

Blackpool Council Private Sector Housing

Civil Penalties Policy 2018

1.0 Introduction

- 1.1 Blackpool Council is committed to improving standards in the private rented sector, ensuring that landlords are aware of the standard of property they should be offering, and that all properties are well managed, properly maintained, habitable and safe.
- 1.2 Blackpool Council recognises that the Government is committed to tackling rogue landlords, consequently having introduced measures under the new Housing and Planning Act 2016. Blackpool Council is committed to utilising all available powers fully including Civil Penalties to improve standards across the private rented sector.
- 1.3 Blackpool Council also appreciates the importance of recognising good landlord performance, i.e. those who do provide the decent, habitable and safe homes that our local people want to live in.
- 1.4 Local authorities have the option to use these new powers alongside existing powers contained within the Housing Act 2004 and Town and Country Planning Act 1990.
- 1.5 Since 6 April 2017 Councils have had the power to impose civil penalties of up to £30,000 on individuals and organisations acting as or on behalf of private sector landlords as an alternative to prosecution for certain offences under the Housing Act 2004. Rent Repayment Orders have also been extended to cover a wider range of offences.
- 1.6 This policy contains information about civil penalties and rent repayment orders and how Blackpool Council intends to use them. It takes into account the statutory guidance that has been issued by Government under Schedule 9 of the Housing and Planning Act 2016, and should be read alongside the Council's Enforcement Policy.

2.0 Purpose of the Policy

- 2.1 Local authorities are expected to develop and enforce their own policy on when to prosecute and when to issue a civil penalty, and detail how they will decide on the size of each penalty.
- 2.2 This policy will outline the circumstances in which Blackpool Council will consider the use of a civil penalty as opposed to prosecution, and how it will determine the size of each civil penalty.
- 2.3 This Civil Penalties Policy is designed to ensure that Blackpool Council adopts a transparent, consistent and fair approach to how the new powers will be used. Complementing the existing Enforcement Policy it will play a significant role in assisting the Council in tackling poor standards within the private rented sector, by robustly dealing with rogue landlords.
- 2.4 Offenders who are issued with a civil penalty have a right of written representation to the Council: and then if still dissatisfied; the right of appeal to the Residential Property Tribunal where the soundness of the decision to impose a fixed penalty can be rigorously scrutinised.
- 2.5 Each case will be decided upon its own merits taking into account all the evidence available, Where the Local Housing Authority considers that a Housing Act offence has been committed; it must decide whether to prosecute or issue a civil penalty as an alternative to prosecution.

3.0 Housing Offences Covered by Civil Penalties

- 3.1 The introduction of section 126 and Schedule 9 of the Housing and Planning Act 2016 gives powers to local authorities to impose a civil penalty as an alternative to prosecution for certain housing offences.
- 3.2 The specified housing offences where a civil penalty can be issued are detailed below:
- Section 30: Failure to comply with an Improvement Notice;
 - Section 72: Offences in relation to licensing of Housings in Multiple Occupation;
 - Section 95: Offences in relation to licensing of houses under Part 3 of the Act;
 - Section 139: Offences of contravention of an overcrowding notice;

- Section 234: Failure to comply with management regulations in respect of Housings in Multiple Occupation.

4.0 Principles of Civil Penalties

- 4.1 Although the maximum civil penalty which can be issued is £30,000, it is for the Council to determine the level, having regard to each individual circumstance.
- 4.2 To prevent double jeopardy, civil penalties can only be issued as an alternative to prosecution. Where a landlord or letting agent (or both) has been prosecuted for any offence, a civil penalty cannot be issued for that offence, and conversely if a civil penalty has already been issued, a prosecution cannot ensue.
- 4.3 Although only one civil penalty can be issued for each of the four offences listed under section 3.2 above, this is not the case for Section 234 as here a civil penalty can be issued for each separate breach of the HMO Management Regulations.
- 4.4 Where a letting agent and landlord have committed the same offence the Council is able to impose a civil penalty on both parties as an alternative to prosecution. Although the level of penalty imposed may differ dependent on individual circumstances.

5.0 Determination of Civil Penalty Fines and Burden of Proof

- 5.1 The process for determining the level of penalty issued is based on the Sentencing Guidelines Councils Overarching Principles of culpability and harm.
- 5.2 The same standard of proof is required for a civil penalty as that of a prosecution. As with prosecutions the Council must determine beyond all doubt that the offence has been committed by the person alleged. The criminal burden of proof, i.e. beyond all reasonable doubt, must be satisfied before a civil penalty can be issued as an alternative to prosecution. The local housing authority must satisfy itself there would be a realistic prospect of conviction, applied objectively, given the evidence available.
- 5.3 Due regard must be given to any potential defences available, and, in certain circumstances the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE Codes of Practice to assist in determining whether the issue of a civil penalty is appropriate or not.

5.4 A civil penalty should not be seen as a lesser option in comparison to prosecution. The level of fine should be set sufficiently high as to have a real impact economically upon the offender, whilst also clearly demonstrating the consequence of not complying with their responsibilities.

5.5 The Council will consider civil penalties for all landlords/letting agents that are in breach of one or more of the sections of the 2004 Act listed in section 3.2. Enforcement action will be considered on a case by case basis in line with Blackpool Council's Enforcement Policy.

5.6 This section sets out how the Council will determine the appropriate level of fine in each case. The agreed fine should take into consideration the severity of the offence and the offender's income and previous history.

5.7 Factors taken into account when deciding the level of penalty are detailed below.

The factors detailed below are taken from the CLG statutory Guidance:

- The severity of the offence
- The culpability and track record of the offender
- The harm caused to the tenant
- The punishment of the offender
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.

5.8 The Council must also ensure that the level of penalty issued removes any financial benefit that has been gained from committing the offence(s).

5.9 The Council must also take into account the cost of investigating the offence(s); preparing the case for formal action; and any costs that could potentially be incurred from defending its decision at the First Tier Tribunal.

6.0 Process for determining the level of penalty issued

6.1 As outlined in the Council's Enforcement Policy the Local Authority must consider the Code for Crown Prosecutors when determining what action will be most appropriate to take. The two stages to this code are:

- The evidential stage: is there enough evidence to charge the offender? Consideration must be given to whether evidence could be used in Court and if it is 'reasonable' and 'credible'.
- The public interest stage: is it in the public interest to bring the case against the offender? The prosecutor needs to be sure that the public interest factors for the case to be brought outweigh those against.

6.2 The determination of a civil penalty will be based on four culpability levels and 3 levels of severity which are explained below:

Category of Offence	Example (but not limited to)
HIGH (Intentional): An intentional breach by the offender or a flagrant disregard for the law	Intentional breach by the landlord or letting agent, i.e. failure to comply with a correctly served improvement notice
HIGH (Reckless): An actual foresight of, or wilful blindness to the risk of offending, but takes the risk regardless	Failing to comply with HMO regulations
MEDIUM (Negligent): Failure of an offender to take reasonable care to put in place and enforce proper systems for avoiding the offence	Failure of the landlord or letting agent to take reasonable care to put in place and enforce proper systems, for avoiding commission of the offence; such as part compliance with a schedule of works but failure to complete all schedule items within notice timescale
LOW (Low or no culpability): The offender is responsible to at least some part however there are other mitigating circumstances out of their control	Obstruction by the tenant to allow a contractor to access the property to carry out repairs; or damage caused due to negligence on behalf of the tenant
Harm Level	Example
Level 1: MINOR HARM Minor risks which left unattended to could impact upon the health and safety of the occupant resulting in deterioration of health	Housing defects that may be scored as low category 2 hazards
Level 2: SERIOUS HARM Serious risks to the health and safety of the occupants and/or immediate community which has, or could have led to serious injury or disease requiring prolonged treatment and/or hospitalisation	Housing defects that may present such a risk could include risks associated with falls; lack of adequate heating; collision and entrapment and any other hazards that could lead to a serious risk to the occupants and immediate community
Level 3: MAJOR HARM Serious and substantial risk including imminent risk to the health and safety of the occupants and/or immediate community as a result of the offence, with potentially life threatening results	Housing defects that may present such a risk could include risks associated with electrical hazards; exposure to carbon monoxide; exposure to asbestos or radiation; fire safety risks; risk of explosion or structural collapse.

6.3 The penalty matrix can then be used to determine the level of fine issued (see section 7).

7.0 Penalty Matrix

Part A: This covers the following three sections of the Housing Act 2004

- Failure to licence HMO under Part 3 of the Act – Section 95(1)
- Failure to licence under Part 2 of the Act – Section 72(1)
- Breach of condition under Part 2 of the Act – Section 72(2)

Type of offender	Category of offence	Level 1 MINOR HARM	Level 2 SERIOUS HARM	Level 3 MAJOR HARM
Landlord/Agent with 1 property	Low culpability	£775	£1,250	£2,500
	Negligent	£1,250	£2,500	£5,000
	Reckless	£2,500	£5,000	£7,500
	Intentional	£5,000	£7,500	£10,000
Landlord/Agent with 2-15 properties	Low culpability	£6,250	£9,375	£12,500
	Negligent	£7,500	£11,250	£15,000
	Reckless	£8,750	£13,125	£17,500
	Intentional	£10,000	£15,000	£20,000
Landlord/Agent with 16+ properties	Low culpability	£11,250	£16,875	£22,500
	Negligent	£12,500	£18,750	£25,000
	Reckless	£13,750	£20,625	£27,500
	Intentional	£15,000	£22,500	£30,000

Part B: This covers the following four sections of the Housing Act 2004

- Breach of condition under Part 3 of the Act – Section 95(2)
- Breach of condition under Part 2 of the Act – Section 72(3)
- Failure to comply with an Improvement Notice under Part 1 of the Act – Section 30
- Failure to comply with management regulations in respect of HMOs under Part 7 of the Act – Section 234¹
- Contravention of an Overcrowding Notice under Part 4 of the Act – Section 139

Type of offender	Category of offence	Level 1 MINOR HARM	Level 2 SERIOUS HARM	Level 3 MAJOR HARM
Landlord/Agent with 1 property	Low culpability	£500	£750	£1,000
	Negligent	£1,000	£1,500	£2,000
	Reckless	£1,500	£2,250	£3,000
	Intentional	£2,000	£3,000	£4,000

¹ Section 234: a civil penalty can be issued for each separate breach of HMO Management Regulations.

Landlord/Agent with 2-15 properties	Low culpability	£2,500	£3,750	£5,000
	Negligent	£3,000	£4,500	£6,000
	Reckless	£3,500	£5,250	£7,000
	Intentional	£4,000	£6,000	£8,000
Landlord/Agent with 16+ properties	Low culpability	£4,500	£6,750	£9,000
	Negligent	£5,000	£7,500	£10,000
	Reckless	£5,500	£8,250	£11,000
	Intentional	£6,000	£9,000	£12,000

8.0 Issuing a Notice of Intent

8.1 The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004 and summarised in the DCLG guidance.

8.2 Schedule 13A states that the local housing authority must give the person notice of the authority's proposal to do so (a 'notice of intent').

8.3 The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

8.4 But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

- (a) At any time when the conduct is continuing, or
- (b) Within the period of 6 months beginning with the last day on which the conduct occurs.
- (c) A person's conduct includes a failure to act.

8.5 The notice of intent must set out:

- The amount of the proposed financial penalty
- The reasons for proposing to impose the financial penalty, and
- Information about the right to make representations

8.6 Once a landlord receives a notice of intent they have the opportunity to make written representations to the local housing authority about the proposal to implement a financial penalty

8.7 Any representations must be made within 28 days from the day after the notice of intent was issued

8.8 At the end of the 28 day period the local housing authority must:

- a) Decide whether to impose a financial penalty, and
- b) If it decides to impose a financial penalty, decide the amount of the penalty

8.9 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given, and the notice must set out:

- a) The amount of the financial penalty
- b) The reasons for imposing the penalty
- c) Information about how to pay the penalty
- d) The period for payment of the penalty
- e) Information about rights of appeal, and
- f) The consequences of failure to comply with the notice.

8.10 The Council may, at any time, if circumstances dictate, withdraw a notice or reduce the amount owed as specified in a notice in relation to a civil penalty.

9.0 Appeal Process

9.1 Any person who received a final notice can appeal to the First-Tier Tribunal against either the decision to impose the penalty, the amount of the penalty

9.2 The appeal effectively suspends the notice and requirement to pay until determined

9.3 The First-Tier Tribunal can confirm, vary or cancel the final notice

10.0 Recovery of the financial penalty

10.1 Following failure to pay the whole or part of a financial penalty give the local authority the option to recover the financial penalty on the order of the County Court as if it were payable under an Order of that Court.

11.0 Consequences of non-compliance

- If a landlord has received a civil penalty, that fact can be taken into account in considering whether the landlord is a fit and proper person to be the licence holder for a HMO or any other property subject to licensing

12.0 Database of Rogue Landlords and Letting Agents

Where a landlord receives two or more civil penalties under this legislation across a twelve month period, the Council will make an entry on the National Database. When considering making an entry the Council will have regard to any guidance issued by the Secretary of State.

13.0 Policy Review

This policy will be subject to review and will be reviewed annually as a minimum.