

Barnsley Council

Civil Penalties Policy for Private Sector Housing

BARNSELY MBC

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Barnsley Council Civil Penalties Policy.

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Foreword

This document sets out the Council's policy relating to the implementation of Civil Penalties for housing offences. This Civil Penalties policy should be read in conjunction with the Private Sector Housing Enforcement Policy and other policies that also include the Council's role in private sector housing. The Safer Neighbourhood Service aims to maintain and improve housing conditions in privately owned properties and improve neighbourhoods. Where an informal approach fails or it is necessary to protect the health, safety and welfare of people in private rented accommodation, the service will decide whether to serve a legal notice for non-compliance and then prosecute or pursue the Civil penalty route.

This policy aims to promote efficient and effective approaches to non-compliance and to outline in policy when to prosecute and when to consider the use of civil penalties offering a transparent approach to enforcement so that people understand how they will be dealt with by the Council.

Introduction

The Council has a statutory duty to regulate and enforce the Housing Health and Safety Rating System (HHSRS) and to license certain Houses in Multiple Occupation (HMOs). Regulation consists of carrying out inspections, processing licences and undertaking any necessary enforcement action in relation to defective and unsafe properties.

1.0 Aim & Objectives of the Policy

The aim of the policy is to set out the legal responsibilities, policies, principles and priorities that the Safer Neighbourhood Service will follow when enforcing legislation.

The Policy Objectives include:

- Helping to provide safer and healthier private housing and Houses in Multiple Occupation (HMO).
- Increase transparency and raise the profile of enforcement in the private rented sector; Ensuring culpability is accountable and enforced upon as an alternative to prosecution.

2.0 What is a Civil Penalty?

2.1 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 up to a maximum of £30,000. This action does not replace formal enforcement action such as prosecution or service of legal notices. The principle piece of legislation is the Housing and Planning Act 2016 which amends the [(Housing Act 2004) 'new schedule 13A'- *procedures to follow before imposing a financial penalty*] to allow civil penalties, up to a maximum of £30,000, to be imposed.

This Policy has been written taking into account the statutory guidance 'Civil Penalties under the Housing and Planning Act 2016: 'Guidance for Local Authorities' issued under section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016 which Local Housing Authorities must have regard to in the exercise of their functions in respect of civil penalties.

2.2 However, there are circumstances where other pieces of legislation may be more appropriate in dealing with an identified problem. Officers will be expected to use judgement to determine the most appropriate course of action. When exercising its powers the Council must have regard to; previous harms; the confidence in the management of the dwelling and the degree of culpability.

2.3 Which housing offences are covered?

The Safer Neighbourhood Service will be able to impose a civil penalty as an alternative to prosecution for the following offences:

a) under the Housing Act 2004:

- Failure to comply with an Improvement Notice – (section 30);
- Offences relating 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 (HMO) (section 234)

See appendix 2. For other relevant offences.

b) under the Housing and Planning Act 2016

- Breach of a banning order (section 21)

2.4 Who are Civil Penalties aimed at?

These penalties are aimed at landlords¹ who are in breach of one or more of the sections of the Housing Act 2004 listed above. A civil penalty can only be imposed as an **alternative** to prosecution. The Council cannot impose a civil penalty in respect of the same offence for which a landlord has been convicted of or being prosecuted for and vice versa.

3.0 Policy approach and decision making

3.1 In line with the existing Enforcement Policy and guidance relating to the Housing and Planning Act, prosecution may be the most appropriate option where an offence is particularly serious or where the offender has previously committed similar offences in the past. A civil penalty of up to £30,000 can be imposed where a serious offence has been committed, or where the Council decide that a significant financial penalty (or penalties if there have been several breaches) rather than prosecution, is the most appropriate and effective course of action. A minimum starting level for fines has been set .

3.2 Civil penalties will not be publicised in the public arena, unlike prosecution. Therefore, it is unlikely that civil penalties will offer a deterrent from peers or members of the public. However, they will offer a financial deterrent. Therefore deriding the landlord of any financial gain by not undertaking works required.

3.3 The final decision to use civil penalty powers or to seek prosecution will be made by the Service Director Stronger, Safer and Healthier Communities be authorised to implement the policy and to undertake relevant enforcement under it, including the issuing and enforcement of Civil Penalty Notices in conjunction with Legal services after reviewing the evidence presented.

3.4 Each case will be considered on a case by case basis, by determining the following:

¹ Landlord refers to anyone who has financial control of the property or is responsible to undertake repairs and ensure the health, safety and welfare of the occupants in accordance with the HHSRS.

- Severity of the offence - is prosecution a better option based on the significance of the offence and the harm impact upon the tenants?
- The type of property and the types and numbers of occupiers affected.

See appendix 1 for lists of vulnerable people and section 8.0 for guidance relating to the levels of fines set and the rationale and methodology for those fines. This is a baseline guide and each case should be considered individually with a rationale for implementation.

4.0 Burden of proof.

4.1 The same criminal standard of proof is required for a civil penalty as for prosecution. Therefore, prior to formal action, the Council must satisfy itself that if pursued, an appeal made by the appellant to the First Tier tribunal against the civil penalty, the Council could demonstrate beyond a reasonable doubt that the offence had been committed.

5.0 Outline procedure to impose a Civil Penalty.

5.1 The procedure is followed in accordance with Schedule 13A of the Housing Act 2004. The Council must give the person a notice of its proposal ('notice of intent') to impose a financial penalty:

- The notice must set out:
 - The reasons for proposing to impose the penalty;
 - The amount of the proposed financial penalty; and
 - Information about the right of the landlord to make representations.

5.2 The notice of intent must be given no later than 6 months after the local housing authority has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

5.3 A person who is given a notice of intent may make written representation to the Council about their intention to impose a financial penalty. This must be made within 28 days from when the notice was given. After the 28 day period of representation, the council must decide whether to impose the financial penalty and, if so, the amount of the penalty. It must therefore give the person a notice ('final notice') requiring the penalty to be paid within 28 days.

5.4 The final notice must set out:

- The amount of financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty (28 days)
- Information regarding the rights of appeal; and
- The consequences of failure to comply with the notice.

6.0 Right of Appeal

6.1 The person served with the notice has the right to appeal to the First Tier Property Tribunal against:

- ° The decision to impose a penalty; or
- ° The amount of the penalty.

6.2 If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

6.3 An appeal will involve a re-hearing of the local housing authority's decision to impose a civil penalty. It may also have regard to matters of which the local housing authority was unaware when the decision to impose a civil penalty was made.

6.4 The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the local housing authority, or to cancel the civil penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000. It further has the power to dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

7.0 Enforcement or other consequences.

7.1 Where a landlord or agent fails to pay a civil penalty, the council should refer the case to the county court for an order of that court. If necessary the council should use county court bailiffs to enforce the order and recover the debt.

7.2 The Councils powers to carry out works in default under the Housing Act 2004 are unaffected by the civil penalty provisions. This should be pursued in accordance with the enforcement tools available and register the debt as a local land charge, under the specific Act.

7.3 If a landlord receives a civil penalty, this can be taken into account when considering fit and proper person status to be licenced for a HMO or another other property which requires a licence.

7.4 Where a landlord receives 2 or more civil penalties over a period of 12 months, the Council will include that persons details on the government database of rogue landlords and property agents.

8.0 Setting the Civil Penalty

8.1 High level of culpability: A person is deemed to be highly culpable where the council is satisfied that the landlord intentionally or recklessly breached or wilfully disregarded the law. Factors that may lead to the conclusion include the following.

- A history of non-compliance.
- Severity of the offence
- Conduct/ obstructive as part of the investigation.
- Deliberate/ intentional breach or flagrant disregard for the law.
- Are they an experienced landlord / agent with a portfolio of properties who would be expected to know or have failed to fully comply with all scheduled items or their responsibilities.
- Serious and/or systematic failure to comply with their legal duties.

8.2 Medium Level of culpability: Where a landlord commits an offence through an act or omission which we consider a person exercising reasonable care would not commit. Factors which may lead to that conclusion are as follows:

- First offence – with no high level culpability criteria being met
- Landlord / agent had systems in place to manage risk or comply with their legal duties but they were not sufficient or complied with on this occasion.

8.3 Low level of culpability: Where a person fails to comply, or commits an offence where;

- The breaches are minor
- The offence is an isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance E.g. some fault on the landlords part but there are other mitigating circumstances. For example: Obstruction by the tenant not allowing the contractors access or damage caused by tenant negligence.

9.00 Determining the level of fine in respect of the likelihood of Harm.

Category 1– High likelihood of Harm.

- Serious and substantial effects of harm to individuals and having wide spread impact.
- High risk of an adverse effect on an individual/s – including where those persons are vulnerable. Examples of risks: electrical hazards, CO2, structural collapse, asbestos.

Category 2 – Medium likelihood of Harm.

- Medium risk of an adverse effect on individual(s) [Not amounting to a Category 1 Harm level]
- The Council and /or legitimate landlords or agents substantially undermined by offenders activities .
- Where the Councils work as a regulator is inhibited by the offender.

- Consumer/ tenant is misled.

Category 3 – Minor likelihood of Harm.

- Low risk of injury or disease to the occupier resulting in treatment at the doctors. E.g. management issues which could lead to a risk to the occupier. Damp, mould and hygiene issues.

The table below gives the minimum starting points and maximum financial penalties for each harm category and level of culpability.

| Outline Definitions of Culpability. | Range | Starting point | Min starting point (with mitigating circumstances) | Max financial penalty. | Aggravating Factors. |
|--|---------------------------|----------------|--|---------------------------------------|--|
| Breaches are minor; Significant effort made to comply; The offence is an isolated occurrence. | Low Culpability | | | | Previous convictions Nature of offence Time elapsed since previous conviction. Motivated by financial gain. Deliberate concealment Wider community impact. Record of proving sub-standard accommodation. Record of poor management / not meeting legal standard. Refusal of free advice. Member of an accreditation scheme. |
| | Harm Cat 3 | £500 | £450 | £750 | |
| | Harm Cat 2 | £1,250 | £750 | £1,500 | |
| | Harm Cat 1 | £2,500 | £1,500 | £4,000 | |
| A landlord exercising reasonable care would not commit such an offence; Had systems been in place but were not complied with; First offence. | Medium Culpability | | | | |
| | Harm Cat 3 | £1,500 | £1,000 | £2,500 | |
| | Harm Cat 2 | £3,000 | £1,500 | £5,000 | |
| | Harm Cat 1 | £5,500 | £4,000 | £9,000 | |
| Intentionally reckless; Conduct obstructive; Wilful disregard for the law; Symptomatic failure of their legal duties; A history of non-compliance. | High Culpability | | | | |
| | Harm Cat 3 | £6,000 | £5,000 | £7,500 | |
| | Harm Cat 2 | £10,000 | £7,500 | £15,000 | |
| | Harm Cat 1 | £15,000 | £10,500 | £28,000 (plus costs to a max of £30K) | |

| Harm Cat 3 | Harm Cat 2 | Harm Cat 1 |
|---|--|---|
| Low risk of injury or disease to the occupier resulting in treatment at the doctor. Management issues which could lead to a risk to the occupier. E.g. Damp, Mould or hygiene issues. | Medium risk of an adverse impact on individuals not amounting to a Cat 1. The council and landlords/ agents substantially undermined by offenders activities; Or Where the Councils work as a regulator is inhibited by the offender. | Serious and substantial effects of harm to individuals and having widespread impact. High risk of an adverse effect on an individual(s) including where those persons are vulnerable |

To offer context to the charging structure. These can be adjusted upwards from the minimum within the culpability and the ranges of harms depending upon factual elements; For example: relevant recent convictions are likely to result in substantial upward adjustment.

9.1 Factors which increase seriousness

Statutory aggravating factors:

- Previous convictions having regard to
 - a) the nature of the offence to which the conviction relates and its relevance to the current offence;
 - and
 - b) the time that has elapsed since the conviction.

Other aggravating factors include:

- Motivated by financial gain.
- Deliberate concealment of illegal nature and activity.
- Established evidence of wider/community impact.
- Obstruction of justice
- Record of providing substandard accommodation.
- Record of poor management and not meeting legal requirements.
- Record of free advice and training.
- Member of an Accreditation scheme.

9.2 Factors which reduce the seriousness or reflecting personal mitigation down to the minimum.

- No recent convictions or no relevant recent conditions
- Voluntary steps taken to remedy the problem.
- High level of cooperation with the investigation, beyond that which will always be expected.
- Good record of maintaining property
- Self-reporting, cooperation and acceptance of responsibility
- Good character and exemplary conduct.
- Mental disorder or learning disability, where linked to the commission of the offence.
- Serious medical conditions requiring urgent, intensive or long term treatment.
- Age and / lack of maturity where it affects the responsibility of the offender.
- Sole or primary carer for dependant relatives.

9.3 General Principles and a Review of any financial penalty.

- Check whether the level of fine is proportionate to the overall means of the offender. The council may increase or reduce the proposed fine reached to more than the stated threshold set provided that..... Where multiple offences are being pursued. Consideration should be given to offences taken into account in totality.
- The fine should reflect the seriousness of the offence and the financial circumstances of the offender.
- The level of fine should reflect the level at which the offender fell below the required standard.
- It should not be cheaper to offend than to take the appropriate precautions.

The council has concluded that the cost of serving a Community Protection Notice. (CPN) is £100 (accurate as 18.06.2018). Therefore in setting a minimum penalty it should reflect other options available and court charges associated with non-compliance. This figure may be varied upwards from the minimum figure of £500 dependent upon how the case is conducted.

Any quantifiable economic benefits derived from the offence, including those through avoided costs of operating savings, should normally be added to the total financial penalty. The rationale for this is to

ensure that no financial gain should be made from the harm caused by the lack of conduct of the landlord. The council may draw upon information available from other enforcing authorities regarding general costs of operating within the law.

10.0 Additional actions

In all cases the council may consider additional further action. This may include works in default, Interim Management Orders or Rent repayment orders. The Council cannot take a prosecution for the same conduct as is the subject of a financial penalty Notice. They must choose at the outset which route they follow. Eg prosecution or civil penalty.

11.0 Recording the decision.

The officer making the decision shall be accountable to outline the rationale for imposing the penalty , giving reasons for coming to the amount of financial penalty which is to be imposed.

12.0 Appendix 1 – Non exhaustive list of vulnerable people.

- Young adults and Children
- Disabled persons
- People on low income
- Persons with Drug and alcohol addiction.
- Victims of domestic abuse.
- Looked after children.
- People with complex health conditions
- People exploited where English is not their first language.
- Victims of sexual abuse and trafficking.
- Refugees/ asylum seekers
- People at risk of harassment or eviction.
- People at risk of Homelessness.

12.1 Appendix 2 - Relevant offences (this list in non-exhaustive)

Offences under:

- The Public Health Act of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Act of 1982 and 1976
- The Housing Act 2004
- The Local Government and Housing Act 1989.

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