



# **Harborough District Council Civil Penalty Policy**

DRAFT

## **1. Introduction**

## **2. What is a Civil Penalty?**

2.1 Offences covered by Civil penalties

2.2 Burden of proof

2.3 Considerations made prior to issuing a Civil Penalty

## **3. Determining the level of Civil Penalties**

**3.1 Considerations made**

3.2 Civil Penalty Calculator

3.3 Recording the decision

## **4. Imposing a Civil Penalty**

4.1 Notice of Intent

4.2 Representations

4.3 Final Notice

4.4 Right of appeal

## **5. Discount for paying civil penalty within specified period**

## **6. Recovering an unpaid Civil Penalty**

## **7. Income from Civil Penalties**

## **8. Enforcement or other consequences**

## **9. Further guidance**

## **Appendix 1 Work Flow**

## **1. Introduction**

Harborough District Council (“the council”) is committed to improving the standards of homes within the private rented sector, ensuring that all accommodation is safe, well managed, adequately maintained and compliant with regulations and requirements.

The council acknowledges that most landlords and letting agents operate their businesses in a professional and legal manner. However, it is also recognised there are some landlords and letting agents within the private rented sector that poorly manage and fail to maintain their properties to a safe standard and in some cases knowingly and wilfully disregard the law.

This policy set out below is supplementary to the Private Sector Housing Enforcement Policy and applies to both individuals and businesses.

This document follows the DCLG guidance in using the term "civil penalty", but the terms "civil penalty" and "financial penalty" are interchangeable.

## **2. What is a Civil Penalty?**

Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. The Housing and Planning Act 2016 provides powers that allow the council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.

A civil penalty is a financial penalty that may be imposed in instances where there are breaches of legislation and is a criminal act. Therefore, before imposing a civil penalty the council must be satisfied ‘beyond all reasonable doubt’ that a persons’ conduct amounts to the relevant housing offence as defined by section 249A(2).

The exception to this is the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as this is not considered as a criminal offence, however

a financial penalty may still be served. To impose a civil penalty the council must still be satisfied beyond reasonable doubt that the landlord has breached a duty under regulation 3.

The maximum fine that can be imposed is £30,000 per offence. The Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' stipulates that the maximum penalty is for the worst offenders.

## **2.1 Offences Covered under the Civil Penalties**

A civil penalty can be imposed on a landlord or letting agent or both. The power to impose a civil penalty as an alternative to prosecution for certain specified housing offences is stated in section 126 and Schedule 9 of the Housing and Planning Act 2016. The civil penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:

- Section 30 – Failure to comply with an Improvement Notice<sup>1</sup>
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)<sup>2</sup>
- Section 95 – Offences in relation to licensing of houses under Part 3 (Inc. Selective Licensing)<sup>3</sup>
- Section 139 – Offences of contravention of an overcrowding notice<sup>4</sup>
- Section 234 – Failure to comply with management regulations in respect of HMO<sup>5</sup>
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)<sup>6</sup>
- Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.<sup>7</sup>

Civil penalties can be imposed under regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Electrical Regulations) where the authority is satisfied beyond reasonable doubt that a landlord has breached a duty under regulation 3.

1 <https://www.legislation.gov.uk/ukpga/2004/34/section/30>

5 <https://www.legislation.gov.uk/ukpga/2004/34/section/234/2005-06-06>

2 <https://www.legislation.gov.uk/ukpga/2004/34/section/72>

6 <https://www.legislation.gov.uk/ukdsi/2017/9780111162224>

3 <https://www.legislation.gov.uk/ukpga/2004/34/section/95>

7 <https://www.legislation.gov.uk/uksi/2020/312/contents/made>

4 <https://www.legislation.gov.uk/ukpga/2004/34/section/139>

The breach of a Prohibition Order under section 30 of the Housing Act 2004 is not one of the specified offences. Where appropriate, the council will be able to seek a rent repayment order in addition to prosecuting the landlord for the offence.

Sometimes minor offences and those that are less serious may be better addressed using a civil penalty. A prosecution can easily be lost on technicalities or error in court. Court time is relatively limited, and the public interest test is applied before a prosecution is decided to be taken. The most appropriate course of action will be considered on a case-by case basis. This is in line with the councils Housing Enforcement Policy.

In circumstances where both a landlord and letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution.

## **2.2. Burden of proof.**

The same criminal standard of proof is required to serve a civil penalty as to bring a criminal prosecution. The council must therefore be satisfied that, before a civil penalty can be imposed, it can demonstrate it is satisfied 'beyond all reasonable doubt' that criminal offence(s) have been committed by either a landlord or letting / managing agent, and if the matter were to be prosecuted in the Magistrates Court, there would be a realistic prospect of conviction

In determining whether there is sufficient evidence to secure a conviction, the council will have regard to its own Enforcement Policies and the Crown Prosecution Service Code for Crown Prosecutors. The council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each offender on each charge. The Code Crown Prosecutors has two stages, the evidential stage and the public interest stage and both will be considered during the council's decision for the most appropriate course of action when considering a financial penalty being issued.

## **2.3 Considerations prior to a Civil Penalty being issued.**

The council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be properly served by imposing a civil penalty.

The following questions should be considered:

- Does the council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the Council?
- Has the evidence been reviewed by the Council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e., the offence is particularly serious and the landlord has committed similar offences in the past and/or a banning order should be considered.
- The council will consider its own Housing Enforcement Policy when determining whether it is appropriate to serve a civil penalty an alternative option for prosecuting for the relevant offence.
- The council cannot consider both a prosecution and issue a civil penalty for the same offence. The council can consider a civil penalty following the serving of a Housing Act notice if there is non-compliance.

### **3. Determining Level of Civil Penalty**

When determining the level of the civil penalty the severity and harm of the offence must be considered as stated in Section 63 Sentencing Act 2020: "in considering the seriousness of any offence the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably cause".<sup>8</sup> Harm includes actual harm caused as well as risk of harm.

The Government has laid out statutory guidance as to the process and the criteria that need to be considered when determining Civil Penalties.

### 3.1 Considerations

**a) Severity of the offence.** The more serious the offence, the higher the penalty should be.

**b) 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.

**c) 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.

**d) 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 demonstrate the consequences of not complying with their responsibilities.

**e) Deter the offender from repeating the offence.** The primary aim 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.

**f) 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 civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

**g) Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle of civil penalties is that they should remove any financial benefit 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<sup>8</sup>

### 3.2 Civil Penalty Calculator

#### Matrices

Table 1 details the overall calculation process. Each of the 3 columns are totalled to give the cumulative total in Column 4 which is applied.

**Table 1: Civil Penalty level for relevant offences**

Column 1 + Column 2 + Column 3 = Column 4

1	2	3		4
Offence specific penalties	Further penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, column	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	

**Step 1/ Column 1** in table 1 involves detailing what “Offence specific penalties” apply. This will involve going through the case in question and comparing the offences the officer is able to demonstrate “beyond all reasonable doubt” to column A of Table 2 (below). For example, an offence of failing to obtain a HMO licence under section 72 of the Housing Act 2004 will automatically get an offence specific penalty of £2,500. If more than one offence has been committed at a property, then they must be added together. So, for example in at HMO the officer notes a series of offences under the HMO management regulations, then each breach of a regulation has an associated offence specific penalty and must be must be aggregated (added together). Where a licensing offence is also an HMO management regulation offence the Licence offence will take primacy.



**Step 2/ Column 2** in table 1, involves looking at column B and C of Table 2 (below).

This step applies where offences have been noted under sections 30, 139, or the Electrical safety standards legislation. For example, if in the improvement notice that has been failed to have complied with, an offence may have occurred under section 30. If the notice relates to three hazards (e.g. Excess cold rated as an A, damp and mould rated as a D and falls between levels rated as B) then an additional £2000 is added under Column B. An additional £1,000 is then added for column C as there are 3 or more “high scoring hazards”, as all hazards were scored E or higher).

**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. <sup>1</sup>	£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 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'. <sup>2</sup>	£3,500	There is one or more identified relevant defect(s).	£2,500

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

<sup>2</sup> A relevant defect for 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.

**Step 3** involves evaluating the impact and this requires table 3 (below) to be considered and applied.

The officer is required to answer questions 1-5 and score appropriately using the evidence of the case. It is important the officer records these in a narrative or tabulated form including their evidence that they are relying upon. This may be required to be evidenced in next stages.

**Table 3: Impacts scoring matrix**

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

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

Note that the score for row 1 should be multiplied by two (doubled). When each question is completed, and the total aggregated the total is compared to Table 1 column 3 so that an appropriate level of penalty for column 3 is apportioned. A number of worked examples are included at the end of the document.

The assessment of the impacts scoring matrix may make consideration to the following:

**1) Severity of the Offence and Severity of Harm**– the more serious the offence, a higher penalty should be imposed. The greater the harm or the potential for harm, the higher the amount should be when imposing a civil penalty. The severity of harm will also consider whether the property is occupied by a vulnerable individual (as detailed in the HHSRS operating guidance). A vulnerable individual is one who is at greater risk of harm, and therefore the penalty should be greater when vulnerability is an issue. This assessment will consider both harm and potential harm within the property. The level of severity will be determined by whether Category One or Category Two hazards are present.

**2) Number of properties owned/managed** – Consideration here is made towards the number of properties that are owned and/or managed by the offender.

**3) Culpability and track record of the Offender** – Culpability levels will be considered higher if the offender has a large portfolio. Landlords, including property

managers and agents are running a business and are expected to be aware of their legal obligations. A higher penalty will be appropriate where there is a history of failing to comply with obligations and that they were in breach of their legal responsibilities.

An assessment of culpability and track record includes any past enforcement action taken by the council. This assessment can include, but is not limited to, the history held of the landlord or letting agent, the number of Housing Act 2004 Notices served, previous Civil Penalties served, simple cautions issued, whether works in default have been undertaken by the council as a result of relevant notices being breached, subject to either an Interim or Final Management Order, registration on either the Rogue Landlord Database or Banning Order.

#### **4) Removal of Financial Incentive**

The principle is to ensure that the offender does not benefit due to committing an offence. The council will consider the financial advantage because of the offence, including but not limited to, rental income gained, financial benefit from not undertaking remedial works contained within an enforcement notice, and/or financial benefit in failing to obtain a property licence when required to do so.

#### **5) Deterrence and Prevention:**

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 demonstrate the consequences of not complying with their responsibilities. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all 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.

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.

**3.3 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.

#### **4. The Procedure for Imposing the Civil Penalty**

The Housing and Planning Act 2016 lays out the process in which council must undertake when imposing a civil penalty.

##### **4.1 Notice of Intent - Housing Act 2004 Schedule 13 A, paragraph 1**

The council will firstly serve a Notice of Intent on the person suspected of committing the offence. This notice must be served within 6 months of the last day the council has evidence of the offence occurring. The Notice will specify:

- The amount of any proposed financial penalty
- The reasons for proposing the financial penalty
- Information about the right to make representation to the Council.

##### **4.2 Written Representations following Notice of Intent.**

Any person in receipt of the Notice of Intent has the right to make representations in writing to the council within 28 days of the date in which the notice was given. The representations will be reviewed by the Regulatory Services Manager.

Written responses will be provided by the council detailing the decision once the case has been reviewed and consideration to the representations made.

##### **4.3 Final Notice - Housing Act 2004 Schedule 13 A, paragraph 6**

After the Appeal period if the council still consider the issue of a Civil Penalty is correct a Final Notice will be served. This Notice will include the following information:

- the amount of the 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 about rights of appeal to the First Tier Tribunal;

- the consequences of failure to comply with the notice.

The 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.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was served, unless appealed.

At any time, the council may either withdraw the notice or intent or final notice. The council may reduce the amount specified in the notice of intent or final notice at any time. This will be by a written notice to the person on whom the notice was served. The council may decide to withdraw the civil penalty; however it reserves its right to pursue a prosecution for the original offence where appropriate to do so.

The council will take into account a reduction of the level of penalty for an admission of guilt.

#### **4.4 Right of Appeal**

The person served with the Final notice has the right to appeal to the First Tier Tribunal against: The decision to impose a penalty; or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

#### **5. Discount for paying civil penalty within specified period.**

To encourage the prompt payment of civil penalties, the council will offer a discount of 1/3 reduction in line with the sentencing guidelines to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. Both amounts will be included in the Final Notice.

#### **6. Recovering an unpaid Civil Penalty**

It is the policy of the council to consider all legal options available for the collection of unpaid civil penalties and to the council will commence proceedings to recover the debts owed. The council will endeavour to recover these debts through the County Court, usually in form of a Court Order. Some of the Orders available to the council through the County Court are as follows:

- A Warrant of Control for amounts up to £5000;

- A Charging Order,
- A Third Party Debt Order;
- and; Bankruptcy or insolvency.

In the first instance, a Certificate, signed by the Council's Chief Finance Officer which states the outstanding amount has not been received by the date of the Certificate. This will be accepted by the Courts as conclusive evidence of the outstanding payment due to the council.

When considering which properties to apply for a Charging Order against, the council can consider all properties owned by the landlord and not just the property to which the offence relates. After obtaining a Charging Order the council may consider applying for an Order for Sale against the property or asset in question.

Where a civil penalty is appealed and the Property Tribunal confirms or varies the penalty, this decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. This may affect the landlords ability to obtain financial credit due to the Register of Judgment Order made against the individual.

The recovery of the debt may be undertaken by third party Enforcement Agents (Bailiffs) and this may lead to additional fees being applied to the outstanding amount.

## **7. Income from Civil Penalties**

Income received from a civil penalty is retained by the council provided that it is used to statutory functions in relation to its private rented sector enforcement activities as specified in the Statutory Instrument 367 (2017)<sup>9</sup>. There is no time limit imposed by the Housing and Planning Act 2016 for the council to use the income gained from a civil penalty.

## **8. Enforcement or other consequences.**

Where a civil penalty has been imposed on a landlord or agent, this will form part of the council's consideration when it reviews the HMO licence applications relating to properties in which that person has had some involvement.

Although the imposition of a civil penalty will not automatically prevent the council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant an HMO licence. Where a landlord has two civil penalties imposed on them within a period of 12 months and each relates to a Banning Order offence for the purposes of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the council will seek to register the landlord's details on the Database of Rogue Landlords and Property Agents.

## **9. Further guidance**

The 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' is statutory guidance which Local Housing Authorities must have regard to and has been reviewed as part of developing the Civil Penalty Policy. The Policy has also been developed with specific regard to the Housing Act 2004, Housing and Planning Act 2016 and Harborough District councils Housing Enforcement Policy.

Appendix A Process Flow

