

5th February 2019**REPORT NO. OS1903****KEY DECISION? YES****CIVIL PENALTIES POLICY****SUMMARY AND RECOMMENDATIONS:**

The civil penalties policy is required following the introduction of new powers given to local authorities to deal with rogue landlords under the Housing and Planning Act 2017 (the Act). This legislation amended the Housing Act 2004 (HA 2004) and includes powers for a local authority to charge a civil penalty for a housing offence as an alternative to taking prosecution proceedings. This policy details how civil penalties are calculated and in what circumstances they will be used.

Recommendation

- Cabinet is asked to approve the adoption of the Civil Penalties Policy.
- Cabinet is asked to grant authority for the Head of Operational Services, in consultation with the Operational Services Portfolio Holder to approve any minor changes to the policy that may be required following the introduction of new regulations or secondary legislation.

1. INTRODUCTION

- 1.1 The council is committed to improving housing standards in the private rented sector by making sure that properties are safe, well maintained and properly managed. The Council supports the government's desire to work with good landlords and to take enforcement action against landlords who provide poor quality accommodation.
- 1.2 A policy is required to determine how the Council will decide whether a civil penalty or prosecution is the most appropriate enforcement action to be taken when an offence is committed.
- 1.3 The policy sets out how civil penalties are calculated in a fair and transparent way to ensure that the highest civil penalties go to the worst and most prolific offenders.

2. BACKGROUND

2.1 Enforcement action taken for poor housing conditions is dealt with under the Housing Health and Safety Rating System (HHSRS) – Housing Act 2004 (HA2004). This allows the Council to serve statutory enforcement notices depending on the severity of the issue. These are:

- Hazard Awareness Notices
- Improvement Notices
- Prohibition Orders
- Emergency Prohibition Orders
- Demolition Orders
- Clearance areas

2.2 The table below details the enforcement action taken by the private sector housing team over the past three years, including this year to date. This does not include informal interventions.

Type of action	2015/16	2016/17	2017/18	2018/19 @ 31.10.18
Hazard Awareness Notice	1	0	0	0
Improvement Notice	1	7	10	8
Prohibition Order	5	7	5	6
Emergency Prohibition Order	0	3	0	3

2.3 The Housing and Planning Act 2016 (the Act) amended the HA2004 by introducing additional powers to help local authorities tackle rogue landlords and property agents. These new powers run alongside the existing enforcement powers.

2.4 Section 9 of the Act allows local authorities to impose civil penalties as an alternative to prosecution for certain housing offences.

2.5 The Act has also introduced the extended use of rent repayment orders, banning orders and a national rogue landlord register for repeat offenders.

2.6 The policy forms part of the Council's overarching Housing and Homelessness Strategy by helping residents to live in good quality accommodation that is suitable for their needs.

2.7 The council continues to work closely with landlords to encourage the provision of good quality accommodation and take enforcement action when landlords refuse to comply with the requirements.

3. DETAILS OF THE PROPOSAL

General

3.1 The policy details:

- What a civil penalty is

- When a civil penalty will be issued
 - What evidence is required
 - The cost of a civil penalty and how it is calculated
 - How a civil penalty is issued
 - How to appeal against a civil penalty
- 3.2 The Housing and Planning Act 2016, the Housing Act 2004 and the Ministry of Housing, Communities and Local Government (MHCLG) guidance were used as reference when writing this policy
- 3.3 The policy supports national requirements to improve conditions with the private rented sector by tackling rogue landlords and supporting landlords who provide good quality accommodation.

Consultation

- 3.4 There is no requirement to carry out a public consultation, however, the policy has been benchmarked against other local authorities in Hampshire through the Housing Advisory Group.
- 3.5 The Operational Services portfolio holder has been consulted on this policy.

4. IMPLICATIONS

Risks

- 4.1 The policy provides a framework by which the council can impose a civil penalty as an alternative to prosecution. Provided it is imposed correctly, there should be minimal risk of an appeal to the First-tier Tribunal.

Legal Implications

- 4.2 The policy supports the council's duty to take appropriate action against landlords who do not comply with legal requirements to provide safe, good quality housing in the private sector.
- 4.3 The Head of Operational Services and the Corporate Legal Services Manager will consider each case before a final decision is made on the most appropriate course of action to take.
- 4.4 The evidence required to impose a civil penalty is the same evidence required for a prosecution, therefore the council must be satisfied, that an offence has been committed and that both the evidential test and the public interest test have been considered.

Financial and Resource Implications

- 4.5 There are no new financial implications from the recommendations of this report, as the resources to impose civil penalties under the Act will come from the existing private sector housing team.

- 4.6 Any monies received by the council from civil penalties can be used to offset the cost of housing enforcement work by the private sector housing team as detailed in the MHCLG guidance document.

Equalities Impact Implications

- 4.7 It is considered that the proposed civil penalties policy presents no specific impact on those with protected characteristics.
- 4.8 The policy seeks to ensure equality for residents living in the private rented sector to be able to live in a home that is safe, and suitable for their needs.

Other

- 4.8 Existing IT systems will be used to log and monitor any enforcement action.

5. CONCLUSIONS

- 5.1 The policy will allow the council to impose civil penalties as an alternative to prosecution for certain housing offences.
- 5.2 The policy will assist the private sector housing team to take appropriate enforcement action against landlords who do not provide safe, good quality, privately rented accommodation in Rushmoor.
- 5.3 These increased powers provide further tools for the private sector housing team to deal with rogue landlords.

BACKGROUND DOCUMENTS:

Housing Act 2004 (as amended)
Housing and Planning Act 2016
MHCLG guidance on civil penalties

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Housing and Planning Act 2016 Civil Penalties Policy



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Introduction

Rushmoor Borough Council is committed to improving standards in the private rented sector, ensuring that all accommodation is safe, well managed, maintained and compliant with regulations and requirements.

The council share the government's desire to support landlords who provide good quality accommodation and to take appropriate action against those unscrupulous landlords who flout the law and gain profit from letting sub-standard properties.

The Housing and Planning Act 2016 (the Act) received Royal Assent on 12 May 2016. Part 2 of the Act amended the Housing Act 2004 and introduced new powers to help local authorities tackle rogue landlords and property agents.

Section 126 and Schedule 9 of the Act introduced the power for local authorities to impose civil penalties as an alternative to prosecution when they are satisfied that a relevant housing offence has been committed.

A civil penalty of up to £30,000 can be imposed for these offences and serve as an alternative to prosecution. The amount of penalty is determined on a case-by case basis.

This policy forms part of the council's overall Housing and Homelessness Strategy by enabling people to live in good quality accommodation that is suitable for their needs. The vision is to have a private rented housing stock that is in good condition, safe, not overcrowded and meets the required housing standards.

A copy of the strategy is available online at www.rushmoor.gov.uk/housingstrategies



General principles of enforcement in Rushmoor

The council has an overarching Corporate Sanctions and Enforcement Policy that provides guidance on what can be expected from our regulatory services and how enforcement action is considered and taken, ensuring consistency and good practice.

The principles used to carry out our regulatory activities are:

- Proportionality
- Consistency
- Openness and accountability
- Risk assessment and targeting

Consideration will be given to:

- The Regulators' Compliance Code
- The code for crown prosecutors
- Equality and diversity

Civil penalties

What is a civil penalty?

This is a financial penalty that the council can impose on an individual or an organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004.

How much is a civil penalty?

A maximum of £30,000 can be imposed for each offence with the amount of the penalty determined on a case-by-case basis. The council must provide details of the factors taken into account when determining the level of penalty and this is detailed further on in the policy.

What is the most appropriate course of action?

The decision to prosecute or issue a civil penalty will be taken considering:

- The severity of the offence
- The landlord's history of failing to comply with their obligations in Rushmoor and anywhere else in the country
- The effect that the breach has had on the tenant of the property
- The economic impact on the offender which should also deter repeat offences by both the offender and others

The final decision on the most appropriate course of action will be made by the Head of Operational Services in consultation with the Corporate Legal Services Manager.

Civil penalties should not be used as an “easy option” but as the most effective action that will have a maximum impact on the rogue landlord.

In order to determine the most appropriate course of action, the council must have regard to the Crown Prosecution Service – Code for Crown Prosecutors, which provides advice on the evidence required and forms part of the council’s Corporate Sanctions and Enforcement Policy.

The code has two stages, each of which must be considered. They are:

- The evidential stage
- The public interest stage

What evidence is required to issue a civil penalty?

A civil penalty requires the same considerations as a prosecution. The burden of proof is the same for a prosecution and the council must be satisfied, beyond reasonable doubt, that the offence has been committed before issuing a civil penalty. The council cannot impose a civil penalty and bring a prosecution for the same offence.

What are the housing offences that can be considered for a civil penalty?

The housing offences covered by the Act for which civil penalties can be considered are:

- Failure to comply with an Improvement Notice (Section 30) – a single civil penalty can be imposed.
- Offences in relation to the licensing of houses in multiple occupation (HMOs) (Section 72). A civil penalty can be imposed on both a landlord and agent for the same offence and they may be at different levels.
- Offences in relation to the licensing of HMOs under part 3 of the Act (Section 95). A civil penalty can be imposed on both a landlord and agent for the same offence and they may be at different levels.
- Contravention of an overcrowding notice (Section 139).
- Failure to comply with management regulations in respect of HMOs (Section 234) – a separate civil penalty can be imposed for each failure to comply with the regulations.

A breach of a Prohibition Order cannot be considered for a civil penalty and can only be dealt with as a prosecution through the courts.

How is a civil penalty calculated?

Guidance published by the Ministry of Housing, Communities and Local Government (MHCLG) stipulates that the level of penalty should reflect the severity of the offence, the landlord's previous record of offending, the landlord's rental income and assets, the size of their portfolio and the way that a landlord works with his tenants and the council.

To ensure that the highest civil penalties are reserved for the worst offenders and less serious offences receive a lower civil penalty, a matrix has been designed and is attached at Appendix 1.

The factors to be considered as part of the matrix are:

- **Factor 1** – the severity of the offence and the risk of harm caused to the tenant
- **Factor 2** – culpability of the landlord and history of previous housing offences
- **Factor 3** – suitable financial punishment for the offence, removal of financial gain for non-compliance and consideration of the landlord's income and assets
- **Factor 4** – must be a suitable financial punishment to deter the landlord from repeated offences or to deter other landlords from committing an offence

Factor 1

Consideration must be given to how severe the offence is and how it will affect the tenants health and wellbeing. Therefore, it is appropriate to look at the harm outcomes detailed in the Housing Health and Safety Rating System – Housing Act 2004 that will help to determine the likely risk of harm to the tenant from the offence.

Level 1 – Minor/moderate impact, may cause a risk of injury or disease to the occupier that does not require intervention by a health practitioner. For example, the effect of minor dampness on health such as coughs and colds.

Level 2 – Serious impact, may cause a risk of more serious injury or disease to the occupiers requiring treatment by a health practitioner. For example, the effect of mould growth and

dampness causing allergic rhinitis or lack of adequate hygiene facilities amenities resulting in gastric upset.

Level 3 – Severe impact, may cause a risk of severe injury or chronic disease to the occupiers requiring hospital treatment. For example, the effect of serious damp and mould growth causing asthma and respiratory problems, or carbon monoxide exposure causing loss of consciousness and carbon monoxide poisoning.

Level 4 – Extreme impact, may cause death or life-threatening illness. For example, serious breaches in electrical safety causing electrocution/burns or severe structural defects putting the occupant at risk of falls that may result in paralysis or death.

Factor 2

Consideration must be given to the landlord's culpability and previous convictions. If a landlord has a history of running poor quality accommodation and deliberately lets out sub-standard property and does not comply with housing standards.

Level 1 - Landlord makes significant efforts to address disrepair issues and there is little or no history of previous offences.

Level 2 – The landlord has insufficient systems in place to ensure good housing standards in the properties. Regulations are not adhered to or

implemented and the landlord may have a record of previous minor housing offences.

Level 3 – The landlord has failed to maintain the property to the required housing standards and has ignored requests from tenants and the council to comply with the regulations. The landlord has failed to improve conditions over a long period and has a history of more serious housing offences.

Level 4 – The landlord has deliberately breached housing standards and has a long and recent history of housing offences and a total disregard for the law.

Factor 3

Consideration must be given to the most appropriate financial punishment for the offence committed, ensuring that the civil penalty is high enough to have an economic impact on the offender. This will demonstrate the consequences of not complying with their responsibilities. The civil penalty should remove any financial benefit that they may have had from renting out a sub-standard property. Information will be requested from the landlord about their portfolios, rental income and any other assets for consideration when looking at this aspect of the matrix.

The landlord's financial status will be determined by the information that has been provided. However, should a landlord fail to provide the information, a calculation will be made on a best estimate of income and assets from records held by the council. It will be assumed, based on this information that the offender is likely to be able to pay the civil penalty. The onus is on the landlord to disclose all relevant information and failure to do so will mean that the council will set the penalty based on the information that is available.

Level 1 - The landlord has no significant assets and makes little or no financial profit from renting out a single property. The landlord has tried to carry out repairs but due to a lack of finances or other restrictions has been unable to complete them; therefore, consideration needs to be given to whether the landlord would be able to pay any civil penalty imposed.

Level 2 – The landlord has a small portfolio consisting of two or three properties and makes minimal profit from rental income. The landlord runs the properties as a business but is also in full time employment. The landlord has the ability to pay the civil penalty based on their disclosed income and assets.

Level 3 – The landlord has a medium sized portfolio consisting of four or five properties or is a small managing agent. The properties are run as a business and a healthy profit is made from rental income. The landlord/agent has other assets, for example, business premises that indicates that the civil penalty should be reasonably high in order to have an impact

Factor 3 continued

on the landlord's income to encourage future compliance with housing standards.

Level 4 – A professional landlord with a large portfolio consisting of five or more properties or a large managing agent. The properties are run

as a high asset value business and significant profit is made. The civil penalty must be high enough to have a real economic impact on the offender demonstrating the consequences of not complying with their responsibilities and legal obligations to their tenants.

Factor 4

Consideration must be given to the effect that a civil penalty will have on the landlord and whether this will deter them from committing further offences and ensure that they comply with their legal responsibilities in the future. Thought must be given to the effect that the civil penalty will have on other landlords and the way that they carry out their businesses. The council needs to ensure that the message to landlords is that we have a pro-active approach to giving civil penalties and will not tolerate poor standards of maintenance and management. The landlord should know that civil penalties are set high enough to punish them for any breach and to deter repeat offending.

Level 1 – The council is confident that a civil penalty will deter the landlord from repeat offending and publicity around the council's approach will deter other landlords from offending. The landlord has co-operated fully with the investigation, accepted responsibility and has a good previous record of compliance. There may be health reasons why the landlord has failed to comply, which may include mental or physical illness.

Level 2 – The council is moderately confident that a civil penalty will deter repeat offending by the landlord and that informal publicity will encourage landlords to comply in the future and will act a deterrent to other landlords. The landlord has generally complied in the past with informal intervention but has not with this offence.

Level 3 – The council has little confidence that a civil penalty will deter repeat offending and will need to publicise their action. The landlord is fully aware of the housing standards required and has chosen not to comply; this is a regular occurrence with a view to the landlord saving money. The landlord has been convicted of housing offences in the past.

Level 4 – The council has no confidence that a low-level civil penalty will deter repeat offending. The landlord has a history of past housing offences and a failure to comply with requirements. The landlord has falsified documentation and tried to avoid scrutiny of the business assets by the council. The landlord houses vulnerable tenants and deliberately tries to avoid access to properties for housing inspections.

How to impose a civil penalty

Before imposing a civil penalty, a notice of intent must be served on the landlord or responsible person within six months of the completion of the council's investigation and evidence gathering for the offence. The notice must detail:

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the penalty; and
- Information about the landlord's right to make representations against the imposition of a civil penalty

Any representation must be made in writing to the council within 28 days from the date that the notice of intent is served.

At the end of the 28 days, the council must consider all representations, decide whether to impose the penalty, and if so, determine the amount of penalty, and serve a final notice on

the landlord or responsible person. The notice must detail:

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

At any time during the notice of intent or final notice period, the council can withdraw or reduce the amount of the civil penalty and this will be confirmed in writing. If a civil penalty is withdrawn, the council can decide to pursue a prosecution for the offence if it considers this a more appropriate course of action.

How to appeal against a civil penalty

Any person served with a final notice has the right to appeal to the First-tier Tribunal against:

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

If an appeal is made and the decision is pending, the civil penalty is suspended. The First-tier Tribunal can confirm, quash or vary the civil penalty and if it is considered that the appeal has no merit, they can dismiss the case.

Recovery of a civil penalty

If the landlord does not pay the civil penalty within the relevant timescales, the council will refer the case to the county court for an order, which will be enforced by court bailiffs.

Database of Rogue Landlords

If a landlord or organisation has received two or more civil penalties in a 12-month period the council will include that person's details on the database of rogue landlords and property agents. This will mean that other local authorities are aware that formal action has been taken against a particular landlord who may be working in their area.

If a landlord receives a civil penalty, the council will consider whether the landlord is a fit and proper person to hold a HMO licence.

Complaints

The council is committed to providing a good quality service and we need to know that we are getting things right. If not, please let us know, as feedback, both positive and negative, is an opportunity to learn and improve services.

If you are not happy with the response or explanation we give, you can find out how to make a formal complaint at **www.rushmoor.gov.uk/complaint**. You can also ask us for information by emailing **customerservices@rushmoor.gov.uk** or by calling **01252 398 399**.

Policy review

This policy will be updated and reviewed annually. The Head of Operational Services can agree changes to the policy in consultation with the Cabinet portfolio holder for Operational Services.

Matrix to determine level of civil penalty

This matrix must be scored using the information provided in this policy and can be used to determine a civil penalty amount that is fair, consistent and transparent.

1. Choose one option from each row between Level 1 and 4 (1 being the lowest and 4 being the highest).
2. Write your score in the far right hand column.
3. Consideration must be given to all factors within the policy to determine the score.
4. All rows must be scored.
5. There is additional weighting to Factor 1 due to the effect of defects on any tenants' health and wellbeing along with their vulnerability.
6. Add up all of the scores in the right hand column and put the total scored in the bottom right hand box.
7. Look at the score range table, using the total scored which will determine a sliding scale of civil penalties to be levied dependent on the score.

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Factors to consider when determining amount of civil penalty	Level 1 Score = 10	Level 2 Score = 20	Level 3 Score = 30	Level 4 Score = 40	Score per Factor
Factor 1 <ul style="list-style-type: none"> • Severity of the offence. • Risk of harm caused to the tenant. 					
Factors to consider when determining amount of civil penalty	Level 1 Score = 5	Level 2 Score = 10	Level 3 Score = 15	Level 4 Score = 20	Score per Factor
Factor 2 <ul style="list-style-type: none"> • Culpability of Landlord. • History of housing offences. 					
Factors to consider when determining amount of civil penalty	Level 1 Score = 5	Level 2 Score = 10	Level 3 Score = 15	Level 4 Score = 20	Score per Factor
Factor 3 <ul style="list-style-type: none"> • Suitable financial punishment for the offence. • Removal of financial gain for non-compliance. • Consideration of landlords income and assets. 					
Factors to consider when determining amount of civil penalty	Level 1 Score = 5	Level 2 Score = 10	Level 3 Score = 15	Level 4 Score = 20	Score per Factor
Factor 4 <ul style="list-style-type: none"> • Deter the offender from repeating housing offences. • Deter other landlord from committing similar housing offences. 					
					Total Score

Sliding scale of civil penalties to be given breaches of certain housing offences as set out by the Housing and Planning Act 2016

Scoring range	Civil penalty to be applied
25 - 35	£100 - £2,499
40 - 45	£2,500 - £4,999
50 - 55	£5,000 - £9,999
60 - 65	£10,000 - £14,999
70 - 75	£15,000 - £19,999
80 - 85	£20,000 - £24,999
90 - 95	£25,000 - £29,999
100	£30,000

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