



**Prosperous Communities  
Committee**

**19 March 2019**

**Subject: Housing Civil Penalties Policy Amended**

Report by:

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Purpose / Summary:

To provide elected members with a revised version of the Council's Housing Act Civil Penalties Policy.

**RECOMMENDATION(S)**

**Elected Members are asked to:**

- a) Approve the revised policy in regards to Housing Act Civil Penalties to come into effect from the 1<sup>st</sup> of April 2019.**

## IMPLICATIONS

### **Legal:**

Section 126 of the Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences. Schedule 9 of the Act amends the Housing Act 2004 including the providing of a new section 249a which covers financial penalties as an alternative to prosecution.

### **Financial : FIN/226/19**

The revised Civil Penalties Policy will enable the Council to issue financial penalties directly to landlords who commit certain offences.

Any income received from these penalties will be used to offset costs which may include additional legal costs incurred through the hearing of appeals and seeking of court orders.

It is proposed any income generated above total cost will be considered for investment in private sector housing statutory enforcement functions, should this be required.

Whilst the proposed amendments reduce two of the penalties within the policy, it is not expected that this will alter the overall financial impact as the lower penalty is less likely to be appealed and is more in line with tribunal decisions to date.

### **Staffing :**

There are no staffing implications

### **Equality and Diversity including Human Rights :**

None noted

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**Risk Assessment :**

**Income derived from Civil Penalties** – there is no guarantee that payment of a civil penalty will be made by the person it has been issued to. As a result the Council would need to seek a court order for payment, which will incur additional costs.

Mitigation – the Council has processes in place in regards to the recovery of debt and it is expected that the cost of current legal processes for lower level offences would be minimised and enable this action to be taken at no additional cost.

**The First Tier Tribunal** – the appeal of Civil Penalties and Rent Repayment Orders are considered by the First Tier Tribunal. This tribunal has the power to quash, confirm, increase or reduce the civil penalty and its decisions are currently untested.

Mitigation – any arising case law will be considered and cases will be developed to the same burden of proof as per our current criminal investigations. A number of cases have now been heard at tribunal and this policy review has taken those matters into consideration.

**Climate Related Risks and Opportunities :**

None noted

**Title and Location of any Background Papers used in the preparation of this report:**

Report to Prosperous Communities Committee – 1<sup>st</sup> May 2018

[http://democracy.sharedlincs.net/ieListDocuments.aspx?CId=176&MId=1736&Ver=4&LO\\$=1](http://democracy.sharedlincs.net/ieListDocuments.aspx?CId=176&MId=1736&Ver=4&LO$=1)

First Tier Tribunal Decisions from March 2018

[https://www.gov.uk/residential-property-tribunal-decisions?keywords=&tribunal\\_decision\\_category%5B%5D=housing-act-2004-and-housing-and-planning-act-2016&tribunal\\_decision\\_decision\\_date%5Bfrom%5D=&tribunal\\_decision\\_decision\\_date%5Bto%5D=](https://www.gov.uk/residential-property-tribunal-decisions?keywords=&tribunal_decision_category%5B%5D=housing-act-2004-and-housing-and-planning-act-2016&tribunal_decision_decision_date%5Bfrom%5D=&tribunal_decision_decision_date%5Bto%5D=)

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

**Yes**

**No**

## 1 Introduction

- 1.1 In May 2018 the Prosperous Communities Committee approved a Civil Penalties Policy which enabled powers to impose civil penalties for certain offences under the Housing Act 2004.
- 1.2 The policy has now been in place for around a year and as a result some minor amendments are required as a result of tribunal decisions, best practice and practical experience in dealing with matters relating to this. The revised policy is included in appendix 1.

## 2 Civil Penalties to Date

- 2.1 To date the Council has issued 6 civil penalties:
- 2 of these have been paid, £2,500 per penalty
  - 3 of these across 2 landlords are at the tribunal for appeal (£11,000 per penalty)
  - 1 of these is in the process of being recovered via a charging order (£11,000) through the county court

## 3 Proposed Amendments

- 3.1 The proposed amendments to not affect the legal status of the policy, they seek to ensure that it is fit for purpose and effective.
- 3.2 The table below sets out the proposed amendments and the reasons for it being required:

	<b>Amendment</b>	<b>Reasoning</b>
<b>1</b>	Removal of provision for seeking of tribunal costs of £2,000 where appeals are unsuccessful.	The tribunal process does not allow for costs to be sought within it. There is no other mechanism for these costs to be recovered.
<b>2</b>	County Court Debt Recovery (see 6.7)	Note added to advise that a debt recovery process will be followed for any unpaid penalties.
<b>3</b>	Payment Plans (see 6.8)	Note added to formalise that payment plans will be offered, as appropriate, in regards to payment of civil penalties
<b>4</b>	Totality (see 6.9)	It is best practice and noted in tribunal decisions that the totality principle should be considered in any decisions made.
<b>5</b>	Reduction of penalty for S.72 and S. 95 Failure to Obtain a Licence (see Table 2)	To ensure that basic offence penalty is at a more proportionate level and to enable it to be increased more effectively using the scoring matrix within Table 3.

<b>6</b>	Additional information added in relation to culpability and track record (see Table 3)	Culpability is a key feature in regards to tribunal decisions and previous matrix did not place enough emphasis on this.
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3.3 The reduction of the penalty amount for S.72 and S.95 offences has been informed by a number of matters. The original penalty amount within the policy was £10,000, which meant that for basic licensing offences (even those that were not deliberate) had to commence on the penalty scale at £10,000. It is felt that this figure was not reflective of the offence.

3.4 The revised scoring matrix in Table 3 makes additional provision for culpability and track record, which along with the other factors included, ensures that those more severe offences can be issued with a larger penalty.

3.5 The lowering of the penalty for the two offences is less likely to lead to appeals in relation to the offence, particularly from those landlords who are at the lower end of the scoring matrix. This will therefore reduce the amount of officer and legal time needed to deal with these matters and make the policy more effective.

#### **4 Recommendations**

4.1 Elected Members are asked to:

- a) Approve the revised policy in regards to Housing Act Civil Penalties to come into effect from the 1<sup>st</sup> of April 2019.



# 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 its 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 Culpability and track record – 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 Culpability and track record – 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	£2,500 (Table 2, column A)	£2,500
Impact Score = 140 Severity = Low No of properties managed = 8+ Culpability and track record – 1 previous notice Financial Incentive – Moderate Deterrence and prevention – Medium confidence	£5,000	£7,500
<b>Total Penalty</b>		<b>£7,500</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.

- 6.7.** If a civil penalty is unpaid the Council will refer the case to the county court for an order of that court to seek its recovery.
- 6.8.** The Council will consider a landlords ability to pay in regards to whether a form of payment plan should be offered. Any payment plan would be relative to the amount of penalty issued, the offenders ability to pay and would not exceed 12 months. Where a payment plan is defaulted upon the Council would seek to recover the penalty via a charging order.
- 6.9.** Where multiple penalties are issued to a landlord, which are considered to be within the same course of conduct the Council will consider the totality of the penalty in its final decision. Where totality is applied the decision will be explained and justified.

**Appendix 1:**

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

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

- 1	2	3		4
<i>Offence specific penalties</i>	Further penalties (if any)	Table 3 impact matrix score	Level of penalty	Cumulative total
<i>Total for each penalty shown in Table 2, column A</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>£2,500</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>£2,500</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 <b>Severity of harm or potential harm caused x 2 (the relevant column score is double)</b>	<b>Low</b> Low level of harm Potential harm unchanged in HHSRS assessment. Previous/current occupant not in vulnerable category.	<b>Moderate</b> Moderate level health risk(s) to relevant persons. Previous/current occupant in vulnerable category.	<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.	<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.
2 <b>Number of properties owned/managed</b>	1-2	3-4	5-8	8+
3 <b>Culpability and Track record</b>	No previous enforcement history. Minimal prior contact. Clear evidence of action not being deliberate	1 or more previous enforcement notice served. Clear evidence of action not being deliberate	1 or more enforcement notice served. Offender ought to have known that their actions were in breach of legal responsibilities	Significant evidence of historical non-compliance Actions were deliberate or offender knew or ought to of known that their actions were in breach of their legal responsibilities
4 <b>Removal of financial incentive</b>	Little or no income received	Low income received	Moderate income received	High income received
5 <b>Deterrence and prevention</b>	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.