

REPORT FROM: HOUSING, HEALTH AND ECONOMIC DEVELOPMENT SERVICES MANAGER

TO: EXECUTIVE

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THE HOUSING AND PLANNING ACT 2016 CIVIL PENALTIES

PURPOSE OF REPORT

To implement the new enforcement powers contained in the Housing and Planning Act 2016 (part 2 Rogue Landlords and Property Agents in England) including the use of civil penalty notices.

RECOMMENDATIONS

- (1) To recommend that Council approves the Policy and Matrix for the use of civil penalties (Appendix 1) and its inclusion into the Environmental Health Enforcement Policy.
- (2) Delegate to the Housing Health and Economic Development Manager all powers to issue, use and enforce civil penalties as detailed in the Housing and Planning Act 2016 and any regulations made there under.
- (3) Delegate to the Housing Health and Economic Development Manager all powers to issue, use and enforce rent repayment orders as detailed in the Housing and Planning Act 2016 and any regulations made there under.
- (4) That the money received from civil penalties returns to the housing revenue budget to fund further enforcement activity.

REASON FOR RECOMMENDATIONS

The use of these powers will support and complement the work that the Council continues to deliver to tackle rogue landlords. The civil penalties and extension of the use or rent repayment orders could be a powerful deterrent to rogue landlord behaviour through the enforcement of significant financial penalties.

ISSUE

Civil Penalty Notices

A report to Executive on 25th May 2017 set out that the Housing and Planning Act 2016 introduced civil penalties of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004. These changes were introduced on the 6th April 2017. It is necessary for Pendle Council to agree a policy to begin to use these penalties.

The following offences can now attract civil penalties.

- Failure to comply with an Improvement Notice;
- Offences in relation to the licensing of Houses in Multiple Occupation;
- Offences of contravention of an overcrowding notice;
- Offences in relation to licensing of houses under selective licensing;
- Failure to comply with management regulations in respect of Housing in Multiple Occupation;

The imposition of a civil penalty precludes the Council from perusing a prosecution for the same offence. However this will not reduce the amount of investigatory work as the Secretary of States guidance states that the same burden of proof required for a criminal prosecution is required for a civil penalty. It is the Intention of the Council to use civil penalties in preference to prosecution in all cases

The guidance issued by the Secretary of State requires each local authority to have a policy in relation to when civil penalties will be used and what level of penalties will be imposed. It is expected that the maximum amount, of £30,000 will be reserved for the worst offenders. The actual amount levied in any case should reflect the severity of the offence as well as the landlords previous record of offending.

Non-payment of the civil penalty may be enforced through the County or High Court. The offender has the right of appeal to the First Tier Tribunal (Residential Property Tribunal), which has the power to confirm, vary, increase or reduce the amount of the penalty or cancel the civil penalty.

Section 8.1 of the guidance issued by the Secretary of State requires that income from civil penalties can be retained by the local authority provided it is used for further local authority statutory functions in relation to their enforcement activities covering the private rented sector

The civil penalty policy and matrix as attached in appendix 1 has been create as a guide for enforcement officers to assist them in determining the level of fine. This will offer transparency and promote consistency in the enforcement process. Once approved the policy and matrix will be added to the existing Environmental Health enforcement policy.

The policy and matrix has been agreed with the other Pennine Lancashire Authorities, again this will assist in the authorities imposing the civil penalties consistently across the east of the county as a number of landlords own properties in more than one borough.

Rent Repayment Orders

The Housing Act 2004 introduced the sanction of rent repayment orders where a landlord of a house or house in multiple occupation has failed to obtain the necessary licence for those premises.

From the 1st April 2017 the Housing and Planning Act 2016 has extended this power to cover a much wider range of offences including

- Failure to comply with an improvement notice.
- Offences in relation to licensing of Houses in multiple occupation.
- Offences in relation to licensing of houses under selective licensing.
- Offences of contravention of an overcrowding notice.
- Failure to comply with management regulation in respect of a House in multiple occupation.
- Breaching a Banning Order.

Where a landlord has been convicted of one of the offences listed above and if the rent has been paid through housing benefit/universal Credit the Council can apply to the first Tier Tribunal (Residential Property Tribunal) for a rent repayment order. If the tribunal decides in favour of the local authority they must require the landlord to repay the rent to the local authority up to a maximum of 12 months.

Non Payment of a rent repayment order May be enforced through the County or High Court.

Other Sanctions

The Housing and Planning Act 2016 also details other power in relation to:

- Banning Orders, to stop the worst criminal landlords from operating in England or face imprisonment and a fine
- The Use of a Rogue Landlord Database to share enforcement information across England.

However to date these powers have not been implemented.

IMPLICATIONS

Policy: The Environmental Health Enforcement policy will need to be revised to take account of these changes.

Financial: The Executive agreed on 25th May 2017 that an Environmental Health Officer be appointed on a 2 year contract funded from the income generated by civil penalties

Legal: None arising from this report

Risk Management: None arising from this report

Health and Safety: None arising from this report

Sustainability: The implementation of these powers will assist the residential team in improving the private rented property on offer across the Borough

Community Safety: None arising from this report

Equality and Diversity: Impact assessment screening has been carried out against this policy which has indicated that there is no requirement for a full impact assessment.

APPENDICES

Appendix 1 Policy and Matrix for the use of Civil Penalties

LIST OF BACKGROUND PAPERS

Housing and Planning Act 2016

Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities

Policy and Matrix for the use of Civil Penalties

Introduction

The Housing and Planning Act 2016 introduces Civil Penalties of up to £30,000 as an alternative to prosecution for certain Housing Act 2004 offences from 6th April 2017.

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

These are:

- Section 30 failure to comply with an Improvement Notice
- Section 72 offences in relation to licensing of Houses in Multiple Occupation (HMO)
- Section 95 offences in relation to licensing of houses under part 3 (Selective Licensing)
- Section 139(7) failure to comply with an overcrowding notice
- Section 234 Management Regulations in respect of HMOs

In determining the Civil Penalty amount the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and the Civil Penalty Matrix developed by the Department for Communities and Local Government.

Burden of Proof

The criminal burden of proof, 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 that there would be a realistic prospect of conviction, applied objectively, to the evidence available.

In assessing the evidence regard must be given to the Code for Crown Prosecutors and when deciding whether there is sufficient evidence to prosecute consideration must be given as to whether the evidence can be used and is reliable.

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.

Factors to consider when determining to prosecute or issue a civil penalty

Each case will be determined on its own merits taking into account all available evidence.

Prosecution is likely to be the most appropriate action where the offence is particularly serious and/or where the landlord has a history of non-compliance in relation to property condition or property management.

The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty:

- The offender had no evidence of previous non-compliance with appropriate legislation
- The offender had no previous convictions recorded
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- The offenders co-operation is beyond what would be expected
- The offender does not need continuous chasing to rectify the offence

Factors to consider when determining the level of civil penalty

The actual amount levied in any particular case should reflect the severity of the offence, as well as the landlord's previous record of offending. The Council should consider the following factors to help ensure the civil penalty is set at an appropriate level:

- Severity of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- Punishment of the offender for the offence
- The deterrent from repeating the offence
- The deterrent from others committing similar offences
- Removing any financial benefit obtained from committing the offence

These factors are contained in the financial penalty matrix which helps officers to determine the level of fine that should be imposed by creating a score and band for each case.

Financial Penalty Matrix

Officers should first determine the severity of the offence by looking at the harm and culpability categories.

Examples of Harm Categories

The table below contains factors relating to both actual harm and risk of harm.

High	<p>Serious adverse effect on individuals and/or having a widespread impact.</p> <p>High risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Housing defect giving rise to the offence poses an imminent or serious and substantial risk of harm to the occupants and/or visitors, for example Housing Health and Safety Rating System (HHSRS) imminent category 1 hazards such as danger of electrocution, carbon monoxide poisoning, serious fire safety risk or excess cold with vulnerable resident.</p>
Medium	<p>Adverse effect on individuals</p> <p>Medium risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Tenant misled/disadvantaged by the failing.</p> <p>The housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example HHSRS category 1 hazards, multiple high category 2 hazards such as falls between levels, excess cold, asbestos exposure.</p>
Low	<p>Low risk of an adverse effect on individuals</p> <p>The housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors, for example low category 2 hazards under the HHSRS, localised damp and mould.</p>

Examples of Culpability Categories

Very High (Deliberate Act)	<p>Where the offender intentionally breached, or flagrantly disregarded, the law.</p> <p>For example repeatedly ignored reminders to apply for a property or HMO licence. Failure to comply with a correctly served improvement notice. No attempt made to contact the local authority to discuss breaches.</p>
High (Reckless Act)	<p>Actual foresight of or wilful blindness to the risk of offending but risks nevertheless taken by the landlord or property agent, for example failure to comply with HMO Management Regulations.</p>
Medium (Negligent Act)	<p>Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems that prevent the offence being committed, for example part compliance with a schedule of works but failure to fully complete all schedule items within notice timescale. Partially completed</p>

	licensing application forms.
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent, for example significant efforts were made to address the risk but they were obstructed by the tenant to allow contractor access or damage caused by tenants. Failings were minor and occurred as an isolated incident such as low category 2 hazards under the HHSRS found in one property from a large portfolio.

Having determined the category the officers should refer to the following starting points to reach a penalty band. Officers should then consider whether further adjustments should be made for aggravating and mitigating features.

Starting points

Culpability	Harm category 1	Harm category 2	Harm category 3
Very high	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Banding Levels

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

The starting point for each band will be the mid point e.g. for Band 1 the mid point will be £2,500.

An offender will be assumed to be able to pay any financial penalty imposed unless they can demonstrate otherwise.

Aggravating Factors

The penalty can be increased by £1000 for each aggravating factor up to a maximum of £5000.

Mitigating Factors

The penalty can be decreased by £1000 for each mitigating factor up to a maximum of £5000.