

**Civil Penalty**

**Policy**

**Published 2019**

**Civil penalty as an alternative to prosecution under the Housing Act 2004**

**Tunbridge Wells Borough Council policy and procedure on deciding when to impose a Civil Penalty Notice and the penalty amount**

1. **Introduction**

This Policy document sets out how Tunbridge Wells Borough Council will deliver section 249A of the Housing Act 2004 (as implemented by section 126 and Schedule 9 of the Housing and Planning Act 2016) and section 23 of the Housing and Planning Act 2016 which allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for the following housing offences

* 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 Act (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)
* Breach of a banning order (section 21 of the Housing and Planning Act 2016)

The council is required to have a policy in place to determine when to prosecute and when to issue a civil penalty. Statutory guidance, which the Council has had regard to, issued by Ministry of Housing, Communities and Local Government details the factors that must be taken into account as part of the financial penalty setting process. It places particular emphasis upon the severity of the offence and the landlord’s previous record of offending. The statutory guidance can be viewed at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf>.

**2. Decision making process involved in imposing a Civil Penalty Notice (CPN)**

Officers will assess each case carefully to identify and apply the appropriate sanction dependant on the severity of the offence and any other relevant circumstances. The same criminal standard of proof is required for a civil penalty as for prosecution in the Magistrates’ Court. To impose a civil penalty the Council needs to be satisfied and able to demonstrate ‘beyond reasonable doubt’ that an offence has been committed.

Consideration will be given to the evidential test within the Code for Crown Prosecutors (<https://www.cps.gov.uk/publication/code-crown-prosecutors>) as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction. The Code has two stages: (i) the evidential stage and (ii) the public interest stage.

Once satisfied beyond reasonable doubt that the conduct amounts to a relevant offence a decision will be taken on a case by case basis, whether to prosecute or issue a civil penalty notice. It will be Council policy to use the civil penalty route as the principal way to both punish a person and deter reoffending, however prosecution may be the most appropriate option where an offence is particularly serious and would always be the choice of action in cases of serious injury or death.

A civil penalty matrix has been created for officers to use as a guideline to determine the most appropriate level of civil penalty which can be imposed, up to a maximum of £30,000 (see Appendix A). The Council will determine the offence category using a number of factors including severity of the offence, culpability and track record of the offender, risk of harm and actual harm caused to the tenant, punishment of the offender, deterring future offending and removing any financial benefit from offending. The matrix will also be used to offer transparency, aid consistency in the enforcement process and assist in the defending of appeals in the First Tier Tribunal (Property Chamber).

The Council’s policy will, in serious cases and when proportionate to do so, be to issue the maximum penalty. It is intended this will help achieve the maximum deterrent for criminal landlord behaviour and drive landlord behaviour change.

 **3. Process for imposing a Civil Penalty Notice**

When it has been determined that a civil penalty notice is appropriate, the Council will follow the following procedure.

A “Notice of Intent” shall be served on the person whose conduct amounts to a relevant housing offence. The Notice of Intent must be given within 6 months from the date when the Council has sufficient evidence of the offence to which the financial penalty relates; or alternatively, if the conduct is continuing, within 6 months from the last date the conduct occurred.

The Notice shall specify:

a. The amount of any proposed financial penalty

b. The reasons for proposing the financial penalty, and

c. Information about the right to make representations to the Council.

The person to whom the notice relates will be given 28 days (beginning with the day on which the notice was given) to make written representations to the Council about the proposal to impose a financial penalty.

Following the 28 day period for representations, the Council will consider the representations and decide:

a. Whether to impose a financial penalty on the person, and

b. The amount of any such penalty.

If the Council decides to impose a financial penalty, a final notice will be issued requiring the penalty be paid within 28 days. Beginning with the day after that on which the notice was given. 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 (28 days),

e. Information about the right of appeal to the First Tier Tribunal, and

f. The consequences of failure to comply with the notice.

The Council may at anytime, by giving written notice, withdraw a notice of intent or final notice or reduce the amount specified in the notice of intent or final notice. The person who is given the final notice may appeal to the First Tier Tribunal within 28 days against the decision to impose the penalty or the amount of the penalty.

Enforcement and Consequences of non-compliance

Multiple Offences

When the Council are satisfied that more than one offence is being committed concurrently, they may issue multiple Civil Penalty Notices. Where satisfied on the merits of a case and/or where the Council consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the Council to do so. The Council may decide to take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

Where a landlord or property agent fails to pay the whole or any part of a civil penalty including after any appeal has been finally determined or withdrawn, the Council will recover the penalty by order from the County Court. If necessary, the Council will use county court bailiffs to enforce the order and recover the debt. The Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

The Council’s powers to carry out works in default under the Housing Act 2004 are unaffected by the civil penalty provisions.

If a person receives a civil penalty, that fact can be taken into account if considering whether the person is a fit and proper person to be the licence holder for a House in Multiple Occupation (HMO) or any other property subject to licensing.

Where a landlord receives two or more civil penalties over a 12 month period, the Council will include that person’s details in the database of rogue landlords and property agents. While it is not a compulsory requirement, under the MHG&LG guidance Councils are strongly encouraged to do so. This will help ensure that other Councils are made aware that formal action has been taken against the landlord.

Reduction in Penalty

The Council will take into account mitigating factors, including any admission of guilt. Any reduction in the level of financial penalty will be decided on a case by case basis, up to a maximum of a third discount.

If the person on whom a notice of intent has been served carries out the required works or obligations before the final notice is served, the Council will consider a reduction of up to one third in the civil penalty applied in the ‘Final Notice’. No further opportunity for a discount will be available after this time. A person may receive a discount for an admission of guilt and for completing required works but the combined discount will not be greater than one third.

Any reduction must not result in a financial penalty being less than the financial gain received by the owner from committing the offence.

Financial hardship

The Council should make an assessment of a landlord’s assets and all income not just rental income when determining an appropriate penalty. A person will have the opportunity to make representations following the service of the Notice of Intent and may set out any financial hardship in those representations. The onus is placed firmly on the person to provide sufficient documented evidence of income. The Council reserves the right to request further information to support any financial claim and where this is incomplete, appears to be inaccurate, or the person is being deliberately misleading, may determine that the representations should not be considered. It should be noted that due to the combination of high property and rental income levels in the Borough of Tunbridge Wells and an upper limit of £30,000 being associated with any civil penalty action, it is unlikely that perpetrators with multiple properties will be able to demonstrate financial hardship.

Income from Civil Penalties

Any income received from civil penalties will be retained and used, in accordance with regulations, to further the Council’s enforcement activities covering the private rented sector.

Contact and Complaints
If you require any further information or clarification on the civil penalty process the case officer will be able to assist. If after speaking with the case officer, you wish for further clarification or make a complaint then you should contact the Private Sector Housing Manager. Private Sector Housing can be contacted on 01892 554241 or HousingRenewal@tunbridgewells.gov.uk

Appendix A – Civil Penalty Matrix

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Factors** | **Score = 1** | **Score = 5** | **Score = 10** | **Score = 15** | **Score = 20** | **Total** |
| **1 – deterrence & prevention (pick only one box to the right)** | High confidence that a financial penalty will deter repeat offending. | Medium confidence that a financial penalty will deter repeat offending. | Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender).  | Little confidence that a financial penalty will deter repeat offending. | Very little confidence that a financial penalty will deter repeat offending. |  |
| **2 - Removal of Financial Incentive (pick only one box to the right)** | No significant assets.No or very low financial profit made by offender. | Little asset value.Little profit made by offender. | Small portfolio landlord  (2 – 3 properties).Low asset value.Low profit made by offender. | Medium portfolio landlord (4 – 5 properties) or a small managing agent.Medium asset value.Medium profit made by offender. | Large portfolio landlord (over 5 properties) or a medium to large Managing Agent.Large asset value.Large profit made by offender. |  |
| **3 – Offence & History (pick only one box to the right)** | Offence committed with little fault e.g. failings were minor and occurred as an isolated incident or efforts were made to address risk although they were inadequate.Single low level offence.No previous enforcement history. | Offence committed through act or omission which a person exercising reasonable care would not commit.Single offence.Minor previous enforcement. | Offender aware of risk but does not alter actions in light of risk.Offence has moderate severity or small frequent impacts. Recent second time offender.Previous enforcement. | Offender knew their actions were unlawful. Ongoing offence of moderate to large severity or a single instance of a very severe offence. Several previous offences.More than one instance of previous enforcement action. | Offender has intentionally breached or flagrantly disregarded the law. Continuing serious offence. Serial offender.Multiple enforcement over recent times. |  |
| **4 – Harm to Tenant (s) (weighting x 2)****(pick only one box to the right)** | Very little or no harm caused.No vulnerable occupants.Tenant provides no information on impact.  | Likely some low level health/harm risk(s) to occupant.No vulnerable occupants.Tenant provides poor quality information on impact. | Likely moderate level health/harm risk(s) to occupant.Vulnerable occupants potentially exposed.Tenant provides some information on impact but with no primary or secondary evidence. | High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences.Vulnerable occupants more than likely exposed.Small HMO (3 -4) occupants, multiple occupants exposed.Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.  | Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports). | Double score  |
| Final Total |  |  |  |  |  | Add total of above here  |

|  |  |
| --- | --- |
| Score range | Fee  |
|  1 – 5 | £250 |
| 6 - 10 | £500 |
| 11 – 20 | £750 |
| 21 – 30 | £1000 |
| 31 – 40 | £2500 |
| 41 – 50  | £5000 |
| 51 – 60 | £10,000 |
| 61 – 70 | £15,000 |
| 71 – 80 | £20,000 |
| 81 – 90 | £25,000 |
| 91 - 100 | £30,000 |

Scoring regime –

* Each row should be scored in order with only one option being chosen for each row.
* All rows must be scored.
* Note the score in the Total column.
* Factor 4 – harm to tenants has an additional weighting, which will double the selected score.
* In the final cell at the bottom of this column insert the final total.
* The score should then be compared to the sliding scale of enforcement fee to be levied

Non exhaustive list of vulnerable occupiers

Young adults and children

Disabled persons

People on a low income

Persons with a Drug or alcohol addiction

Victims of domestic abuse

Looked after children

People with complex health conditions

People exploited where English is not their first language

Victims of Trafficking or sexual exploitation

Refugees

Asylum seekers

People at risk of harassment or eviction

People at risk of homelessness