

# Civil Penalties Policy for Housing Offences

## 1. Introduction and Overview

The Council's Regulatory Services team regulates the private rented sector for Southend-on-Sea Borough Council. Landlords of privately rented properties are required to comply with the law, to ensure the health, safety and welfare of occupiers are protected and their properties, and activities at their properties, are not having a negative effect on the neighbouring population.

Landlords will be assisted by Regulatory Services to comply with the law through the provision of advice, guidance, and signposting. Where landlords are not complying with the law, or proactively managing their properties, Regulatory Services can use enforcement powers to require landlords to take the necessary action to do so. The main legislation that Regulatory Services have available to use is the Housing Act 2004. Amendments to this Act were introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016. This amendment enabled Councils to impose a Civil Penalty, as an alternative to prosecution, for specific offences. These offences are detailed in section 3 on specific offences below.

The process that the Council must follow for Civil Penalties to be applied is detailed in statutory guidance (April 2018). This outlines the factors that must be considered when determining the level of Civil Penalty to be imposed, which can be up to £30,000. A Civil Penalty (or Penalties if there have been several breaches), can be used if the Council considers their use the most appropriate and effective sanction in a particular case.

The purpose of this policy is to set out the framework within which decisions will be made by the Council regarding issuing Civil Penalties for these specific cases. The Civil Penalties Policy is a supplement of the Council's Environment and Regulatory Services Policy.

***This policy may be departed from where the circumstances so justify and each case will be dealt with on its own merits, having regard to those circumstances.***

## 2. Aim of the Use of Civil Penalties

The aim of the service is to develop landlords to become more professional and knowledgeable in their role of protecting the health, safety, and welfare of their tenants.

Where Civil Penalties are used as enforcement action the aim will be to protect the health of occupiers and improve housing standards by:

- Promoting professionalism and resilience with the private rented sector.
- Providing transparent and consistent regulation within a private market.
- Providing a 'light touch' for compliant landlords and create a level playing field by tackling non-compliant landlords within the sector.
- Changing behaviours, by seeking legal punishment of those who flout

the law.

- Eliminating financial gain or benefit from non-compliance.

The statutory guidance is clear that the intention of a Civil Penalty is to act as a deterrent. The Council will apply Civil Penalties to ensure that landlords (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) and HMO managers do not benefit from their failure to comply with the relevant legislation.

### **3. Specific offences where a Civil Penalty can be used**

Civil Penalties can only be used as alternative to prosecution for the following specific offences:

- Section 30 - failure to comply with an improvement notice
- Section 72 – mandatory licensing of houses in multiple occupation (HMO)
- Section 95 – licensing under Part 3 of the Housing Act 2004 (Selective Licensing)
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO.

### **4. Determination of Level of Civil Penalty to be applied.**

The statutory guidance details the factors that must be considered when determining the level of Civil Penalty to be applied. The Council has developed a matrix (Appendix 1) from this guidance having considered the following:

- Level of culpability
- Level of harm
- Severity of the offence
- Aggravating factors
- Mitigating factors
- Penalty to be fair and reasonable
- Penalty to be a deterrent and remove the gain derived through the failure to comply
- Landlord's income (as appropriate)
- Financial gain from failure to comply.

Determination of the level of Civil Penalty to be applied will be on a case-by-case basis and have regard to the Environment and Regulatory Services Enforcement Policy, local circumstances, and the relevant statutory guidance.

Each of the rows in the matrix considers the factors set out in the guidance. At the end of every row the officer will have to justify the most appropriate score

chosen based on evidence in each case. The final total of the scores from each of the 4 rows determines the actual fee to be applied.

Officers using the matrix will at no point be setting the Penalty amount themselves as it is calculated by the matrix, dependent on their assessment and scores in each of the 4 rows.

The fee to be applied from the total calculated in the matrix is detailed in the table below.

Score Range	Fee
1 – 5	£1,000
6 – 10	£2,500
11 – 15	£5,000
16 – 20	£7,500
21 – 30	10,000
31 – 40	15,000
41 – 60	20,000
61 – 80	25,000
81 – 100	30,000

For example, a matrix total of 17 would result in a Penalty of £7,500, a score of 55 would result in a Penalty of £20,000 etc.

## 5. When to use a Civil Penalty

When determining the appropriate sanction, the Council will satisfy itself that if the case were to be prosecuted there would be a realistic prospect of a conviction. This is determined by adhering to the Code for Crown Prosecutors. The Code requires two tests to be applied:

- the evidential test; and
- the public interest test.

Regulatory Services will use the attached flow diagram (Appendix 2) to assist with the decision making on whether to apply a Civil Penalty or to proceed with to prosecution.

## 6. Burden of Proof for Prosecution

The same criminal standard of proof is required for a Civil Penalty as for a criminal prosecution. This means that before a Civil Penalty can be imposed, the Council will have satisfied itself beyond reasonable doubt that the landlord or manager committed the offence(s) and that if the matter were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

In doing this the Council will satisfy itself that:

- Enforcement is in accordance with the Environment and Regulatory Services Enforcement Policy
- There is sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question

- The public interest is properly served by imposing a Civil Penalty
- Evidence has been reviewed by a senior manager and where required legal services.

## **7. The Totality Principle**

Where a landlord has committed multiple offences, and a Civil Penalty could be imposed for each one, consideration will be given to whether it is just and proportionate to impose a Penalty for each offence. Where there are multiple similar offences, or offences which arose from the same incident consideration will be given to whether it would be more appropriate only to impose Penalties for the more serious offences being considered and to prevent any double-counting. Only one Penalty can be imposed in respect of the same offence.

Having regard to the above considerations, a decision will be made about whether a Civil Penalty should be imposed for each offence and, if not, which offences should be pursued.

## **8 Notice of Intent**

Before imposing a Civil Penalty, the Council will give notice of intention of the authority's proposal to do so.

The notice of intent will set out:

- The amount of the proposed financial Penalty
- The reasons for proposing to impose the Penalty
- Information about the right of the landlord to make representations.

## **9. Representations**

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by the local authority and responded to.

Where a landlord challenges the amount of the Civil Penalty, it will be for the landlord to provide documentary evidence (e.g., tenancy agreements, rental income, etc) to show that the calculation of the Penalty amount is incorrect. Where there is no such supporting evidence provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case-by-case basis and responded to where the Council considers it necessary.

## **10. Final Notice**

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a

Civil Penalty and the final Penalty fee. This can be a lower amount that was proposed in the notice of intent, but it cannot be a greater amount.

The imposing of a Civil Penalty requires the service of a final notice, which must contain 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 the rights of appeal, and
- the consequences of failure to comply with the notice.

The period of payment for the Civil Penalty must be 28 days beginning with the day after that on which the final notice was given.

### **11. Withdrawing or Amending Notices**

The Council may withdraw the notice of intent or a final notice or reduce the amount of Civil Penalty at any time. This is done by giving notice in writing to the person on whom the notice was served.

Where a Civil Penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the Penalty was originally imposed. Each case will be considered on a case-by-case basis.

### **12. Appeals to the Tribunal**

If a Civil Penalty is imposed on a landlord or manager, that person can appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a Penalty or the amount of the Penalty. The Tribunal has the power to confirm vary (increase or reduce) the size of the Penalty imposed by the Council, or to cancel the Civil Penalty. The Penalty can only be increased to the maximum of £30,000.

The appeal must be made to the First-tier Tribunal within 28 days of the date the final notice was issued. Where an appeal has been made, this suspends the Civil Penalty until the appeal is determined or withdrawn.

### **13. Consequence of having a Civil Penalty imposed.**

Where two or more Civil Penalties are given to a person over a 12-month period the Council may include the person's details in the database of rogue landlords and property agents. The rogue landlord's database is viewable by local housing authorities to help them to target their enforcement activities. The person will be advised where this is the case as this may be used to determine whether they are a fit and proper person to be a licence holder.

Where a landlord or manager receives a Civil Penalty, this action can be considered when assessing whether they are a fit and proper person to be the

licence holder for a House in Multiple Occupation or property within a Selective Licensing area.

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

The Council has a Debt Collection and Recovery Policy. Through this Policy all legal options available for the collection of unpaid Civil Penalties will be considered. Unpaid Penalties will be pursued through the County Courts. Some of the orders available to the Council through the County Courts are as follows:

- A warrant of control for amounts up to £5,000
- A third-party debt order
- A charging order
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the Court as conclusive evidence of the payment due.

Where a Civil Penalty is appealed and the Council has a tribunal decision, confirming or varying the Penalty, the decision will be automatically registered on the Register of Judgements, Orders and Fines, once accepted by the County Court. Inclusion on this Register may make it more difficult for the Landlord to obtain financial credit.

#### **15. Income from Civil Penalties**

Any income from the Civil Penalties will be retained by the Council's Regulatory Services team. The Council will spend any income from Civil Penalties on its enforcement function in relation to the private rented sector.