

**Policy on the issuing of a civil penalty as opposed to prosecution under the Housing and Planning Act and determining the appropriate level of penalty to impose.**

The Housing and Planning Act 2016 enables Local authorities to impose Civil Penalties as an alternative to prosecution for certain offences under the Housing act 2004.

In Particular the relevant offences are;

- Section 30 of the Housing Act 2004 – Failing to comply with an Improvement Notice
- Section 72 of the Housing Act 2004 – Offences in relation to the licensing of Houses in Multiple Occupation
- Section 95 of the Housing Act 2004 – Offences in relation to the licensing of houses under Part 3 of the Housing Act 2004 (Selective Licensing of Residential Accommodation)
- Section 139 of the Housing Act 2004 – Offences in relation to the contravention of an overcrowding notice
- Section 234 of the Housing Act 2004 – Failure to comply with Management Regulations in respect of Houses in Multiple Occupation.

In deciding how to proceed, the Council has to be satisfied that they have sufficient evidence to prove that an offence has been committed and this needs to be to the criminal burden i.e. beyond reasonable doubt. In determining that the issuing of a civil penalty as opposed to prosecution is the appropriate course of action the Council will consider each case individually and will take into consideration factors including the seriousness of the offence; the culpability of the offender; the harm, or potential harm to tenants; and the impact on the wider community.

In making a decision as to what, if any, enforcement action is appropriate the Council will refer to its own Enforcement Policy, and must also have regard to the Code for Crown Prosecutors. Due regard must also be given to any potential defences and it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore this.

When the Council is satisfied that a relevant offence has been committed and that it is in the Public interest to proceed formally it must decide whether to prosecute or issue a civil penalty.

The following, whilst not exhaustive, are situations where prosecution may be appropriate;

- The offence was serious , for example breach of a prohibition order or where there was imminent risk of injury or loss of life;
- The offender has been prosecuted for similar Housing Act offences

The following factors, whilst not exhaustive, are situations where the issuing of a civil penalty may be appropriate;

- No history of previous non-compliance with relevant legislation
- No previous convictions of relevant offences
- The offence was committed as a result of a genuine mistake or misunderstanding, but this must be balanced against the seriousness of the offence.
- Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

The Housing and Planning Act 2016 also specifies that the amount of penalty that can be imposed is to be determined by the Council but must not be more than £30,000. The Government's desire is that the penalty should be a punishment which has a real economic impact to the offender.

In determining the amount of penalty the Council will use a Financial Penalty Matrix (see Appendix 1) which takes into account relevant matters including, but not limited to:

- The penalty should act as a deterrent to repeating the offence ,and to others from committing similar offences;
- The penalty should remove any financial benefit obtained as a result of the commission of the offence;
- The severity and seriousness of the offence;
- The culpability and past history of the offender;
- The harm ,or potential harm, caused to the tenant;

The use of the matrix generates a score which corresponds to a representative penalty as follows;

Score	Penalty
1-5	£250
6-10	£500
11-20	£750
21-30	£1,000
31-40	£2,500
41-55	£5,000
56-65	£10,000
66-75	£15,000
76-85	£20,000
86-95	£25,000
96-100	£30,000

### **Factors when considering the Harm, or potential harm, caused**

In determining the level of harm the Council will have regard to;

- The persons affected in terms of physical injury , negative impacts on their health, and any psychological distress;
- Any Vulnerability of the persons affected
- The number of persons affected
- The community in terms of economic loss and the effects on public health, public complaints and the effects of poor housing condition on the neighbourhood.

The degree of harm will depend on the personal characteristics and circumstances of the person affected, normally the tenant. Where no actual harm has resulted from the commission of the offence the Council will consider the relative danger and the potential of harm that could have resulted as a result of the offences.

### **Factors when considering culpability**

In determining the level of culpability the Council will have regard to the following;

- Whether there was the intention to commit the offence
- Whether the offence has resulted from reckless behaviour for example where the offender had some appreciation of the effects their actions would have but proceeded regardless.
- Whether the offender had knowledge of the risks of harm that their actions could cause
- Whether the offender's actions are considered to be negligent.

### **Aggravating Factors**

The amount of penalty can be increased if there are any relevant aggravating factors. Furthermore the amount of penalty can be reduced if any relevant mitigating factors are disclosed by the offender. **Multiple Offences**

Where the Council are satisfied that more than one offence has been committed a multiple Civil Penalty Notice can be issued, for example multiple breaches of the Management regulations in a House in Multiple Occupation. However the Council will consider whether the issuing of multiple penalties would result in an excessive cumulative amount and this policy gives discretion in this situation. For instance the Council could decide that it is appropriate to issue a civil penalty for the most significant offences and warn the offender that continuation or repeating of the other offences may result in further formal enforcement action being taken.

## **The Process for Imposing Penalty Charges**

Where it has been determined that a Civil penalty Charge as opposed to prosecution is the appropriate course of action the Council will follow the following process:

- 1) A 'Notice of Intent' will be served on the person(s) responsible for the commission of the offence(s). The Notice will specify ;
  - The amount of the proposed penalty
  - The reasons for the proposed penalty
  - Information relating to the right of the recipient to make representation to the Council.
- 2) The recipient of the Notice is given 28 days to make representation to the Council regarding the proposal to impose a Civil Penalty.
- 3) Following the 28 day period the Council will decide; whether to impose the proposed financial penalty and the appropriate value. This could be varied taking into account any comments received from the recipients.
- 4) If the Council decides that a Civil Penalty is still appropriate It will issue a Final Notice which will specify;
  - The amount of the financial penalty
  - The reasons for imposing the penalty
  - Information on how and when to pay the penalty
  - Information regarding the right of appeal against the imposition of a Civil penalty to the First Tier Property Tribunal
  - The consequences of failure to comply with the Notice

## **Consequences of non-payment and miscellaneous provisions.**

If the penalty charge is not fully paid within the prescribed time , including after an appeal has been finally determined and the charge upheld , the Council will seek to recover the penalty by order from a County Court including the costs incurred in taking such action where deemed appropriate.

The Council may at any time withdraw any Notices it has served or amend the amount of penalty specified.

## **Links with the National Database of 'Rogue Landlords and Letting agents'**

Upon the commencement of the statutory provisions contained on the Housing and Planning Act 2016 relating to the national Landlord and Letting Agent Database, where two Final Civil Penalty Notices have been issued to the same recipient within a 12 month period the Council may make an entry on the database. When considering if this is an appropriate course of action the Council will have regard to any guidance issued by the Government.