

Housing Standards Civil Sanctions Policy

April 2018

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Rent Repayment Orders and Civil Penalties Policy under the Housing and Planning Act 2016

Introduction

The Public Health and Housing team work under a wide range of legislation to prevent harm to health, improve quality of life and increase the number of suitable homes in West Suffolk. The existing legal provisions allow us to take a graduated approach to enforcement from informal action to formal action, including enforcement notices and licencing for Houses in Multiple Occupation (HMOs).

We are currently protecting tenants from being exposed to risk through unsafe housing conditions with inspections, advice and enforcement in instances when landlords do not cooperate and ensure that housing meets the required standards. One of our objectives is in bringing properties up to standard. When necessary we will prosecute landlords that fail to comply with enforcement actions such as improvement notices and licencing breaches.

Alongside the HMO licencing regime for the higher risk HMOs, we currently have risk based inspection programmes for the smaller HMOs, and flats above shops to ensure this accommodation is safe.

We cover a variety of private sector housing areas including:

- Housing Standards
- Houses in Multiple Occupation-Risk based inspections
- Houses in Multiple Occupation-Licensing
- Breaches of landlord obligations
- Empty Homes
- Public Health
- Caravan Sites
- Nuisance
- Anti-social Behaviour (ASB)
-

Much of the work we do is to support vulnerable people, where we work closely with partner services and organisations around the needs of the individual and their home, and to protect the wider community.

We make a fundamental contribution to the West Suffolk Council's priorities, which are:

- Homes for our communities
- Resilient families and communities that are healthy and active
- Increased opportunities of economic growth.
- In particular, as part of the West Suffolk Housing Strategy, we improve standards and safety in housing thereby increasing the numbers of suitable homes.
- Where appropriate we will take enforcement action to achieve compliance with a statutory requirement.

A staged approach is taken to enforcement wherever possible to ensure solutions are initially sought through advice, co-operation and agreement. However, where this is not successful there will be cases where formal action is necessary and this may ultimately lead to prosecution or other summary action.

Prosecution incurs a real cost to the council. Fines are usually small and these are not allocated to the local authority.

The Housing and Planning Act 2016 provides Local Housing Authorities an alternative enforcement option for non-compliance with certain Housing Act 2004 offences rather than taking a prosecution in Court. Although the burden of evidence will be the same for a civil penalty as it is for a prosecution, prosecutions can be both time consuming and expensive. The provisions do not replace the option for prosecution, and it is expected that a prosecution would still be taken in the most serious of cases or for repeat offenders.

The new penalty charges offer us a cost efficient alternative to prosecutions where this is appropriate. Any funding **received from fines** (this is paid to the Council not central government) is used to support housing **enforcement part of our public protection work**.

The Council will maintain a tiered approach to enforcement in line with our enforcement policy. Most landlords are responsible and maintain homes to legal standard and/or respond positively to advice when necessary. Therefore the number of fines issued per annum is likely to be low but will target the worst offending.

The purpose of this policy is to set out the framework within which decisions will normally be made with regard to issuing Civil Penalties and to applying for a Rent Repayment Order in relevant cases. This policy may be departed from where the circumstances so justify. Each case will be dealt with on its own merits, having regard to its particular circumstances. This policy is supplementary to the Council's overarching Enforcement Policy.

1. Civil Penalties

1.1. Evidence

Where evidence is obtained that an offence has been committed which falls within the powers to issue financial penalty notices (i.e. civil penalty notices) within the Housing and Planning Act 2016, Council officers will consider whether this is an appropriate alternative to prosecution through the Courts.

1.2. Offences

The following offences under the Housing Act 2004 can be considered for civil penalty:

Failure to comply with an Improvement Notice (section 30)

Offences in relation to licensing of Houses in Multiple Occupation (section 72)

Offences in relation to licensing of houses under Part 3 of the Housing Act 2004 (section 95)

Offences of contravention of an overcrowding notice (section 139)

Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

1.3. Maximum fine

The maximum fine that can be currently issued through a civil penalty is £30,000. This is for each offence or non-compliance. The Authority must have regard to any guidance issued by the Secretary of State (see the Government document 'Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' Civil Penalties Guidance)

1.4. Appeal

An appeal against the issue of a civil penalty is heard by the First-tier Tribunal. Civil penalties will therefore be pursued only where sufficient evidence is obtained to demonstrate to the Tribunal 'beyond reasonable doubt' that a relevant offence has been committed. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

1.5. Powers and duties

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. Therefore, the power to issue civil penalty will be pursued where it is considered the most appropriate course of action.

1.6. Prosecution

Where the offence is of the highest severity, or where the landlord has previous convictions or a poor track record of compliance, prosecution may be considered the most suitable course of action to enable a Court to examine the circumstances and make the most appropriate decision. Civil penalties should normally be pursued for all clear breaches of the relevant legislation, provided that the conditions below exist. See Appendix

Appendix 1

2. Banning Orders

The use of banning orders is designed to prevent rogue landlords and/or property agents from letting property for a fixed period of time, from holding an HMO licence or from making a prohibited disposal of property.

The Banning order must be made for a minimum of 12 months. A Banning Order can be made by a first Tier Tribunal if a person is convicted of a Banning Order Offence which will be specified in Regulations

2.1. Breach of a banning order

Breach of a banning order is an offence, a person being guilty on summary conviction may face a fine and/or imprisonment for a period of up to 51 weeks. The Authority will have a Statutory Duty to enter data on a National Database of Rogue Landlords.

3. Rent Repayment Orders (RRO's)

A Rent Repayment Order is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to –

- repay an amount of rent paid by a tenant, or
- Pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

NB. The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has a duty under section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

3.1. Offences for which a Rent Repayment Order (RRO) can be obtained:-

- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004 but which is not so licensed, contrary to section 72(1) of the Housing Act 2004
- Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004
- Using violence to secure entry to a property, contrary to Section 6(1) of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)

The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only. The offence must have been committed on or after 6th April 2017. A RRO can be applied for whether or not the landlord has been convicted.

3.2. Evidence of commission

Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied beyond reasonable doubt that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

3.3. Statutory Guidance

In deciding whether to apply for a RRO, the Council must under section 41(4) of that Act have regard to any guidance issued by the Secretary of State (see the Government document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - Rent Repayment Orders Guidance).

3.4. Assistance

Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but in such cases, the tenant will usually be referred direct to Citizens Advice Bureau or other appropriate bodies for further support.

3.5. Considerations for decision as to whether to apply for a RRO

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks.

The objective of an application for a Rent Repayment Order is not only to issue a sanction as a consequence of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

If a conviction for an offence has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances. For details of whether to pursue a RRO and the amount of rent to reclaim see 3.6 below

3.6. Appendix

Appendix 1 Civil Penalties

1.1. Factors to be considered when deciding whether to pursue a civil penalty

.	Factor
1.	Does the seriousness of the offence suggest that a prosecution is appropriate? Is there a suggestion that a banning order may be appropriate? Does the landlord have a history of previous convictions?
2.	Is there sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defence?
3.	Is it in the public interest to proceed to apply for a civil penalty? (consider the level of harm that has been caused)
4.	Is pursuing a civil penalty proportionate to the offence?

Where two or more civil penalties are issued, the details of the landlord shall be submitted to be included on the database of rogue landlords. Officers shall consider the Ministry Of Housing, Communities and Local Government guidance document in determining the level of fine. The matrix below gives an indication of the level of fine which should be imposed.

The guidance makes it clear that a civil penalty should not be a lesser alternative to prosecution and that the fine should ensure a real economic impact on the offender for not complying with their responsibilities.

1.2. Decision on level of fine for Civil Penalties

The three steps below shall be used to determine the level of fine to issue.

Step One

A decision shall be made, by first considering the culpability factors below.

Serious breach of legislation	<u>Very High</u>
History of failing to comply with legislation	<u>High</u>
An act or omission that a reasonable person would not commit	Medium
Effort was made to comply but was insufficient	Medium
Minor failings due to an isolated incident	Low

The harm factors should then be considered and given a category below. Consideration to be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

Serious adverse effect on individual or high risk of adverse effect. Includes vulnerable people	Cat 1
Adverse effect, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled	Cat 2
Low risk of an adverse effect.	Low cat 2

Step Two

The Standard Scale (Criminal Justice Act 1982) has been used as reference and converted below to provide a point scale within the range of the civil penalty.

1. £1-£500
2. £501 - £1000
3. £ 1001-£2500
4. £2501 - £7000
5. £7001 - 17000
6. £17001-£30000

The table below indicates the level at which the fine should be imposed by considering culpability and harm

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

The following factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offences to which the conviction relates and its relevance to the current offence; and b) the time that has been elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors include (this is not an exhaustive list):

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Record of providing substandard accommodation
- Refusal of free advice

Factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property/member of Accreditation scheme
- Self-reporting, co-operation and acceptance of responsibility - Good character

Obtaining financial information

- The Council shall submit a request to the offender, to provide any financial information that they feel shall influence their ability to pay a high fine. This will be taken into consideration if it appears reliable. If no information is provided then the Council will consider any information known to them regarding the offender, consider this when making a decision regarding the level of fine.

Step Three

Review the penalty. Ensure that it meets, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

Step Four

Legal Services to review the case as a whole before, where appropriate, any notice of intent is issued and any final notice relating to a civil penalty is given by, or on behalf of, the authorised officer.

Step Five

Ensure a written record of delegated decision is made.

Step Six

Where a civil penalty remains outstanding, consider what enforcement action is appropriate, having regard to the Council's Enforcement Policy.

Appendix 2 Rent repayment Orders

The questions shall be considered in the matrix below. These should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

	Factor	Yes or No
1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make an RRO application. If no go to step 2.
2.	Has evidence been obtained from ARP/Benefits to confirm that Housing Benefit has been paid by ARP over the 12 months?	If no – no case for RRO. If yes, proceed to step 3.
3.	Is there sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defense?	If no – case closed, do not pursue. If yes, proceed to step 4.
4.	Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step5.
5.	Is pursuing an RRO proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6.
6.	Does the offender have any previous convictions?	If yes – proceed to RRO. If no, proceed to step 7.
7.	Where no previous offence – is the issuing of a RRO likely to deter from future offences?	If yes – proceed to RRO. If no, consider closing and not pursuing.
8.	<u>RRO</u> Would the issuing of a RRO cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application
9.	Are there any other factors that would indicate the Council should not proceed with the issuing of the RRO	If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application

If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below.

If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum.

The amount of rent to be repaid cannot exceed the amount actually collected. Where the tenant is in receipt of Universal Credit, the formula provided in the Ministry of Housing, Communities and Local Government guidance in relation to RRO's shall be followed.

3.1. Factors to influence amount of RRO

1.	Punishment of the offender – the RRO should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating
3.	Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
4.	Remove any financial benefits that the offender may have obtained as a result of the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	Are there any other factors the Council considers should be taken into account?

Consideration of the above points will determine whether the full amount of rent should be reclaimed or whether there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.