

Civil Penalties Policy

Housing and Environmental Enforcement
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.
- 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 matrixes also apply to financial penalties issued in respect of breaches of Regulations, unless otherwise specified.

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, in respect of offences committed under the Housing Act 2004, 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.
- 2.6.** It should be noted that the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 do not enable the Council to prosecute as an alternative to issuing a financial penalty in respect of a breach of those regulations.

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

- 3.2.** Financial penalties can also be issued where there has been a breach of the Electrical Safety Private Rented Sector (England) Regulations 2020

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

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

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.

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)	£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 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.

Example C	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	£9,500
Total Penalty		£9,500

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 and/or making an entry into the rogue landlord database in the circumstances in which either apply.
- 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.** Income received from the issuing of financial penalties will be retained by the Council and used for the purpose of meeting the costs and expenses incurred in relation to carrying out its enforcement functions in relation to the private rented sector.
- 6.10.** 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 relevant 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 Table 2, 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	

Table 2: Offence specific penalty and other penalties

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				
		Breach of conditions – The HMO is licenced 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 licenced 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 – Regulation 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

¹ A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect or 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.

Table 3: Impacts scoring matrix

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

<i>Score</i>		<i>0</i>	<i>20</i>	<i>30</i>	<i>40</i>
1	Severity of harm or potential harm caused x 2 (the relevant column score is double)	Low No identified risk Previous/current occupant not in vulnerable category. No impact assessed	Moderate Moderate level risk(s) to relevant persons. Previous/current occupant not in vulnerable category. Low impact assessed	High High level risk(s) to relevant persons. Previous/current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	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.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	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	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High income received
5	Deterrence and prevention	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.