

**Boston Borough
Council
Civil Penalty
Policy.**

1.0 Introduction

- 1.1 The power to impose a **civil penalty** as an **alternative** to prosecution for certain Housing Act offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016. A civil penalty is '*a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004*'.
- 1.2 The list of offences (which may from time to time be amended) that may be dealt with by way of a civil penalty are:
- *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).*
- 1.3 At all times, the Council, as the Local Housing Authority, will have regard to the prevailing Statutory Guidance in respect of civil penalties.

2 Factors in deciding whether to Prosecute or issue a Civil Penalty

- 2.1 Each case will be decided upon its own merits taking into account all the evidence available.
- 2.2 Where the Council considers that a relevant Housing Act offence has been committed, it will determine the most appropriate course of action to take, including, whether to prosecute or to issue a civil penalty as an alternative to prosecution. A range of factors, including but not limited to those set out below, will be used to determine the appropriate enforcement option:
- The seriousness of the offence
 - The immediacy of the risk

- The history of an individual, including any previous non-compliance and convictions
 - Whether prosecution is in the 'public interest'
 - Whether the offence was committed as a result of a genuine mistake or misunderstanding, having regard to the seriousness of the offence
 - The likely 'human impact' the enforcement action will have in preventing future offences
- 2.3 As a civil penalty is an 'alternative' to prosecution, the burden of proof test to be applied is that of **beyond all reasonable doubt** so the Council will satisfy itself that there would be a realistic prospect of conviction if the case were to be prosecuted in a Magistrates Court before issuing a civil penalty and will comply with the Council's prevailing corporate enforcement policy and all other prevailing Codes and Statutory Guides, eg the Code for Crown Prosecutors and Police and Criminal Evidence Act codes.

3 Factors determining the level of Civil Penalty

- 3.1 The law allows a maximum penalty of **£30,000** to be imposed for each relevant offence.
- 3.2 The Council will use a range of factors, including but not limited to those set out below in order to set a civil penalty at an appropriate level:
- The severity of the offence, the more serious the offence the higher the penalty
 - The **culpability**, history and compliance of the offender
 - The **harm** caused to the tenant and other relevant people by the offender
 - The 'real terms' economic impact that a civil penalty punishment will have on the offender
 - The deterrent value that a civil penalty is likely to have on preventing the offender from repeating the offence and failing to meet all of their legal responsibilities
 - The deterrent value that civil penalties are likely to have on other landlords from committing similar offences
 - Removal of any financial benefit gained by the offender from committing the offence.
- 3.3 The nature of the harm will depend on the personal characteristics and circumstances of the victim. Where no **actual** harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offenders conduct, action or lack of action as well as the likelihood of harm occurring and the gravity of harm that could have resulted.

3.4 In determining the level of **harm** arising from an offence, the Council will have regard to any relevant consequences including:

- The harm caused to an individual or individuals, i.e. physical injury, damage to health and psychological distress
- The harm caused to the wider neighbourhood and community i.e. economic loss and harm to public health.

3.5 Factors that indicate higher degrees of harm include:

- Where there are multiple victims
- Where there is a serious or long term psychological effect on the victim or
- Where the victim or victims is/are particularly vulnerable

3.6 In determining the **culpability** of the offender or offenders, the Council will have regard to issues including whether:

- The offender **deliberately and/or intentionally** caused harm
- The offender was **reckless** in their actions or failings. Being reckless here means failing to have had regard to the danger or other negative consequences of any risk or risks that would be obvious to most people
- The offender **knew** of the risks, for example, they had been set out in a notice and not complied with or would have been obvious to most people upon inspection
- The offender was **negligent**. Being negligent here means the offender failed to take reasonable care and did something or failed to do something that would have been reasonable to do, ie inspecting or causing to have a property regularly inspected, acting upon the findings of an inspection or failing to act on reports from tenants and others

3.7 Where a civil penalty is deemed appropriate, to demonstrate transparency, the Council will determine the financial level of the civil penalty using the matrix set out at **Appendix D**.

4.0 Procedure for imposing a civil penalty

4.1 Where it has been determined that it is appropriate to impose a civil penalty as an alternative to prosecution, the Council will follow the process set out within the Housing Act 2004. In summary:

- i. A “**Notice of Intent**” shall be served on the person suspected of committing the offence. The Notice shall be served no more than six months after the Council has sufficient evidence of the conduct to which the penalty relates.

The Notice shall specify:

- a. The amount of any proposed financial penalty

- b. The reasons for proposing the financial penalty
 - c. Information about the right to make representation to the Council.
 - ii. 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 financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
 - iii. Following the 28 day period the Council will decide:
 - a. Whether to impose a civil penalty on the person, and
 - b. The value of any such penalty imposed.
 - iv. If the Council decides to impose a civil penalty, a final notice shall be issued imposing that penalty. 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,
 - e. information about rights of appeal to the First tier Tribunal
 - f. the consequences of failure to comply with the notice.
 - v. A person who receives a final notice may appeal to the First-tier Tribunal against:
 - a. the decision to impose a penalty; or
 - b. the amount of the penalty.
 - vi. The Council may, at any time:
 - a. Withdraw a notice of intent or final notice or
 - b. 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 served.

5.0 Payment of a civil penalty

- 5.1 Where a person in receipt of a civil penalty has exhausted all rights of appeal or has not paid or is not paying the penalty, the Council may refer the case to

the county court for an Order of that Court. The Council may use any reasonable and lawful process, including use of county court and other bailiffs, to enforce the order and recover the debt.

6.0 Database of Rogue Landlords

6.1 Where a landlord receives **two** or more civil penalties over a 12 month period, the Council may include that person's details in the national **database of rogue landlords and property agents**.

6.2 The purpose of the database is to enable local housing authorities to record information about, and target enforcement action against, any landlord who has:

- received a banning order under the Housing and Planning Act 2016;
- been convicted of a banning order offence; or
- received TWO or more civil penalties over a 12 month period.

Appendix D – 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)	<p>High confidence that a financial penalty will deter repeat offending.</p> <p>Publicity likely to have some deterrence value to other landlords.</p>	<p>Medium confidence that a financial penalty will deter repeat offending.</p> <p>Publicity likely to have some deterrence value to other landlords.</p>	<p>Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender).</p> <p>Publicity likely to have deterrence value to other landlords.</p>	<p>Little confidence that a financial penalty will deter repeat offending.</p> <p>Publicity likely to have significant deterrence value to other landlords.</p>	<p>Very little confidence that a financial penalty will deter repeat offending.</p> <p>Publicity likely to have very significant deterrence value to other landlords.</p>	
2 - Removal of Financial Incentive (Pick only one box to the right)	<p>No or very low financial benefit made by the offender.</p> <p>Probable single property asset.</p>	<p>Low financial benefit made by the offender.</p> <p>Probable small property asset value (2–3 properties).</p>	<p>Some financial benefit made by the offender.</p> <p>Probable small portfolio landlord (between 4 and 6 properties). Low asset value.</p>	<p>Clear financial benefit made by the offender.</p> <p>Probable medium portfolio landlord (between 7 and 10 properties) or a small Managing Agent. Medium asset value.</p>	<p>Substantial financial benefit made by the offender.</p> <p>Probable large portfolio landlord (over 10 properties) or a medium to large Managing Agent. Large asset value.</p>	
3 - Offence History (Pick only one box to the right)	<p>Single offence with no previous enforcement history.</p>	<ul style="list-style-type: none"> Single offence with one previous enforcement issue. Multiple offences with no previous enforcement history. 	<ul style="list-style-type: none"> Single offence with two previous enforcement issues. Multiple offences with one previous enforcement issue. 	<ul style="list-style-type: none"> Single offence with three or more previous enforcement issues. Multiple offences with two previous enforcement issues. 	<p>Multiple offences with three or more previous enforcement issues.</p>	

4 - Harm to Tenant(s) (Weighting x2) (Pick only one box to the right)	Little potential for harm.	Potential for low level harm.	Potential for moderate level harm.	Potential for high level harm.	Actual harm caused to occupant/occupants as a direct consequence of a landlords failings.	Double score
Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	Total
5- Culpability (Responsibility, guilt, fault) (Pick only one box to the right)	There has been an unintentional/unforeseen failing(s) on behalf of the landlord/agent.	There has been an act, error or omission on behalf of the landlord/agent. Offence is committed with little fault on the part of the landlord or property agent e.g. damage caused by tenants including damp and mould caused by tenants where however property improvements could be made to improve the property and address the situation	There has been a negligent act , error or omission on behalf of the landlord/agent. i.e. a landlord or agent has failed to take reasonable care and did something or failed to do something that would have been reasonable to do. e.g. failing to act upon the findings of an inspection or failing to act in a timely manner to reports from tenants.	There has been a reckless act , error or omission on behalf of the landlord/agent. i.e. the danger and risk brought about by an act, error or omission would be obvious to most people yet the landlord/agent made no attempt to address such obvious matters. e.g. failure to comply with gas and/or electrical safety requirements for rented property, failure to carry out a fire risk assessment in an HMO or failure to remedy obvious serious disrepair.	There has been a deliberate and intentional act , error or omission on behalf of the landlord/agent. i.e. – there has been a blatant disregard for the law. e.g. an unreasonable failure to comply with a correctly served Improvement Notice, deliberate breach of the Management Regulations or deliberate failure to Licence a Mandatorily Licensable HMO.	Double score
Failure to Licence a THREE	<u>Score = 41</u>					

storey plus Mandatorily Licensable House in Multiple Occupation						
Failure to Licence a one/two storey Mandatorily Licensable House in Multiple Occupation	<u>Score = 36</u>					
Final Total						Add total of above here

Score Range	Fee
1-5	£100
6-10	£250
11-20	£500
21-30	£750
31-40	£1,000
41-45	£2,500
46-50	£5,000
51-60	£10,000

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.

61-70	£15,000
71-80	£20,000
81-90	£25,000
91-100	£30,000

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