

**Warwick District Council**

**Civil Penalties Policy – Private Sector Housing**

**2018**

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**1:** **Introduction**

**1.1 Overview**

Warwick District Council are commited to ensuring good quality private housing stock in our District. The number of people housed in private rented accommodation now exceeds the number of people housed in socially rented properties both nationally and locally.

The Private Sector Housing Team work with many good landlords who provide decent, well maintained homes and we assist those who need advice and support to become compliant. However, where landlords put tenants at risk and are not compliant with their legal requirements, we will take action in line with our Enforcement Policy.

The Council is committed to the appropriate use of the new civil penalties powers available under the Housing & Planning Act 2016 (HPA). The Council formally adopted this policy on 24th January 2018.

**1.2 Purpose of this Policy**

The Civil Penalties Policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed. Since April 2017 this Council has worked with the West Midlands Enforcement Group and the District and Borough Councils in Warwickshire to produce a consistent charging framework and process.

The Policy contains specific information on the offences under the HPA, the level of penalty charges and the procedure Officers will follow in considering civil penalties as an alternative to prosecution.

This policy runs in conjunction with the Private Sector Housing Enforcement Policy.

* 1. **Equality Impact Assessment**

An impact assessment has been completed and no adverse or negative impact has been identified for any particular group as a result of the proposed policy.

**2: Legislation**

**2.1 Associated Housing Offences**

The HPA came into force on April 6th 2017 and introduced Civil Penalties of up to £30,000 as an alternative to prosecution for specified housing offences listed below:

* + 1. Failure to comply with Improvement Notice (Housing Act 2004 Section 30)
		2. Failure to licence an HMO under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)( mandatory licensing )
		3. Breach of HMO licence conditions under Housing Act 2004 Parts 2 & 3 Housing Act 2004 Section 72 & 95)(mandatory and selective licensing)
		4. Failure to licence houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)( selective licensing )
		5. Failure to comply with an Overcrowding Notice, (Housing Act 2004 Section 139(7))
		6. Breach of Management Regulations in respect of HMOs. (Housing Act 2004 Section 234)

**2.2 Authority**

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.

**3: Applying a Civil Penalty**

**3.1 Process for Imposing Civil Penalties**

The implementation of civil penalties would need to follow the general principles set out in the Regulators Code, which have been included in the Council’s Enforcement Policy.

A criminal standard of evidence is required to establish beyond reasonable doubt that an offence has been committed, and landlords do have a right of appeal to the Residential Property Tribunal (First tier).

Where it has been determined that a civil penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the process set out below:

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

1. The amount of any proposed civil penalty
2. The reasons for proposing the civil penalty
3. Information about the right to make representation to the Council.

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 civil penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.

Following the 28 day period the Council will consider any representations made and decide:

1. Whether to impose a civil penalty on the person
2. The value of any such penalty imposed.

If the Council decides to impose a civil penalty, a Final Notice shall be issued imposing that penalty. The Final Notice will specify:

1. The amount of the financial penalty
2. The reasons for imposing the penalty
3. Information about how to pay the penalty
4. The period for payment of the penalty
5. Information about rights of appeal to the First Tier Tribunal
6. The consequences of failure to comply with the Notice

Civil 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.

The Council may, at any time:

* Withdraw a Notice of Intent or Final Notice
* 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.

**3.2 Consequences of non-compliance**

If, after any appeal has been finally determined or withdrawn, a person receiving a civil 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 civil penalty relates.

**3.3 Penalty Charging table**

The table below will be used to calculate the penalty charge amount. Charges are on a scale, starting at an initial point but will be increased if there are aggravating factors.

**Charging Table for Determining the Value of Civil Penalties**

|  |  |
| --- | --- |
| ***Failure to comply with an Improvement Notice (Section 30)***  | *£* |
| *First offence (note 1)* | *5000* |
| *Subsequent second offence by same person/company (note 2)* | *15000* |
| *Further subsequent offences by same person/company (note 7)* | *25000* |
|  |  |
| ***Premiums (use all that apply)***  |  |
| *Acts or omissions demonstrating high culpability (note 8)* | *+2500* |
| *Large housing portfolio (10+ units of accommodation) (note 3)* | *+2500* |
| *Multiple Category 1 or high Category 2 Hazards (note 4)* | *+2500* |
| *Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)* | *+2500* |
| *Perpetrator demonstrates their income to be less than £440 per week (note 6)* | *-50%* |
|  |
| ***Offences in relation to licensing of HMOs (note1)******under Part 2 of the Act (Section 72)***  | *£* |
| *Failure to obtain property licence (section 72(1)) (note 1)* | *10000* |
| *Subsequent second offence by same person/company (note 2)* | *30000* |
| *Perpetrator demonstrates their income to be less than £440 per week (note 6)* | *-50%* |
|  |  |
| *Breach of licence conditions (Section 72(2) and (3)) - per licence breach* | *5000* |
| *Perpetrator demonstrates their income to be less than £440 per week (note 6)* | *-50%* |
|  |
| ***Offences in relation to licensing of HMOs*** ***under Part 3 of the Act (Section 95)***  | *£* |
| *Failure to licence (section 95(1))**(note 1)* | *10000* |
| *Subsequent second offence by same person/company (note 2)* | *30000* |
| *Perpetrator demonstrates their income to be less than £440 per week (note 6)* | *-50%* |
| *Breach of licence conditions (Section 95(2)) - per licence breach* | *5000* |
| *Perpetrator demonstrates their income to be less than £440 per week (note 6)* | *-50%* |
|  |
| ***Offences of contravention of an overcrowding notice (section 139)***  | *£* |
| *First relevant offence (note 1)* | *5000* |
| *Subsequent second offence by same person/company (note 2)* | *15000* |
|  |  |
| ***Premiums (use all that apply)*** |  |
| *Acts or omissions demonstrating high culpability (note 8)*  | *+2500* |
| *Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3)* | *+2500* |
| *Perpetrator demonstrates their income to be less than £440 per week*  *(note 6)* | *-50%* |
| ***Failure to comply with management regulations in respect of HMOs (Section 234)***  | *£* |
| *First relevant offence (note1)* | *1000/**offence*  |
| *Subsequent second offence by same person/company for the same offence* | *3000/**offence* |
|  |  |
| ***Premiums (use all that apply)*** |  |
| *Acts or omissions demonstrating high culpability (note 8)* | *+2500* |
| *Large housing portfolio (10+ units of accommodation) (note 3)* | *+2500* |
| *Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)* | *+2500* |
| *Perpetrator demonstrates their income to be less than £440 per week (note 6)* | *-50%* |

**Note 1 – Offences that may be dealt with by way of imposing a financial penalty**

* The starting point for a civil penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.
* After the starting point has been determined, relevant premiums are added to the starting amount to determine the full civil penalty to be imposed
* No single civil penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

**Note 2 - Subsequent second offence by same person/company**

* The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

**Note 3 - Large housing portfolio (10+ units of accommodation)**

* The premium is applied where the perpetrator has control or manages 10 or more units of accommodation.
* For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

**Note 4 - Multiple Category 1 or high Category 2 Hazards**

* This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or three or more high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.
* For the purpose of this premium, a high scoring Category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

**Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions**

* This premium will be applied once, if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.
* For the purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm to which the perpetrator ought to have had regard (see table below).
* For the purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

|  |  |
| --- | --- |
| **Hazard** | **Vulnerable age****group (age of****occupant)** |
| Damp and mould growth | 14 and under |
| Excess cold | 65 or over |
| Excess heat | 65 or over |
| Carbon Monoxide  | 65 or over |
| Lead | under 3 years |
| Personal hygiene, sanitation and drainage | under 5 years |
| Falls associated with baths etc. | 60 or over |
| Falling on level surfaces etc. | 60 or over |
| Falling on stairs etc. | 60 or over |
| Falling between levels | under 5 years |
| Electrical hazards | under 5 years |
| Fire | 60 or over |
| Flames, hot surfaces etc. | under 5 years |
| Collision and entrapment | under 5 years |
| Collision and entrapment - low headroom | 16 or over |
| Position and operability of amenities etc. | 60 or over |

**Note 6 - Perpetrator demonstrates their income to be less than £440/week**

* This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall civil penalty by 50%.
* To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.
* The figure of £440 per week is to be calculated after omission of income tax and national insurance.
* The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

**Note 7 - Previous history of non-compliance with these provisions**

* This premium is applied where there has been more than one conviction or imposition of a financial penalty for the same type of offence in the previous four years.
* The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

**Note 8 – Acts or omissions demonstrating high culpability**

* This premium will be applied where, the person to which the civil penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.