

Broxtowe Borough Council
Private Sector Housing Civil Penalties Policy

Housing Committee
2nd February 2021

1. Introduction

1.1. Broxtowe Borough Council (“the Council”) is committed to improving the housing standards within its borough and ensuring that dwellings 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 some 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 (“the Act”) 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
- 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
- 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.

1.6. On the 1st June 2020, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the Regulations”) also came into force, allowing local authorities to issue financial penalties up to a maximum of £30,000 in respect of a breach of those Regulations. This policy and associated scoring matrices also apply to financial penalties issued in respect of breaches of the Regulations, unless otherwise specified.

2. Purpose

The purpose of this policy is to set out the Council’s approach to using the powers relating to civil penalties detailed in the Act, including how the level of any penalty will be set.

3. Expectations

3.1. 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.

3.2. 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.

3.3. 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. Also, it will need to be satisfied that the public interest is properly served by imposing a civil penalty on the landlord in respect of the offence. The Council will satisfy itself that if the case were to be prosecuted in the magistrates' court that there would be a realistic prospect of conviction. In order to do so the Council would take into consideration its Corporate Enforcement Policy, alongside seeking advice from the Council's solicitors and other guidance. If either of these sanctions are not appropriate, then in line with the Corporate Enforcement Policy other measures may be considered.

3.4. Government guidance suggests that prosecution, in respect of offences committed under the Housing Act 2004 ("the 2004 Act"), 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.

3.5. It should be noted that for certain offences within the 2004 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.

3.6. The Regulations do not enable the Council to prosecute as an alternative to issuing a financial penalty in respect of a breach of those Regulations.

4. Offences

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

- 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)

4.2. Financial penalties can also be issued where there has been a breach of the Regulations.

5. Considerations

5.1. The Government recommends that a local authority 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 the 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 the 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.

6. Level of Civil Penalty to be Issued

6.1. 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 a level of penalty determined by an impact scoring matrix (Table 2)

The information is then added together in Table 3 to give the level of civil penalty.

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

6.3. Table 1 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.

6.4. Table 2 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 3, column 3. Where the circumstances of a case fall between the factors outlined in Table 1, the Council will make a determination as to which set of factors best reflects the overall nature of the offence.

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

6.6. Only one civil penalty can be imposed on a landlord in respect of an offence, but where a landlord has committed multiple offences, and a civil penalty could be imposed for each one, consideration should be given to whether it is just and proportionate to impose a penalty for each offence.

6.7 When calculating the penalty amounts for multiple offences, there will inevitably be a cumulative effect and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences involved.

6.8 The landlord may also have committed multiple similar offences, or offences which arose from the same incident. In these cases, consideration should be given to whether it would be more appropriate to only impose penalties for the more serious offences being considered and to prevent any double-counting.

6.9 Having regard to the above considerations, a decision should be made about whether a civil penalty should be imposed for each offence and, if not, which offences should be pursued. Where a single more serious offence can be considered to encompass several other less serious offences, this is the offence that will normally be considered for the civil penalty. Deciding not to impose a civil penalty for some of the offences does not mean that other enforcement options, such as issuing a simple caution, cannot be pursued for those offences.

Table 1: Offence Specific penalty and other penalties

1 A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the Housing Health and Safety Rating System (HHSRS)

2 A relevant defect for the purpose of this matrix is defined as a defect which would result in an ‘Unsatisfactory’ grading on an Electrical Installation Condition Report (EICR). Namely, a defect given a C1, C2 or F1 observation code.

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are 2 or more category 1 hazards	£3,000	Where there are 3 or more high scoring hazards. ¹	£1,000
	Section 72	Failure to obtain a property licence	£2,500				
		Breaches of conditions – The HMO is licensed under this section and there is a breach of licence conditions (penalty per breach)	£1,000				
	Section 95	Failure to obtain a property licence	£2,500				
		Breach of conditions – the property is licensed under this section and there is a breach of licence conditions (penalty per breach)	£1,000				
	Section 139	Non-compliance with an overcrowding notice	£500	Penalty per additional person	£200		
Section 234	Failure to comply with management regulations in respect of HMOs (penalty per breach)	£500					
Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – Regulations 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is one identified Code 1 defect or three or more identified ‘relevant defects’ ²	£3,500	There is one or more identified relevant defect(s).	£2,500

Table 2: Impacts scoring matrix

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

Score	0	20	30	40	
1	<p>Severity of harm or potential harm caused x 2</p> <p>(the relevant column score is double)</p>	<p>Low No identified risk Previous/current occupant not in vulnerable category. No impact assessed.</p>	<p>Moderate Moderate level risk(s) to relevant persons. Previous/current occupant not in vulnerable category. Low impact assessed.</p>	<p>High High level risk(s) to relevant persons. Previous/current occupant in vulnerable category. Occupants affected by frequently or by occasional high impact occurrences.</p>	<p>Severe High level of risk(s) to relevant persons. Previous/current occupant in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.</p>
2	<p>Number of properties owned/managed</p>	1	2-3	4-7	8+
3	<p>Culpability and track record</p>	<p>No previous enforcement history. Minimal prior contact. Failings were minor and an isolated incident. Clear evidence of action not being deliberate.</p>	<p>1 or more previous enforcement notice served. Systems were in place to comply with legal duties but these were not sufficiently adhered to or implemented. Clear evidence of action not being deliberate.</p>	<p>1 or more enforcement notice served. Serious and/or systemic failure to comply with legal duties. Offender ought to have known that their actions were in breach of their legal responsibilities.</p>	<p>Significant evidence of historical non-compliance. Actions were deliberate or with flagrant disregard for the law. Offender ought to have known that their actions were in breach of their legal responsibilities.</p>
4	<p>Removal of financial incentive</p>	Little or no income received	Low income received	Moderate income received	High income received
5	<p>Deterrence and prevention</p>	High confidence that penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence.	No confidence that penalty will deter repeat offence.

**Table 3: civil penalty level for relevant offences
(Column 1 + Column 2 + Column 3 = Column 4)**

- 1	2	3		4
Offence specific penalties	Further penalties (if any)	Table 2 impact matrix score	Level of penalty	Cumulative total
Total for each penalty shown in Table 1 Column A	Total for each penalty shown in Table 1, columns B and/or C	20 – 30	£500	Level of civil penalty to be applied (maximum £30,000)
		40 – 80	£1,000	
		90 – 120	£2,500	
		130 - 170	£5,000	
		180 230	£10,000	
		240	£20,000	

7. The process for civil penalties

Schedule 9 of the Act sets out the process which must be followed when imposing a civil penalty. The decision to impose a civil penalty will be taken by either the Head of Public Protection or the Chief Environmental Health Officer, in consultation with the Head of Legal Services.

7.1 Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a notice of intent on the landlord in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

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

7.2 Representations

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an officer in the Council at Head of Service level or above, with guidance from an officer of the Legal Section.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case by case basis and responded to where the Council considers it necessary.

7.3 Final Notice

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the notice of intent but it cannot be a greater amount.

The imposing of a civil penalty involves serving a final notice and this notice must contain the following information:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal, and;
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

7.4 Withdrawing or amending notices

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on its merits.

7.5 Appeals to the Tribunal

If a civil penalty is imposed on a landlord, that landlord can appeal to the First-tier Tribunal (“the Tribunal”) against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

7.6 Payment of a civil penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given, unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice.

7.7 Other consequences of having a civil penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the 2004 Act.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person’s involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12 month period, each for a Banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

“Banning order offence” means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016.

7.8 Recovering an unpaid civil penalty

The Council will consider all legal options available for the collection of unpaid civil penalties. Some of the options available to the Council through the County Courts are as follows:

- A Warrant of Control for amounts up to £5000;
- A Third Party Debt Order;
- A Charging Order, and;
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, and the amount of the Order is over £1000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the County Court. Inclusion on this Register may make it more difficult for the landlord to get financial credit.

7.9 Income from civil penalties

Any income from civil penalties is retained by the Council. The Council must spend any income from civil penalties on its enforcement functions in relation to the private rented sector pursuant to the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017, as amended or substituted from time to time.

Worked Examples:

Example A – A landlord has failed to licence a property in a selective licensing area. The property is in good condition. The landlord was notified at the start of the scheme but there has not been significant contact with them since. The landlord only has the one private rented property, and receives little income. A licence application was made promptly when they were reminded of the scheme.

	Penalty Amount	Cumulative Amount (£)
Failure to obtain a property licence	£2,500 (Table 2, column A)	£2,500
Impact score = 0 Severity = Low No of properties managed = 1 Culpability and track record – none Financial incentive – little or no income Deterrence and prevention – High confidence	NA	£2,500
Total Penalty		£2,500

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

	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)	£5,000
Impact score = 170 Severity = High No of properties managed = 4-7 Culpability and track record – 1 previous notice Financial incentive – moderate income received Deterrence and prevention – Medium confidence	£5,000	£10,000
Total Penalty		£10,000

Example C – a landlord commences a tenancy on a property after 1st July 2020 which has an ‘Unsatisfactory’ graded electrical report, due to three Code 2 observations recorded. He has not carried out the required remedial works within the specified timeframe. The landlord owns no other properties, but has previously had enforcement action taken against them at this address. The tenant is vulnerable.

	Penalty Amount	Cumulative Amount (£)
Breach of Electrical Safety Standards Regulations	£1,000 (Table 2, column A)	£1,000
Three or more Code 2 defects	£3,500 (Table 2, column B)	£4,500
Impact score = 150 Severity = High No of properties managed = 1 Culpability and track record – 1 previous notice Financial incentive – moderate income received Deterrence and prevention – Low confidence	£5,000	£10,000
Total Penalty		£9,500