

## **Brentwood Borough Council**

### **Statement of principles: determining the amount of penalty charge – Housing and Planning Act 2016**

#### **Purpose of this statement of principles**

This statement sets out the principles that Brentwood Borough Council will apply in exercising its powers under the Housing and Planning Act 2016 to impose a civil penalty on a landlord/owner/company for certain specified offences under the Housing Act 2004 set out in this scheme as an alternative to prosecution

#### **Prosecution**

Generally, the council will prosecute for more serious offences, which would otherwise attract the higher levels of Civil Penalty or gravity of the offence(s) associated with criminal courts. The suffering of actual harm by the tenant or another victim will indicate that a prosecution should be the preferred option. Also, the council will prosecute where there is a history of prosecutions against the same person or company or where civil penalties have had no or little effect of compliance in relations to a landlord's other properties.

#### **Legal powers**

Section 126 and Schedule 9 of the Housing and Planning Act introduced civil penalties under the Housing and Planning Act 2016 for certain housing offences under the Housing Act 2004.

The housing offences for which a civil penalty can be served for breaching regulation 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)
- offences subject to banning orders under s21 Housing Act 2004

Authorised officers will issue a civil penalty where there has been a failure to comply with a notice or management regulation in respect of HMO.

The council will give the person a notice of its proposal (notice of intent) to impose a financial penalty

The notice of intent will set out:

- the amount of the proposed financial penalty
- the reasons for proposing to impose the penalty and
- information about the right of the landlord to make representations within 28 days from when the notice was given

At the end of the period of representation, the council will decide whether to impose a penalty and the penalty amount.

If the council decides to impose the penalty, the person will receive a final notice requiring that the penalty is paid within 28 days.

## **Main principles for issuing a penalty charge**

Main principles for issuing a penalty charge are to:

- lower the risk to the tenant's health and safety and well being
- promote compliance of landlords in the private rented sector
- eliminate any financial gain or benefit from non-compliance with regulation
- education of landlords on the associated risks of non-compliance
- be proportionate to the nature of the breach of legislation and the risk posed
- aim to prevent future non-compliance
- penalising rogue or criminal landlords

## **Main principles to be considered when setting penalty charge levels**

The council is satisfied it has evidence of non-compliance and the breach allows for the council to require the owner/ landlord to pay a penalty charge.

This will be determined using the following principles:

- severity of the offence – the more serious the offence, the higher the penalty should be – please refer to the civil penalties' matrix
- culpability and record of the offender – a higher penalty will be appropriate where the offender has history of failing to comply with their obligations and or their actions were deliberate and or they knew or ought to have known that they were in breach of their legal responsibilities – landlords are running a business and should be expected to be aware
- the harm caused to the tenant – this is a very important factor when deterring the level of penalty – the greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty
- punishment 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 a high enough level to help ensure that it has real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities

- deter the offender from repeating the offence – the ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future, so the level of the penalty should therefore be set at a high enough level such that is likely to deter the offender from repeating the offence
- deterring others from committing similar offences – while the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty it will be set a high enough level to both punish the offender and deter repeat offending
- remove any financial benefit the offender may have obtained as a result of committing the offence - 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 properly managed

## Civil penalty matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out below which is to be read in conjunction with the main principles and level of penalty charge. The matrix is intended to provide an indicative minimum tariff under the various offences categories aforementioned with the final offence of the civil penalty adjusted in each case to consider other relevant or aggravating factors.

Severity of offence	Civil penalty band width
Moderate	£1,000 to £2,500
	£2,501 to £5,000
Serious	£5,001 to £10,000
	£10,001 to £15,000
Severe	£15,001 to £20,000
	£20,001 to £30,000

## Level of penalty charge

The council has the power to impose a civil penalty of up to £30,000.

The maximum amount will be reserved for the very worst offenders.

The council will impose a financial penalty under (a), (b), (c), (d), (e) and (f) in the penalty charge table on page 4, depending on the severity of the offence in any particular case, as well as considering the portfolio size of the landlord and experience in letting and management of property and previous record of offending.

Also, the council will impose multiple fines for each contravention of points (b) and (e). Where penalties are imposed under more than one of these points, the total amount of the financial penalty will not exceed £30,000.

The council has the right at any time to withdraw a notice of intent or final notice and reduce the amount specified in a notice of intent or final notice.

## **Role of the First Tier Tribunal**

A landlord who is served with a notice may appeal to the tribunal who will rehear the council's authority decision to impose the civil penalty.

They have the power to confirm, vary (increase or reduce) the size of the civil penalty or cancel the civil penalty.

## **Recovery of penalty charge**

The council can apply to a County Court for a court order to enforce the civil penalty and recover the debt where the landlord has not paid within 28 days of service of the charge notice and either:

- the landlord has not made an appeal to the First Tier Tribunal
- has made an appeal which has since been determined in the council's favour

Income received from a civil penalty can be retained by the local housing authority provided it is used to further the local housing authorities statutory function in relation to their enforcements activities covering the private rented sector.

## **Review of statement of principles and penalty charges**

This statement will be reviewed annually and published with the fees and charges for private sector housing.

## **Penalty charges 2019/20**

<b>Key</b>	<b>Offence</b>	<b>Penalty</b>
(a)	Failure to comply with an improvement notice (section 30)	£1,500*
(b)	Offences in relation to licensing of Houses in Multiple Occupation (section 72)	£2,500*
(c)	Offences in relation to licensing of houses under Part 3 of the Act (section 95)	£2,500*
(d)	Offences of contravention of an overcrowding notice (section 139)	£1,000*

(e)	Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)	£1,500*
(f)	Offences subject to banning orders under s21 Housing Act 2004	£1,500

\* Extra penalty charge will be applicable if deemed appropriate when setting the penalty level charge if the council are satisfied it has evidence of non-compliance and the harm/risk posed to the public

Any mitigating factors will be considered in the council's rights to make representation to withdraw or vary the civil penalty.