local housing authority make an assessment of a landlord's or letting agent's assets and any income?

Local housing authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income they receive (not just rental income) when determining an appropriate penalty.

Determining the Level of Civil Penalty

DETERMINATION OF INITIAL CIVIL PENALTY LEVEL			
Level of culpability	<u>Level of harm/effect</u>		
	HIGH	MED	LOW
HIGH	£30,000	£15,000	£7,500
MED	£15,000	£7,500	£3,750
LOW	£7,500	£3,750	£1,875

Determining the Initial Level of Civil Penalties

In order to set the level of civil penalty the Council will take the following steps:

Step 1

- Assess the culpability and track record of an offender and,
- Assess the level of harm, or potential harm, to the occupiers

Step 2

We will then make adjustments having regards to:

- Any aggravating or mitigating circumstances

Step 3

Make final adjustments to ensure that:

- The level of penalty is fair and proportionate but in all instances will act as a punishment/deterrent and removes any benefit to the offence.

Notes

Culpability and track record of an offender

The level of culpability of a person will depend on a number of factors:

High level of culpability

A person will be deemed to be highly culpable where the Council is satisfied that they intentionally or recklessly breach or willingly disregard the law. Factors which may lead to that conclusion include:

- A history of non-compliance
- Despite a number of opportunities to comply they have still failed to comply
- The offender has been obstructive to the investigation or to investigating Officers
- The offender is an experienced landlord/agent with a portfolio of properties and would be expected to know their responsibilities

- There have been serious and/or systematic failure to comply with their legal duties

Medium level of culpability

Where a landlord commits an offence through an act or omission which the Council considers that a person exercising reasonable care would not commit. Factors that may lead to that conclusion include the following:

- It is a first time offence- with no high level culpability criteria being met
- The landlord/agent had systems in place to manage risk or comply with their legal duties but the systems were not sufficient or being complied with on this particular occasion

Low level of culpability

Where a person fails to comply, or commits an offence where:

- There was no or minimal warning given to the offender
- The breaches are minor
- The offence is an isolated occurrence
- A significant effort has been made in order to comply but was inadequate and did not achieve compliance

The above lists of factors are not intended to be exhaustive and when considering the level of culpability and other factors may be taken into account.

Level of harm or effect to the occupier

When considering the level of harm the Council will have regard to actual harm, potential harm and the likelihood of harm:

High

- Actual harm to an individual
- High risk of harm to an individual
- Serious level of overcrowding
- Serious effect on individual(s) or a widespread impact

Medium

- Adverse effect on an individual
- Medium risk of harm to an individual
- Moderate risk of harm to an individual(s) or a broader impact

Low

- Minimal adverse effect on individual(s)
- Low risk of harm to an individual
- Limited impact or effect on occupiers

The above lists of factors are not intended to be exhaustive and when considering the level of harm other factors may be taken into account.

Making further adjustments to the initial level of Civil Penalty: STEP 2).

The Council will consider if there are aggravating and/or mitigating factors in each case. These factors may affect the initial level of penalty reached in stage 1.

Aggravating factors may include but are not limited to:

- Previous convictions having regard to the offence to which it relates and the time elapsed since that offence
- Landlord motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- A record of letting substandard accommodation
- A record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash

Mitigating factors may include, but are not limited to:

- Co - operation with the investigation e.g. attends a PACE interview
- Any voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt and remorse for the offence(s)
- Willingness to undertake training
- Health reasons preventing reasonable compliance e.g. mental health, unforeseen health issues, emergency health concerns
- Has no previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence
- Previous good character and/or exemplary conduct.

For each aggravating or mitigating factor which applies to each specific case the level of fine will be adjusted accordingly based on the circumstances, up to the maximum fine of £30k.

Determining the Final Level of Civil Penalty: STEP 3).

The statutory guidance advises that a guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed will normally not be less than what it would have cost the landlord to comply with the legislation in the first place.

The final consideration when setting the level of penalty is therefore, making sure that any financial benefit to the offender of committing the offence is removed, and

that as well as being fair and proportionate, the level of penalty acts as an effective deterrent.

When determining any gain as a result of the offence the Council will take into account the following issues:

- Cost of the works required to comply with the legislation
- Any licence fees avoided
- Any other factors resulting in financial benefit

This Enforcement Policy should be read in conjunction with [current guidance](#) issued by the Ministry of Housing, Communities and Local Government.

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