

Daventry District Council's

Civil Penalties and Rent Repayment Order Policy

Under the Housing and Planning Act 2016

Document Control

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1.0	February 2018	Adopted by Daventry District Council



1. Introduction

The power for local authorities to impose a civil penalty falls under section 126 and Schedule 9 of the Housing and Planning Act 2016. Daventry District Council has regard to statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016, in the exercise of its functions when considering Civil Penalties to address housing act offences. This document should be read in conjunction with Daventry District Council's Environmental Health and Housing Enforcement Policy 2017. To ensure consistency, protocols and procedures will be developed to sit alongside this policy.

Throughout this document, the term 'landlord' is used to refer to the property owner, property manager or letting agent. The term 'Council' is used to refer to the local authority being Daventry District Council.

This document has been produced in line with the Department for Communities and Local Government recommendation that local authorities should have a policy on determining the level of financial penalty applicable to each case.

Government passed the Housing and Planning Act 2016. Contained within were additional instruments for the purpose of assisting local authorities to tackle irresponsible landlords and to avoid unnecessary regulation on those landlords that do a good job.

The Council has had regard to statutory guidance issued in respect of the following additional instruments:

- **Civil Penalties** – as an alternative to prosecution with a maximum level of up to £30,000, the amount of fine up to this level is determined by the Council.
- **Extension of Rent Repayment Orders** - reclaim of rent from the landlord applied on certain offences contained within a number of Acts.

2. Civil penalties

Section 126 and Schedule 9 of the Housing and Planning Act 2016 allows the Council to levy a civil penalty and is reflective of the severity of the crime and the culpability of the offender. Therefore the penalty of £30,000 should be reserved for those that have committed the most serious offences.

Civil Penalties are used as an alternative to criminal prosecution and can be applied to all guilty parties in respect of a contravention of the following offences under the Housing Act 2004:

Offence	Housing Act 2004
Failure to comply with an Improvement Notice	Section 30
Offences in relation to the licensing of Houses in Multiple Occupation (HMO)	Section 72
Offences in relation to licensing of housing under Part 3 of the Act	Section 95
Failure to comply with an overcrowding notice	Section 139
Failure to comply with management regulations in respect of HMOs	Section 234

In addition; the Housing and Planning Act 2016, section 23, provides that a civil penalty can also be applied in respect of a breach of a Banning Order.

2.1 Statutory guidance

To ensure that civil penalties are set to an appropriate level in each case, paragraph 3.5 of the statutory guidance advises that the following factors be taken into account:

- a) **Severity of the offence**
- b) **Culpability and track record of the offender**
- c) **The harm caused to the tenant**
- d) **Punishment of the offender**
- e) **Deter the offender from repeating the offence**
- f) **Deter others from committing similar offences**
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence**

2.2 Determining an appropriate sanction

Where the Council believe there to be a realistic prospect of conviction, the use of civil penalties will ordinarily be prioritised over the application of criminal prosecutions. This will ensure that proceeds from the penalties can be used to finance further enforcement action and are retained for this purpose in accordance with statutory guidance (Section 8.1).

The decision on an appropriate sanction is done on a case by case basis.

A civil penalty **and** a rent repayment order can be sought for failure to comply with an improvement notice and for offences in relation to the licensing of Housing in Multiple Occupancy HMOs.

2.3 Introduction to the financial calculation

The Council will ensure that its calculation for civil penalties is consistent with the level of risk by applying the statutory factors contained within statutory guidance.

The breaching of a banning order is considered the most serious of housing offences. Where it is determined that a civil penalty would be the most appropriate course of action for this offence, the Council would normally set the penalty at the highest level of £30,000 to reflect the severity.

The Council also considers if the landlord has any previous record of offending this will be reflected within the calculation.

The calculated total amount ensures that the offender does not benefit as a result of committing the offence, deterring further bad practice.

Costs that can be accounted for include the cost of investigation, the preparation of the case and any costs related to defending a decision at the First-Tier Tribunal.

Appendix A – Civil penalty calculation guidance contains information about how a civil penalty is decided.

2.4 Further Consequences

Publicity - Following the successful application of a civil penalty, where there has been no appeal following a final notice, the Council may place information in the public domain. Information such as the name of the offender (if an individual), the name of the company, detail of the offence and the amount of penalty, will be published on the Council's website and other appropriate media channels.

Database - Local housing authorities will be able to record information about, and target enforcement action against, any landlord who:

- Is in receipt of a banning order under the Housing and Planning Act 2016,

- Has been convicted of a banning order offence, or
- Has received 2 (or more) civil penalties over a 12 month period.

2.5 Payment

A civil penalty must be paid within 28 days of the final notice, which would start the day following the notice being issued. A suspension would be forced due to an appeal only. The final notice will contain information with regard to making payment.

2.6 Consequences of non-payment

If the landlord or property manager/agent fails to pay a civil penalty or a rent repayment order, the Council will refer the case to County Court for an Order of that court. If necessary, the Council will use county court bailiffs to enforce the order and recover the debt.

2.7 Role of the First-tier Tribunal

Following the issue of a final notice for a civil penalty, and the recipient appealing, the First-Tier Tribunal will re-view the Council's decision to take this action. The First Tier Tribunal has the power to confirm, vary, or cancel the civil penalty.

The First-Tier Tribunal can dismiss an appeal should it have no real prospect of success or is considered to be vexatious, trivial or an abuse of process.

2.8 Income from enforcement

Income received from civil penalties must be used by the Council to further its statutory functions in relation to enforcement activities covering the private rented sector.

3. Rent Repayment Orders

3.1 Overview

The Council can apply to the First-tier tribunal for a rent repayment orders, that have now been extended, to include the following offences:

Offence	Act	Section
Offences in relation to licensing of Houses of Multiple Occupation (HMOs), or licensing of houses	Housing Act 2004	72(1) 95(1)
Failure to comply with an Improvement Notice	Housing Act 2004	30
Failure to comply with a Prohibition Order	Housing Act 2004	32
Breach of a banning order	Housing and Planning Act 2016	21
Using violence to secure entry to a property	Criminal Law Act 1977	6
Illegal eviction or harassment of the occupiers	Protection from Eviction Act 1977	1

Additionally, the Council is able to impose a civil penalty **and** apply for a rent repayment order for the following offences contained within the Housing Act 2004:

Offence	Section
Failure to comply with an Improvement Notice	30
Offences in relation to licensing of Houses of Multiple Occupation (HMOs), or licencing of houses	72(1)

Where a landlord has been convicted of the offence the order relates to, the First-Tier Tribunal will order that the maximum amount of rent is repaid. Rent repayment orders are capped at a maximum of 12 months.

3.2 Statutory guidance

In the case of a civil penalty and where a landlord has not been convicted of the offence to which the rent repayments order application relates, the following factors should be taken into consideration when deciding how much rent the Council should seek to recover:

- a) **Punishment of the offender**
- b) **Deter others from committing similar offences**
- c) **Remove any financial benefit the offender may have obtained as a result of committing the offence**
- d) **Financial details and track record of the offender**

3.3 Determining an appropriate sanction

Where the Council is confident that there would be a realistic prospect of the order being granted it will choose to follow this action. It is not a requirement for the landlord to have been convicted of an offence prior to an application for a rent repayment order. Where a conviction is made, the First Tier-Tribunal must award a rent repayment order.

The Council must consider a rent repayment order if they have been made aware that the offender has been convicted for any of the offences specified in the legislation.

The Council will follow statutory guidance in suggesting the amount repayable. Tenants also have the option of applying for an order independently, if they have paid the rent themselves. In which case the Council are not obliged to assist but advice can be offered.

3.4 Role of the First-tier Tribunal

If a landlord is convicted in respect of the same offence that a rent repayment order is made, then the First Tier-Tribunal must award the maximum amount of rent, which is capped at 12 months' worth. Discretion is applied on the amount where there has not been a conviction.

3.5 Income from enforcement

In accordance with guidance (Section 8.1); A rent repayment order can be granted to the person who paid the rent. Where the rent has been paid through housing benefit or the housing element of Universal Credit, then the amount is due back to the Council. If the amount has been paid by benefit or Universal Credit and paid by the tenant, then the amount would be due back the Council and the tenant on an equivalent basis.

4. *Monitoring and Review*

This Civil Penalties and Rent Repayment Order Policy will be reviewed and monitored to ensure that it meets with legislative requirements. A regular review will take place annually.

Appendix A – Civil penalty calculation guidance

The Council's civil penalty calculation is set in accordance with statutory guidance and takes into account the actual offences and the other factors to consider as contained within statutory guidance (para 3.5, or section 2 of this document).

The calculation will take into consideration the actual offences in line with the Housing Act 2004 and set an initial penalty and also take into consideration the offenders track record. The calculation then considers the seriousness of the offence.

Offence + Seriousness = Civil penalty amount

Breach of a banning order is recognised as the most serious of housing related offences, and therefore a maximum level of £30,000 without the calculation being applied, is set for this offence to reflect the severity of breaching a banning order.

Seriousness

The general concept of seriousness is applicable to the Council's assessment when determining the level of civil penalty to apply. To establish this, the Council calculates that culpability plus harm equals seriousness.

Culpability

The culpability assessment is a measure of the degree in which the offender can be held morally, or legally responsible for actions taken, or not taken, and consists of four levels:

- **Very high** – Where the nature of the offender's conduct has intentional, flagrant disregard for the law e.g. failure to comply with an improvement order
- **High** – A reckless or conscious disregard of risk e.g. not taking necessary fire precautions
- **Medium** – Where the offender should have been aware of the risk, but due to neglect, they have failed to take reasonable care e.g. part compliance of notice within set time
- **Low** – Little culpability. Did not fall short of appropriate standard.

Harm

The harm assessment encompasses offences where harm is caused or where risk is present and harm is likely to occur. It takes into consideration the affliction on individuals, i.e. tenants, as well as to the community. It is an important factor to consider as actual harm maybe less or greater than culpability, and therefore the degree of seriousness does not rely on culpability alone. The HHSRS assessment is the guide for the following levels:

- **Extreme** – Where the risk is identified and has caused or has the potential to cause significant harm e.g. death, related serious illness, burn injury. Categorized within Class I of HHSRS
- **Severe** – Where the risk identified has caused or has the potential to cause severe, but not extreme, harm e.g. poisoning, loss of hand or foot, serious fractures, within Class II of HHSRS
- **Serious** – Where the risk identified has caused or has the potential to cause less severe nonetheless still serious harm e.g. loss of a finger, severe concussion, less severe heart attack, eye disorders, within Class III of HHSRS

- **Moderate** – Where the risk identified has caused or has the potential to cause harm that is less serious e.g. broken finger, mild pneumonia, bruising, regular colds within Class IV of HHSRS
- **Low / Nil** – No harm / very little harm caused in comparison with moderate level

Adjustment

The Council may adjust set charges to take into account early repayment, officer costs in completing an investigation, and to reflect the offender's income and track record.