

Appendix 2 – Civil Penalties Guidance and Matrix

Civil Penalties Guidance

Section 126 of and Schedule 9 to the Housing and Planning Act 2016 provide local authorities with the power by the insertion of section 249A into the Housing Act 2004 to impose a civil penalty (in the form of a financial penalty) as an alternative to prosecution in respect of certain offences. The standard of proof required to issue a civil penalty is that the local housing authority is satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence (as set out below) in respect of premises in England.

Income received from a civil penalty notice can be retained by the Council provided that it is used to further the local authority's statutory functions in relation to its enforcement activities covering the private rented sector as specified in regulations.

A civil penalty cannot be issued where there has been a conviction for the conduct in question or where a prosecution is currently pending in respect of that conduct.

A civil penalty can be imposed in relation to the following relevant housing offences under the Housing Act 2004:

- 1. Failure to comply with an improvement notice (section 30);**
- 2. Offences in relation to licensing of houses in multiple occupation (section 72);**
- 3. Offences in relation to licensing of houses under Part 3 of the Act (section 95);**
- 4. Offences of contravention of an overcrowding notice (section 139)**
- 5. Failure to comply with management regulations in respect of houses in multiple occupation (section 234)**

The government has issued statutory guidance under Schedule 9 to the Housing and Planning Act 2016. Local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties. A full copy of the guidance can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf.

The Council has the power to impose a civil penalty of up to £30,000, with a level of civil penalty imposed decided on a case by case basis in line with this policy. The guidance in this Appendix 2 outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an appropriate enforcement option.

Process for imposing a civil penalty

If the decision is to impose a civil penalty, a notice of intent must be served stating the amount of the proposed penalty, the reasons for its imposition and information about the right to make representations. After the expiry of the period for representations the matter

must be reviewed and a decision taken whether to impose a civil penalty and if so the amount of the penalty. Statutory guidance issued by the Ministry of Housing Communities and Local Government in April 2017 sets out the following factors which must be taken into account when deciding on the appropriate level of penalty:

There are several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

1. **Severity of the offence.** The more serious the offence, the higher the penalty should be.
2. **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.
3. **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.
4. **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared with 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.
5. **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.
6. **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 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.

- 7. 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 Level of Civil Penalty

The Council will determine the level of civil penalty from a review of the case and having regard to the statutory guidance will apply the following five-step approach:

Step 1 – Determining the offence category

To determine the financial starting point, consider the culpability and harm factors in the lists below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

In determining culpability the local housing authority will have regard to four levels of culpability

Where the offender

- Has the intention to cause harm, the highest culpability where an offence is planned
- Is reckless as to whether harm is caused ie the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people
- Has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results
- Is guilty of negligence

Culpability Levels

Very High	Deliberate failure to comply with legal obligations.
High	Knew or ought to have known that they were in breach of their legal responsibilities, wilful blindness to the risk of offending. Non-compliance over a long period or ignoring concerns raised by regulators, tenants or others
Medium	Offence committed through an act .or omission which a person exercising reasonable care would not commit.
Low	Offence committed with little fault, for example, because: significant efforts were made to address the risk although they

	were inadequate on this occasion, failings were minor and occurred as an isolated incident.
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Harm

In determining the level of harm the local housing authority will have regard to:

- The effect on the tenant i.e. physical injury, damage to health, psychological distress
- To the community i.e. economic loss, harm to public health
- Other types of harm i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim e.g. tenant. Where no actual harm has resulted from the offence the local housing authority will consider the relative danger to which persons have been exposed as a result of the offender’s conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims
- Especially serious or psychological effect on the victim
- Victim is particularly vulnerable

High	The property conditions pose a high risk of serious adverse effects to the occupants and/or visitors. Vulnerable individuals were put at risk.
Medium	The property conditions pose medium risk of serious adverse effects to the occupants and/or visitors.
Low	The property conditions pose a low risk of serious adverse effects to the occupants and/or visitors.

Step 2 – Offence matrix

Having determined the culpability and harm levels, the appropriate offence matrix should be referred to in order to calculate the starting point for the civil penalty.

Harm	Culpability			
	Very high	High	Medium	Low
High	Band 6	Band 5	Band 4	Band 3
Medium	Band 5	Band 4	Band 3	Band 2

Low	Band 4	Band 3	Band 2	Band 1
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Banding Levels

- The table below provides an indication of the level of financial penalty that is likely to be appropriate taking into account both culpability and harm. The maximum level of fine permitted under the legislation is £30,000.
- The starting point in each band will be the mid-point e.g. in Band 3 the midpoint will be £12,500.

Band 1	£0 - £4,999
Band 2	£5,000 - £9,999
Band 3	£10,000 - £14,999
Band 4	£15,000 - £19,999
Band 5	£20,000 - £24,999
Band 6	£25,000 - £30,000

Step 3 – Consider aggravating or mitigating factors

The Council should then consider further adjustment from the starting point to take into account aggravating and mitigating factors. Set out below is a non-exhaustive list of elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point.

- The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.
- The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of the top of the band level determined below.

Aggravating factors	Mitigating Factors
History of failing to comply with obligations	Steps taken to remedy the problem
Motivated by financial gain	High level of co-operation with the investigation, beyond that which will always be expected

Deliberate concealment of illegal nature of activity	A history of good communication and compliance regarding work as a landlord
Established evidence of wider/community impact	Co-operation and acceptance of responsibility
Obstruction of justice	Mental disorder or learning disability, where linked to the commission of the offence
Landlord or agent of multiple properties which may include licensed HMOs	Serious medical conditions requiring urgent, intensive or long-term treatment Age and/or lack of maturity where it affects the responsibility of the offender

The penalty may be increased or decreased from the centre starting point within the band to the maximum or minimum level in the band. Issues affecting this decision are detailed in the table below

Step 4 – Case and penalty review

The level of the penalty should reflect the extent to which the offender fell below the required standard. The penalty should be fair and proportionate and meet the objective of being a punishment, deterrent as well as removing any gain derived through the commission of the offence.

Step 5 - Review offender’s ability to pay – prior to any final notice

The level of civil penalty must be proportionate to the seriousness of the offence and the financial circumstances of the offender.

Statutory guidance states that the local housing authority should use its existing powers to, as far as reasonably possible, make an assessment of a landlord’s assets and any income (not just rental income) received when determining an appropriate penalty.

The powers available to the Council include:

- Section 235 of the Housing Act 2004: power to require documents to be produced
- Section 237 of the Housing Act 2004: housing benefit and council tax information
- Section 16 of the Local Government (Miscellaneous Provisions) Act 1976: service of a requisition for information - power to obtain particulars of person’s interested in land

An offender will be assumed to be able to pay a penalty up to the maximum amount unless there is evidence to suggest otherwise or they can demonstrate they are unable to do so. When a person receives a notice of intent to impose a financial penalty they have the right to make written representations about the proposal. We will specifically ask for those representations to include any evidence of the person’s inability to pay the stated penalty. If no representation is received then the assumption will be that the person is able to pay.

Evidence put forward in a representation will be assessed for accuracy against Council-held and public information. Where appropriate further information may be required through service of notice using the powers listed above.

Any evidence relating to the ability to pay will be considered before a final decision is made about the level of the penalty.

Representations and Appeals

A person who receives a notice of the Council's intention to impose a financial penalty may make written representations to the Council. These should be addressed to the Housing Standards Manager (or the person with the equivalent designation at the relevant time) or emailed to:

housingstandards@chichester.gov.uk

A person who receives a final notice requiring a penalty to be paid may appeal the decision to impose a penalty or the level of penalty to the appropriate Chamber of the First-tier Tribunal. The appeal procedure will be included with any final notice.

Recovery

Subject to the inception of any appeal process a penalty must be paid within 28 days beginning with the day after that on which the notice was given. Where a penalty is not paid within 28 days, the Council will seek to recover it through a county court order.