



Ashfield

DISTRICT COUNCIL

Civil Penalties Policy

**Civil Penalties as an Alternative to Prosecution
under the Housing Act 2004 and the Housing
and Planning Act 2016**

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1: Introduction

1.1 Overview

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.

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.

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 to the Ministry of Housing, Communities and Local Government (MHCLG) Guidance for Local Housing Authorities.(April 2018)

1.2 Purpose of this Policy

Ashfield District Council is committed to ensuring good quality private housing stock in our District.

The Environmental Health Residential Team work with many good landlords who provide decent, well-maintained homes and we assist those who need advice and support to become compliant.

Where landlords put tenants at risk and are not compliant with their legal requirements, the Council is committed to the appropriate use of Civil Penalties powers available under the Housing Act 2004 and the Housing and Planning Act 2016.

The Council considers the need for transparency and consistency in the discharge of its functions under the Housing Act 2004 to be of primary importance. The general objective of this policy is, therefore, to promote both transparency and consistency in the imposition of financial penalties so that those managing and having control of properties in the District:

- know how the Council will penalise relevant offences;
- are assured that like cases will be penalised similarly, and different cases penalised differently; and
- are reassured that action taken is for the protection of public health and to ensure compliance with the legislation.

2: Legislation

2.1 Relevant Housing Offences

The Housing and Planning Act 2016 came into force on 6th April 2017 and introduced Civil Penalties of up to £30,000 as an alternative to prosecution for specified housing offences listed below:

- i. Failure to comply with Improvement Notice (Housing Act 2004 Section 30).
- ii. Failure to Licence an HMO under Housing Act 2004 Part 2 (Housing Act 2004 Section 72) (Mandatory Licensing).
- iii. Breach of HMO Licence Conditions under Housing Act 2004 Parts 2 & 3 (Housing Act 2004 Section 72 & 95) (Mandatory and Selective Licensing).
- iv. Failure to Licence houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95) (Selective Licensing).
- v. Failure to comply with an Overcrowding Notice, (Housing Act 2004 Section 139(7)).
- vi. Breach of Management Regulations in respect of HMOs. (Housing Act 2004 Section 234).
- vii. Breach of regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 where the Council is satisfied beyond reasonable doubt that a landlord has breached a duty under regulation 3.

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.

The Council will determine, on a case-by-case basis, whether to instigate prosecution proceedings or to serve a Civil Penalty in respect of any of the offences listed above.

Examples of situations in which a decision to prosecute would normally be taken include:

- Where the offence committed is judged to be particularly serious.
- Where the offender has committed similar offences in the past.

3: Applying a Civil Penalty

3.1 Considerations prior to a Civil Penalty being issued

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).

The Council must be sure that there is sufficient evidence for a conviction against the landlord and that the public interest will be properly served by imposing a Civil Penalty.

The following questions should be considered:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the person in question?
- Is the public interest properly served by imposing a Civil Penalty in respect of the offence?
- Has the evidence been reviewed by the appropriate senior officer at the Council?
- Have the Council's legal services reviewed the evidence?
- Are there any reasons why a prosecution may be more appropriate than a Civil Penalty? i.e., the offence is particularly serious and the landlord has committed similar offences in the past and/or a banning order should be considered.

3.2 Process for Imposing Civil Penalties

The implementation of Civil Penalties would need to follow the general principles set out in the Regulators Code.

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:

- The amount of any proposed Civil Penalty
- The reasons for proposing the Civil Penalty
- 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 representations to the Council about the proposal to impose a Civil Penalty. The representations 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:

- Whether to impose a Civil Penalty on the person
- 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:

- The amount of the Financial Penalty
- The reasons for imposing the Penalty.
- Information about how to pay the Penalty.
- The period for payment of the Penalty
- Information about rights of appeal to the First Tier Tribunal
- 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.

3.3 Right of Appeal

The person served with the Final Notice has the right to appeal to the First Tier Tribunal against:

- The decision to impose a penalty; or
- The amount of the penalty.

Payment of the Civil Penalty must be made within 28 days beginning with the day after that on which the notice was given, unless appealed. If a person appeals, the Final Notice is suspended until the appeal is determined or withdrawn.

3.4 Discount for Prompt Payment

To encourage the prompt payment of Civil Penalties, the Council will offer a 20 percent reduction to those who pay the Civil Penalty in full within 28 days of the Final Notice being issued.

3.5 Recovering an Unpaid Civil Penalty

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 consider all legal options available for the collection of unpaid Civil Penalties and will commence proceedings to recover the debts owed.

The Council will endeavour to recover these debts through the County Court, usually in the form of a Court Order.

Some of the recovery orders available to the Council through the County Court are as follows:

- A Warrant of Control for amounts up to £5,000;
- A Charging Order;
- A Third-Party Debt Order; and
- Bankruptcy or Insolvency

When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the recipient and not just the property to which the offence relates.

After obtaining a Charging Order the Council may consider applying for an Order for Sale against the property or asset in question.

The recovery of the debts may be undertaken by third party Enforcement Agents (Bailiffs).

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. This could result in a money judgement which may affect the recipients credit rating.

3.6 Enforcement or other Consequences

Where a Civil Penalty has been imposed, this will form part of the Council's consideration when it reviews licence applications relating to properties in which that person has had some involvement.

Although the imposition of a Civil Penalty will not automatically prevent the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant a licence.

Where a person has two Civil Penalties imposed on them within a period of 12 months and each relates to a Banning Order offence for the purposes of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the Council will

seek to register the landlord's details on the Database of Rogue Landlords and Property Agents.

3.7 Income from Civil Penalties

Income received from a Civil Penalty is retained by the Council provided that it is used for statutory functions in relation to its private rented sector enforcement activities as specified in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017. There is no time limit imposed by the Housing and Planning Act 2016 for the Council to use the income gained from a Civil Penalty.

4: Factors considered when implementing a Civil Penalty

4.1 Reprimand 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.

Following the initial scoring calculation, consideration will be given to whether this element has been suitably met or not. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

4.2 Deter the offender from repeating the offence

The ultimate objective 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.

Following the initial scoring calculation, consideration will be given to whether this element has been suitably met or not. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

4.3 Deter others from committing similar offences

An important part of deterrence is the realisation that:

- the local housing authority is pro-active in levying Civil Penalties where the need to do so exists; and
- that the level of Civil Penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Following the initial scoring calculation, consideration will be given to whether this element has been suitably met or not. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

4.4 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 effectively managed.

4.5 Financial Hardship

The Council makes an assessment of assets and any income (not just rental income) received when determining an appropriate Penalty.

The perpetrator will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship in those representations. It will be for the recipient to provide sufficient documented evidence of income when relying upon such representations.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete, appears to be inaccurate or is not sufficiently evidenced may determine that the representation should not be considered. It should be noted that due to the average value of properties and the upper limit of £30,000 associated with any Civil Penalty action, it is unlikely that perpetrators with multiple properties will be able to demonstrate financial hardship.

4.6 Fairness and Proportionality

The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach.

5: Additional Considerations

When considering aggravating and mitigating factors the Civil Penalty imposed must remain proportionate to the offence.

Reference will be made to Magistrates Court Sentencing Council guidelines when considering relevant aggravating and mitigating factors and the issuing officer should provide justification for each mitigating or aggravating factor resulting in the fine imposed being increased or decreased.

5.1 Aggravating Factors

In addition to the charging tables, the penalty may be increased by £1000 for each aggravating factor up to a maximum of £30,000.

Aggravating factors include but are not limited to:

- Motivated by financial gain
- Obstructive to the investigation
- Deliberate concealment of the activity or evidence
- Whether landlord or agent's primary trade or income is connected with the private rented sector

5.2 Mitigating Factors

In addition to the charging tables, the penalty may be decreased by £1000 for each mitigating factor.

Mitigating factors include:

- Co-operation with the investigation
- Prompt rectification of matter e.g., applying for a licence at the earliest opportunity
- Evidence of health reasons preventing reasonable compliance (poor mental health, unforeseen health issues and/or emergency health concerns)
- Landlord or agent is a vulnerable individual, where vulnerability is linked to the breach being committed
- Good character / exemplary conduct

Penalty Charging Table

In determining the level of a Civil Penalty, officers will have regard to the charging tables set out below, which are to be read in conjunction with the associated notes.

The charging tables are intended to provide indicative ‘tariffs’ under the various offence categories, with the final level of the Civil Penalty adjusted in each case, and generally within the appropriate level to take into account aggravating and mitigating factors.

Charging Table for Determining the Value of Civil Penalties

Failure to comply with an Improvement Notice (Section 30) Failure to comply with an Improvement Notice :Maximum Court fine that can be levied for failure to comply with an Improvement Notice -	£ Unlimited
First offence *note1	5,000
Subsequent second offence by same person/company*note2	15,000
Further subsequent offences by same person/company*note7	25,000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability *note8	+2,500
Large housing portfolio (5+ units of accommodation) *note3	+2,500
Multiple Category 1 or High Category 2 Hazards*note4	+2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions*note5	+2,500
Perpetrator demonstrates their income to be less than £440 per week *note6	-25%

An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property.

Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

In most cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action.

In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

Offences in relation to Licensing of HMOs under Part 2 of the Act (Section 72) Maximum Court fine that can be levied for failure to license an HMO or Part 3 House	£ Unlimited
Failure to obtain Property Licence (section 72(1)) *note1	5,000
Subsequent second offence by same person/company*note2	15,000
Further subsequent offences by same person/company*note7	25,000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability *note8	+2,500
Large housing portfolio (5+ units of accommodation) *note3	+2,500
Evidence that property has been unlicensed for over 6 months	+1,000
Evidence that property has been unlicensed for over 12 months	+2,500
Perpetrator demonstrates their income to be less than £440 per week *note6	-25%

Breach of licence conditions (Section 72(2) and (3)) - per licence breach*note9	£
First relevant offence *note1	1,500 /Breach
Subsequent second offence by same person/company*note2	3,000 /Breach
Nature of the breaches; likely to have significant impact *note9	+1,000
Nature of breaches less likely to have a significant impact *note9	-1,000
Perpetrator demonstrates their income to be less than £440 per week *note6	-25%

Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority.

HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises.

Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

The Council would view the offence of failing to license an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards, and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

Offences in relation to licensing under Part 3 of the Act (Section 95) <i>Maximum Court fine that can be levied for failure to license an HMO or Part 3 House –</i>	£ Unlimited
Failure to Licence (Section 95(1)) *note1	5,000
Subsequent second offence by same person/company*note2	15,000
Further subsequent offences by same person/company* note7	25,000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability *note8	+2,500
Large housing portfolio (5+ units of accommodation) *note3	+2,500
Evidence that property has been unlicensed for over 6 months	+1,000
Evidence that property has been unlicensed for over 12 months	+2,500
Perpetrator demonstrates their income to be less than £440 per week*note6	-25%

Breach of Licence Conditions (Section 95(2)) - per Licence Breach *note9	£
First relevant offence *note1	1,500 /Breach
Subsequent second offence by same person/company*note2	3,000 /Breach
Nature of the breaches; likely to have significant impact *note9	+1,000
Nature of breaches less likely to have a significant impact*note9	-1,000

Ashfield District Council has exercised its powers under section 80 Housing Act 2004 and has designated areas of Sutton Central and Stanton Hill as Selective Licensing areas.

Under this scheme, which came into force on 25th July 2022 and expires on 24th July 2027, most privately rented homes in the designations, are required to have a property licence to operate in the District. Through the Selective Licensing scheme, which was introduced to combat anti-social behaviour and tackle poor conditions that exist in privately rented homes, the Council intends to improve the professionalism of private landlords and drive-up property standards.

The Council would view the offence of failing to ensure that a rented home was licensed under its Selective Licensing Scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.

Offences of contravention of an overcrowding notice (section 139) <i>Maximum Court fine that can be levied for failure to comply with an Overcrowding Notice –</i>	£ <i>Unlimited</i>
First relevant offence *note1	5,000
Subsequent second offence by same person/company*note2	15,000
Further subsequent offences by same person/company* note7	25,000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability *note8	+2,500
Vulnerable occupant and/or significant harm occurred as result of overcrowding *note5	+2,500
Perpetrator demonstrates their income to be less than £440 per week*note6.	-25%

Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004.

The notice specifies, on a room-by-room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose.

The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant[s] of an HMO to unacceptably cramped living conditions.

Failure to comply with management regulations in respect of HMOs (Section 234) <i>Maximum Court fine that can be levied for failure to comply with each individual regulation -</i>	£ <i>unlimited</i>
First relevant offence*note1*note9	1,500
Subsequent second offence by same person/company for the same offence	3,000/ offence
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability*note8	+2,500
Large housing portfolio (5+ units of accommodation) *note3	+2,500
Nature of the breaches; likely to have significant impact *note9	+1,000
Nature of breaches less likely to have a significant impact*note9	-1,000
Perpetrator demonstrates their income to be less than £440 per week*note6	-25%

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing certain HMOs in respect of:

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]
- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	£
First relevant offence*note1	1,500/ offence
Subsequent second offence by same person/company for the same offence	3,000/ offence
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability*note8	+2,500
Large housing portfolio (5+ units of accommodation) *note3	+2,500
There are 2 or more relevant defects *note10	+2,500
Perpetrator demonstrates their income to be less than £440 per week*note6	-25%

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested to their local authority.

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 - Housing Portfolio (5 + units of accommodation)

- The premium is applied where the perpetrator has control or manages 5 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 two or more Category 1 or two 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 25%.
- To be applicable, the person served with 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 consider 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 advice.

Note 9 – Licence conditions and management regulation breaches.

- The Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others. In determining the level of a Civil Penalty relating to licence conditions and management regulation, the Council will therefore initially consider.
 - a) The number and nature of the management regulation breaches; and
 - b) The nature and extent of deficiencies

Note 10 –Relevant defect Electrical Safety Standards

- A relevant defect for this purpose is a defect that would result in an “unsatisfactory” Grading on an Electrical Installation Condition Report (EICR), namely a defect given C1, C2, or F1 observation codes.