

Extract from section 11 of the private sector housing enforcement policy

Civil penalties for offences under the Housing Act 2004

The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords, including the power for Councils to issue civil penalties. Penalties of up to £30,000 may be issued as an alternative to prosecution for certain specified offences.

Income received from a civil penalty can be retained by the Council, provided that it is used to further its statutory functions in relation to enforcement activities covering the private rented sector.

A civil penalty may be imposed 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)
- Contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The amount of penalty is to be determined by the Council in each case. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. In determining an appropriate level of penalty, the Council will have regard to the publication 'Civil Penalties under the Housing and Planning Act 2016' in which the Government's Department for Communities and Local Government (DCLG) provides statutory guidance.

A civil penalty can only be imposed as an alternative to prosecution. However, unlike prosecution action, where there are offences under Houses in Multiple Occupation Management Regulations, the Council may issue a civil penalty for each separate offence.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. The Residential and Environment Team will consult with the Council's legal team in this respect.

Determining the Sanction

The following principles will apply to each case to be considered in relation to a civil penalty;

- Each case will be considered on its own merits
- There must be sufficient, reliable evidence to justify the action taken
- The action taken must be in the public interest
- Any mitigating circumstances will be considered
- The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.

Factors to be taken into consideration when determining the Penalty

In accordance with the statutory guidance, the Council will consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- **Deter others from committing similar offences.** While the fact that someone has received, a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Determining the Penalty

Tandridge District Council's 'Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004' (pages 55 to 63 of the agenda pack) sets out how the Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made. It also provides further information about how the penalties are imposed, the procedure for issuing them and the process for appealing a penalty.