

HOUSING CIVIL PENALTY POLICY

ISLE OF WIGHT COUNCIL, HOUSING RENEWAL SECTION.

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1.0 BACKGROUND

- 1.1 The private rented sector is an important part of our housing market, housing 4.3 million households in England and approximately 17,000 households on the Island. The quality of privately rented housing has improved rapidly over the past decade with 82% of private renters satisfied with their accommodation, and staying in their homes for an average of 4 years.
- 1.2 The Government wants to support good landlords who provide decent well maintained homes, and avoid unnecessary regulation which increases costs and red tape for landlords and also pushes up rents for tenants. A small number of rogue landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords and disrupt their business model.
- 1.3 When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.
- 1.4 In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:

“[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000 “

“It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”

2. Definitions

2.1. What is a civil penalty

For the purposes of this guidance, 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.

2.2. Which housing offences are covered

Local housing authorities will be able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

2.3. What is the legal basis for these powers

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

2.4. When did these powers come into force

The powers came into force on 6 April 2017. They are not retrospective and do not apply to offences committed before that date.

2.5. What is the maximum penalty that can be imposed

The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. In determining an appropriate level of penalty, local housing authorities should have regard to the guidance in “Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities” at paragraph 3.5, which sets out the factors to take into account when deciding on the appropriate level of penalty. Only one penalty can be imposed in respect of the same offence.

2.6. Can multiple civil penalties be issued if there have been a number of breaches of House in Multiple Occupation management regulations

A civil penalty can be issued as an alternative to prosecution for each separate breach of the House 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.

2.7. Can a separate civil penalty be issued for each hazard specified on an Improvement Notice

No. Only one civil penalty can be issued for failing to comply with an Improvement Notice.

2.8. Can a civil penalty be imposed on both a landlord and letting agent for failing to obtain a licence for a licensable property

Where both the 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.

2.9. Can a civil penalty be imposed on both a landlord and letting agent in respect of the same offence

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.

2.10. 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, a local housing authority 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 actually achieve a conviction in the magistrates' court, the local housing authority 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 local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

2.11. How can a local housing authority establish whether there would be a realistic prospect of conviction

Local housing authorities should consult the Crown Prosecution Service Code for Crown Prosecutors for this purpose as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction.

The Code has two stages: (i) the evidential stage and (ii) the public interest stage.

2.12. What procedure must be followed by a local housing authority if they want to impose a civil penalty

The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004

Notice of intent

Before imposing a civil penalty the local housing authority must give the person concerned a notice of intent.

The notice of intent must be given before the end of a 6 month period beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates. Or, if the conduct is ongoing then 6 months from the last day of that conduct. A person's conduct includes a failure to act.

The notice of intent must set out;

- (a) The proposed financial penalty,
- (b) The reasons for proposing to impose the financial penalty, and
- (c) Information about the right to make representations under paragraph 4 of schedule 13A of the Housing Act 2004.

Right to make representations

A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty, and must do so within 28 days beginning with the day after that on which the notice was given.

Final Notice

After the end of the period for representations the local housing authority must decide whether to impose a financial penalty on the person, and if so, the amount of penalty.

If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

The final notice must set out—

- (a) The amount of the financial penalty,
- (b) The reasons for imposing the penalty,
- (c) Information about how to pay the penalty,
- (d) The period for payment of the penalty,
- (e) Information about rights of appeal, and
- (f) The consequences of failure to comply with the notice

Withdrawal or amendment of notice

A local housing authority may at any time withdraw a notice of intent or final notice, or reduce the amount specified in a notice of intent or final notice by giving notice in writing to the person to whom the notice was given.

Appeals

A person to whom a final notice is given may appeal to the First-tier Tribunal against the decision to impose the penalty, or the amount of the penalty. If a person appeals, the final notice is suspended until the appeal is finally determined or withdrawn.

An appeal is to be a re-hearing of the local housing authority's decision, but may be determined having regard to matters of which the authority was unaware. The First-tier Tribunal may confirm, vary or cancel the final notice.

Recovery of financial penalty

If a person fails to pay the whole or any part of a financial penalty the local housing authority may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is signed by the chief finance officer of the local housing authority which imposed the penalty, and states that the amount due has not been received by a date specified in the certificate, is conclusive evidence of that fact.

3. Factors in deciding whether to prosecute or impose a civil penalty.

- 3.1. The Council will decide which option it wishes to pursue on a case-by-case basis in line with the Neighbourhoods Enforcement Policy that would utilise an authority panel process.
- 3.2. When presenting a case to an authority panel, the case officer will also have regard to the following factors.
 - a) Severity of the offence- Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed. A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.
 - b) Culpability and track record of the offender- it may be more appropriate to issue a penalty for first time offenders, but where the offender has a poor track record of non-compliance with the authorities it may be appropriate to prosecute. It will be taken into account that without a successful prosecution the offender could not be placed on the proposed Rogue Landlord database.
 - c) Resources needed to prosecute- where it is considered that the penalty route will offer a more efficient and effective sanctioning route for the Council that will be considered advantageous.
 - d) Light touch sanctioning is appropriate- for minor offences with sound evidence it may be considered more effective and balanced to issue a penalty of an appropriate level. This may be particularly effective where the offender accepts responsibility for the offence and is willing to accept the light touch penalty sanction rather than face a prosecution process. A lower level civil penalty may also be a proportionate response to breaches of HMO management regulations when the people responsible for their management should already be aware of their duties in this regard.
 - e) Ability for the sanction to act as a deterrent- where the Council considers that the offence is a matter that is more widespread amongst other private rented dwellings, it could be beneficial to issue a penalty of significant level for the sanction to be recognised by other landlords, and it to act as a deterrent (thereby preventing the need for further unnecessary enforcement action elsewhere).
 - f) Ability for offender to continue business- where it is considered disproportionate to prosecute a landlord for various reasons it may be appropriate to issue a suitable penalty. However, it may also be factor in providing a balanced level of penalty to enable the landlord to continue business where this may affect the ability provide a decent home, or risk losing certain important housing from the market.
- 3.3. If a civil penalty is the chosen sanction numerous factors will be considered in each case to help ensure that the penalty is set at an appropriate level. This will be calculated by the case officer prior to the

authority panel and proposed as part of that process. It is based on a weighted scoring process ensuring that amount is proportionate, as well as offering a transparent and easy to follow system for all parties.