



Knowsley Council

Housing Civil Penalties Policy

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1.0 INTRODUCTION

- 1.1 The purpose of this policy is to set out Knowsley Council's ('the Council') approach to the use of civil penalties (financial penalties) in relation to housing offences as an alternative to prosecution. The Council's overall intention is to support good landlords who provide decent homes and to target unscrupulous landlords who have disregard for their legal responsibilities and profit from their non-compliance.
- 1.2 The policy sets out the principles and processes that will apply when civil penalties are used as a method of enforcement of housing standards legislation. To this end, the Council has the power to impose financial penalties of up to £30,000 per offence on individuals and organisations as an alternative to prosecution.
- 1.3 All action taken under this policy will be in accordance with the principles of the Regulators' Code. The policy is consistent with statutory guidance issued by the Government under Schedule 9 of the Housing and Planning Act 2016. It should be read in conjunction with the Council's Housing Enforcement Policy.
- 1.4 It should be noted that reference in this policy to landlords also includes property agents, managing agents and letting agents unless otherwise specified.

2.0 AIMS

- 2.1 The Council aims to improve the range and quality of housing provision across all tenures in the Borough and wants to support good landlords in achieving this goal. In turn, the Council intends to use the powers described in this policy to crack down on rogue landlords who disregard the law and their responsibilities and knowingly rent out unsafe and substandard accommodation.

3.0 PURPOSE

- 3.1 The purpose of this policy is to set out how the Council will use its powers to impose civil penalties of up to £30,000 on individuals and organisations as an alternative to prosecution. It describes how these powers will be used and how the size of each penalty will be determined.
- 3.2 The policy will ensure transparency, consistency, fairness and proportionality in the issuing of civil penalties and will complement the Housing Enforcement Policy in improving the quality and standard of housing stock by dealing robustly and effectively with criminal, rogue and irresponsible landlords.
- 3.3 This policy applies to the power to issue civil penalties for the following offences under the Housing Act 2004 unless otherwise stated.

- Failure to comply with an Improvement Notice (S30)
- Offences in relation to Houses in Multiple Occupation [HMOs](S72)
- Offences in relation to licensing of houses under Part 3 of the Act (S95)
- Contravention of an Overcrowding Notice (S139)
- Failure to comply with management regulations in relation to HMOs (S234)
- Breach of a Banning Order (S21 Housing and Planning Act 2016)

4.0 **PRINCIPLES OF CIVIL PENALTIES**

- 4.1 This policy is consistent with the Housing Enforcement Policy and the principles of good regulation. We recognise that in line with other enforcement activity, the use of civil penalties should be targeted, transparent, consistent, appropriate, proportionate and fair.
- 4.2 In appropriate cases, civil penalties will be used as an alternative means of disposal of an offence to prosecution where this is deemed to be the most effective sanction. The aim of such a penalty should be to create an environment where it is clear to all that operating unlawfully as a landlord will be financially disadvantageous. To justify the issue of civil penalties, the same standard of proof as for a prosecution is required. This means that the Council must be satisfied and be able to demonstrate beyond all reasonable doubt that an offence has been committed. To assist in this process, officers will have regard to the Code for Crown Prosecutors and the Housing Enforcement Policy.
- 4.3 Although prosecution might be deemed a more appropriate sanction for serious offences or where the offender has a history of breaching the law, this does not preclude the use of civil penalties in these instances. Such penalties should not be regarded as an easier or lesser option as compared to prosecution. The circumstances of each case will be carefully considered, and the Council may deem it more effective to issue a civil penalty e.g. where this would cause the most disruptive sanction or provide the greatest deterrent effect to the offender and other landlords.
- 4.4 In situations where both a landlord and letting agent have committed the same offence then a civil penalty can be imposed on either or both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances.
- 4.5 If a landlord receives a civil penalty, then the Council will take this into account when considering if they are a fit and proper person to be a licence holder for an HMO or any other property that may be subject to licensing.
- 4.6 Income from civil penalties will be retained by the Council to support enforcement activities in this area.

5.0 DETERMINING THE LEVEL OF THE CIVIL PENALTY

5.1 The following factors will be taken into consideration when determining the appropriate level of civil penalty:

- a) **Seriousness of the offence:** The more serious the offence, the higher the penalty should be.
- b) **Culpability and previous history of the offender:** A higher penalty will be appropriate where the offender:
 - Has a history of non-compliance.
 - Acted in a deliberate manner.
 - Knew or ought to have known they were in breach of their legal responsibilities.
- c) **Harm caused to tenants/occupants:** The greater the harm or potential for harm, the higher the amount the penalty should be.
- d) **Punishment of the offender:** A civil penalty should not be regarded as a less severe option than prosecution. It is important to set the fine at a high enough level to ensure that it has an economic impact on the offender and demonstrates the consequences of failure to comply with legal responsibilities. Additional matters to consider include whether there is a pattern of re-offending and whether the amount of the penalty is proportionate and reflects the severity of the offence.
- e) **Deter from repeat offending:** The level of penalty should be set at a level sufficient to deter the offender from repeating the offence and ensure that they comply with all their legal responsibilities in future
- f) **Deter others:** It is anticipated that other landlords will become aware of the use by the Council of civil penalties and therefore send the following messages:
 - The Council is proactive in enforcing housing standards and imposing civil penalties.
 - The level of penalty will be set high enough to punish the offender and to deter others from offending.
- g) **Remove financial benefit:** The offender should not benefit from committing the offence and failing to comply with legal responsibilities.

5.2 To enable consistency and transparency in setting the level of the fine, the Council has produced a scoring matrix which appears as an **Appendix** to this policy. It should be noted that this is for guidance only and does not restrict the discretion of the Council to set a level deemed appropriate for the particular circumstances of a case.

6.0 PROCEDURE FOR ISSUING A CIVIL PENALTY NOTICE

6.1 Where it has been determined that a civil penalty notice is the appropriate sanction then the following procedure will be followed.

6.2 The person will be issued will be issued with a **Notice of Intent** to impose a civil penalty. This will be issued no later than 6 months after the date when the Council has sufficient evidence of the offence or at any time when the conduct is continuing. The notice will contain:

- The amount of the proposed financial penalty.
- The reasons for proposing a civil penalty.
- Information on the right to make written representations to the Council.
- The period in which to make representations (28 days from the date the notice is given)

6.3 The recipient of the notice of intent may make written representations which will be considered. The Council will then decide:

- Whether to impose a civil penalty.
- The amount of any such penalty.

6.4 If the decision is made to impose a civil penalty, then a Final Notice will be issued. This will contain:

- The amount of the penalty.
- The reasons for imposing the penalty.
- Information on how to pay.
- The period within which the penalty must be paid (within 28 days)
- Information about rights of appeal.
- The consequences of failure to pay.

6.5 The Council may at any time issue a written notice to:

- Withdraw a Notice of Intent or Final Notice
- Reduce the amount of the penalty.

7.0 Appeals

7.1 The recipient of a Final Notice may appeal the decision to impose a civil penalty to the First-Tier Tribunal within 28 days of the date when the notice was issued. The Final Notice will be suspended until the appeal is determined or withdrawn. The Tribunal has the power to confirm, vary or cancel the penalty.

8.0 ENFORCEMENT OF NON-PAYMENT

8.1 The Council will enforce non-payment of a civil penalty by order from the County Court. Where appropriate, the Council will seek to recover the costs incurred in taking enforcement action from the recipient of the civil penalty notice. If necessary, the Council will use County Court bailiffs to enforce the order and recover the debt.

9.0 OTHER LEGISLATION

9.1 This policy also applies to civil penalties under the following legislation subject to any exceptions identified. Where statutory guidance specifies, this policy fulfils the requirement for local authorities to develop and document their own policies on determining the level of financial penalties to impose.

9.2 **Tenant Fees Act 2019:** This legislation specifies penalties of up to £5000 for a first breach and up to £30,000 for a subsequent offence. The offences are:

- Prohibited payments (S 1 & 2)
- Treatment of holding deposits (Schedule 2)

9.3 **Client Money Protection Schemes for Property Agents (Requirement to belong to a Scheme etc) Regulations 2019:** This legislation specifies penalties of up to £30,000 for a regulation 3 breach and up to £5,000 for a regulation 4 offence. The nature of the offences are:

- Failure to be a member of an approved or designated client money protection scheme with adequate indemnity (Reg. 3)
- Transparency requirements (Reg. 4)

9.4 **Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020:** This legislation specifies penalties of up to £30,000 for the following offence:

- Failure of duty of landlords in relation to electrical installations (Reg 3)

9.5 **Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a scheme etc) Order 2014:** This legislation specifies penalties of up to £5,000. In this case, the burden of proof is on the balance of probabilities. The relevant breach is:

- Failure to be a member of a redress scheme (Article 3(1) and 5(1))

9.6 **Consumer Rights Act 2015:** This legislation specifies penalties of up to £5,000 with the burden of proof being on the balance of probabilities. The offence is as follows:

- Failure to publish fees and membership of client money protection schemes and redress membership. (S 83)

9.7 **Smoke and Carbon Monoxide Alarm (England) Regulations 2015:** This legislation specifies penalties of up to £5,000 and does not require the serving of a Notice of Intent. The burden of proof is on the balance of probabilities. The offence is as follows:

- Failure of a landlord to comply with a remedial notice (Reg. 6)

9.8 **Energy Efficiency (Private Rented Property) (England & Wales) Regulations 2015.** The penalties for this legislation vary from up to £2,000 to up to £150,000 depending upon the nature of the offence. The legislation does not require a Notice of Intent and the burden of proof is on the balance of probabilities. The offences are:

- Letting a sub-standard domestic property (Reg. 23)
- Letting a sub-standard non-domestic property (Reg.27)
- Providing false information on the Exemption Register (Reg. 36)
- Failure to comply with a Compliance Notice (Reg. 37)

9.9 **Energy Performance of Buildings (England and Wales) Regulations 2012.** The penalties for this legislation vary from £200 to £5,000 depending on the nature of the offence. The legislation does not require a Notice of Intent and the burden of proof is on the balance of probabilities. The offences are:

- Failure to make an Energy Performance Certificate available on sale or rent (Reg. 6)
- Failure to secure an Energy Performance Certificate on marketing of a building (Reg 7)
- Failure to secure an Energy Performance Certificate on construction of a building (Reg. 7A)
- Failure to display an Energy Performance Certificate (Reg.10)
- Failure to provide a statement of energy performance rating in any advertising media (Reg. 11)
- Failure to possess a valid recommendation report (Reg. 14 (3) (a))
- Failure to display a valid display energy certificate (Reg. 14 (3) (b))
- Failure to ensure inspection of an air-conditioning system (Reg. 18 (1))
- Failure to keep records of inspections of air-conditioning systems (Reg. 20)
- Failure of new relevant person to ensure inspection of air-conditioning systems (Reg. 21)
- Failure to produce documents on request of an authorised officer (Reg. 35)

10.0 REVIEW OF THIS POLICY

10.1 This policy will be reviewed on a regular basis to ensure that it reflects current Government guidance. In addition, the Council will ensure that all relevant officers are familiar with this policy and implement it in their enforcement activity.

11.0 COMMENTS

11.1 If you wish to contact the Council to comment on or ask a question about this policy, then please use the contact details below:

- Web: [KMBC - Have your say \(mendixcloud.com\)](https://mendixcloud.com)
- Post: Customer Liaison Team, Knowsley Council, Archway Road, Huyton L36 9UX
- Telephone: 0151 443 4712

12.0 AVAILABILITY

12.1 This policy is available on the Council's website. If you wish to receive this policy in another format, then please contact us using the details above.

13.0 LINKS

Civil Penalty Notices: [Civil penalties under the Housing and Planning Act 2016 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Regulators' Code: [Regulators' Code - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Prosecution: [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk)

Housing Enforcement Policy: [Policies, plans and strategies - Place | Knowsley Council](https://www.knowsley.gov.uk)

APPENDIX 1

HOUSING CIVIL PENALTIES SCORING MATRIX

Seriousness of Offence				
Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Technical infringement	Minor offence	Moderate offence	Serious offence	Very serious offence
Previous History				
Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
No previous history	No previous warnings or civil penalties issued.	Previous warning- no civil penalties	More than one warning- one previous civil penalty issued for a minor offence.	More than one warning issued- previous civil penalty issued for serious offence.
Offender co-operative	Offender co-operative	Offender co-operative	Offender not co-operative	Offender not co-operative
Level of Harm				
Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Low level of harm	Low level of harm	Harm which requires treatment by a GP / significant harm	Harm which requires hospital treatment	Harm which resulted in hospital treatment and could lead to a chronic condition.
One occupant exposed	More than one occupant exposed	Several occupants exposed	Multiple occupants exposed	Multiple occupants exposed
Punishment				
Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Small landlord 1 property	Medium landlord 2-3 properties	Portfolio of 4-10 properties Local managing agent	Portfolio of 11-99 properties Regional managing agent	Portfolio of 100 or more properties National managing agent
No other crime.	Minor previous breaches	Minor previous breaches	Significant other crime	Severe harm resulting from other crime.

A willingness to adhere to advice.	A willingness to adhere to advice.	Unwilling to cooperate	Hostile to cooperation	Hostile to cooperation
Deterrence				
Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
Little chance that the penalty will deter from re-offending.	Not likely that the penalty will deter from re-offending. Unlikely to be reported to others.	May deter from reoffending. Would deter others from offending.	Likely to deter from reoffending. Likely to deter others from offending.	Highly likely that penalty will deter from re-offending. Would deter others from offending.
Removal of Financial Benefit				
Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
No financial benefit from the offence	Low to moderate benefit from the offence	Medium benefit from the offence	High level of benefit from the offence	Significantly high level of benefit from the offence

Method:

One score per category is chosen which is the most appropriate fit for the scenarios.

The scores are then added and compared with the table below to determine the level of the civil penalty.

Score	Fee Range (£)
5	0 -250
6-10	251-500
11-20	501-750
21-30	751-1,000
31-40	1,001-2,500
41-50	2,501-5,000
51-60	5,001-10,000
61-70	10,001-15,000
71-80	15,001-20,000
81-90	20,001-25,000
91-120	25,001-30,000

For offences where the maximum penalty charge is £5,000

Score	Fee Range (£)
0-40	0 -2,000
41-60	2,001-3,000
61-80	3,001-4,000
81-120	4,001-5,000