

Policy and Guidance on Determining the Level of the Civil Penalties

1. Purpose of the Civil Penalties Policy

1.1 Local housing authorities have the power to impose civil penalties of up to £30,000 on individuals and organisations (for certain specified offences under the Housing Act 2004) as an alternative to prosecution.

1.2 The purpose of this Policy is to describe how Runnymede Borough Council (the Council) will use its new powers, how it will decide when to prosecute and when to impose a civil penalty, and how it will determine the size of each civil penalty.

1.3 The Policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed.

2. Financial Matrices for Civil Penalties

Factors taken into account when deciding the level of civil penalty

2.1 Generally, the maximum civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of compliance.

2.2 In order to ensure that the civil penalty is set at an appropriate level, The Secretary of State has issued statutory guidance on what a Council should take into account when determining the level of any final penalty. The issues to consider are:

- ***The severity of the offence***

The more serious the offence, the higher the civil penalty should be.

- ***The 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.

- ***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 the local housing authority imposes a civil penalty.

- ***The 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 demonstrates the consequences of not complying with their responsibilities.

- ***Whether it will 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.

- ***Whether it will deter others from committing 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. 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 level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

- ***Whether it will 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.

2.3 The final factor is an overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence.

2.4 When setting a civil penalty, the Council will also take into account the cost of investigating the offence(s) and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal.

2.5 The Civil Penalty Matrix aims to incorporate the above factors and will require supporting reasons recorded separately.

3. Financial means to pay a civil penalty

3.1 In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

3.2 It is for the offender to disclose to the Council such data relevant to his financial position as will enable the Council to assess what s/he can reasonably afford to pay.

4. Housing offences covered by civil penalties

4.1 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

4.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses 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 Houses in Multiple Occupation

5. Process for imposing penalty charges

5.1 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.

5.2 A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:

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

5.3 The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format to the Environmental Health and Licensing Manager.

5.4 Following the 28 day period the Council will decide:

- a. Whether to impose a financial penalty on the person, and
- b. The value of any such penalty imposed.

5.5 If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:

- 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 to the First tier Tribunal, and
- f. the consequences of failure to comply with the notice.

6. Consequences of non-compliance and miscellaneous provisions

6.1 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

6.2 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.

6.3 The Council may, at any time:

- a. Withdraw a notice of intent or final notice
- b. reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either action, it will write to the person to whom the notice was given.

6.4 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State

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Civil Penalty Matrix

Factors	Score = 5	Score = 10	Score = 15	Total
1 Deterrence & Prevention	High confidence that a financial penalty will deter repeat offending. Publicity not required as a deterrence.	Medium confidence that a financial penalty will deter repeat offending. Some publicity will be required as a deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat offending. Mass publicity will be required as a deterrence in the landlord community.	
2 Removal of Financial Incentive	No significant assets and low financial profit made by offender.	Small landlord/agent managing up to 5 properties and/or some rental income retained.	Portfolio landlord/agent running over 5 rental properties.	
3-Offence & History	No previous history and single low offence.	More than one recent offence and/or moderate level offence(s).	Multiple and/or continuous serious offences.	
4- Harm to tenants – DOUBLE WEIGHTING	Low potential harm to tenants and single household dwelling.	Moderate potential harm to tenants and/or small HMO with up to 5 tenants.	High level of potential harm to occupants, continuous impact and/or large HMO with more than 5 occupants	
Cumulative Total	X	X	X	

- Only one option must be scored for each row with supporting reasons recorded separately.
- Each row must be scored.
- Each calculated score shall be justified via evidence prepared to a prosecution case standard.

- The scoring matrix will result in a minimum of £300 and a maximum of £30,000 in penalties (see table below).
- Full payment within 28 days of the 'Notice of Intention' shall attract a 20% discount to the overall penalty charge.

Score	Penalty Charge
25	£300
30	£500
35	£750
40	£1,000
45	£2,500
50	£5,000
55	£10,000
60	£15,000
65	£20,000
70	£25,000
75	£30,000