

Private Sector Housing Enforcement Policy

**THE PRIVATE SECTOR HOUSING ENFORCEMENT POLICY FORMALLY
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Bradford 431010

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PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

Aim

The aim of this policy is to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.

The policy is explained in general terms, as it is intended to be applied in a wide range of situations, the approach adopted by the Private Sector Housing Service when carrying out the Council's powers to enforce a wide range of legislation.

The policy is based on the following principles: -

- * **Consistency:** to ensure that similar issues are dealt with in the same way
- * **Fairness:** to ensure a fair and even handed approach
- * **Transparency:** to ensure that the enforcement action taken by the Council is easily understood by individuals, organisations and businesses
- * **Objectivity:** all enforcement decisions will be fair, independent and objective.

The policy has been written with regard to the Regulator's Code produced by the Better Regulation Delivery Office.

1.0 Introduction

- 1.1 One of the priorities for action for the City of Bradford Metropolitan District Council (the Council) is to ensure good quality healthy housing for all, targeting those properties that present the greatest risk to health and safety.

In order to achieve this priority the Council:-

- a) Will seek to ensure properties achieve the appropriate standards in co-operation with the owners/agents and tenants by the provision of clear advice, guidance, encouragement and recommendations for improvements.
 - b) Will utilise all appropriate enforcement action to achieve the appropriate standards in properties found to be jeopardising the health, safety or welfare of individuals and will, where legislation allows, make an appropriate charge for doing so.
 - c) Will regularly review its policy, standards, schemes and methods of assessing risk and will, in doing so, consider the views of interested parties and individuals. All such policies and standards, etc. will be made freely available.
 - d) Will seek to carry out its responsibilities efficiently and effectively in a way, which is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement.
 - e) Will ensure that provision is made for interpreting information where individuals have difficulty in understanding English.
 - f) Will make arrangements to carry out visits outside of normal office hours where appropriate.
- 1.2 It is the Council's policy that enforcement action in relation to Private Sector Housing will be related to risk. The policy will be implemented through visits and inspections; all enforcement decisions will be based on risk to health/safety and welfare.
- 1.3 Assessment of risk will be based on current research, legislation and specific guidance.
- 1.4 Action taken by the Council will be appropriate to the risk or hazard identified, having regard to the occupancy and type of property.
- 1.5 The Private Sector Housing Service has investigative and enforcement powers relating to all private housing regardless of tenure. However the approach may vary depending on the tenure of the household.

- **Private Landlords and Tenants**

Tenants within rented accommodation do not have the same level of control over their homes, in the same way that owner occupiers do. They are reliant on landlords or their agent to adequately maintain their homes in accordance with

legal requirements.

The Council will normally take enforcement action where required, against landlords or agents who are putting the health, safety and welfare of their tenants at risk, or in circumstances where conditions at the tenanted property are causing serious issues to neighbouring property.

The Council would normally expect the tenant of a property to have informed their landlord and/ or agent of any property related problem and allowed reasonable time for remedial action before contacting the Council for assistance.

- **Owner Occupiers**

Owner occupiers are usually in a position to make informed decisions about maintenance or safety issues in their homes. Formal enforcement action against this tenure group would normally be limited.

Officers would always aim to provide owner occupiers with appropriate advice as to how they can mitigate any hazards identified. In cases, however, where there is a severe risk to the health and safety of occupiers, or where there are conditions that have the potential to cause serious issues to neighbouring property, the Council may take formal action against owner occupiers.

- **Registered Providers (RP)**

These are usually Housing Associations that are private, non-profit making organisations which provide low cost “social housing” for people in need. Their performance is scrutinised by Homes England and the Housing Ombudsman.

Registered providers have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure.

The Council will not normally take action against an RP, unless the problem in question has been properly reported to the RP, which has then failed to take the appropriate action. The Council will consider enforcement action against an RP where there are significant risks to the health, safety and welfare of tenants and/or the wider public.

- 1.6 On completion of an investigation the next course of action shall be determined by reference to Sections 2 and 3 of this Policy document.
- 1.7 The Council's officers will abide by the policy at all times.
- 1.8 The legislation relating to Private Sector Housing can be enforced by several enforcement agencies. Where there are shared enforcement roles e.g. with other council services or external agencies such as West Yorkshire Fire &

Rescue Authority, Health & Safety Executive, West Yorkshire Police etc., officers will ensure that:

- Investigations are led by the most appropriate enforcing authority;
- Any housing enforcement action is undertaken in accordance with agreed protocols and will involve the relevant authority or service in the investigations, information gathering and sharing to ensure it is carried out effectively.

Where a business has registered with a Primary Authority under the Regulatory Enforcement and Sanctions Act 2008 then the Council, during the course of its appropriate enforcement duties, will comply with these Primary Authority requirements, take advice from the partner organisation, where appropriate, and/or will advise such agencies of any contraventions for which that agency is responsible.

- 1.9 It is recognised that any policy is unlikely to take account of every individual situation. Each case therefore needs to be considered on its merits. This policy will act as the guide for officers. In cases where officers consider that a decision should be made outside this policy, they will first refer the matter to the appropriate Strategic Director who will consider all of the information prior to making a decision.
- 1.10 Officers carrying out enforcement functions have been authorised by the Council in accordance with the Scheme of Delegation. Each officer will carry an identification card.
- 1.11 Authorised officers may exercise their power of entry to enter premises in order to perform the Council's statutory functions.

2.0 Enforcement Action

In order to achieve and maintain consistency in Private Sector Housing enforcement the Council will normally use the following range of enforcement options as appropriate: -

No action

Informal Action

Statutory Notices/Orders

Civil Penalty Notices, Monetary/Financial Penalties or Penalty Charges

Simple Caution

Prosecution

Default

Emergency Measures

2.1 Informal Action

Informal action will include verbal advice, advisory letters and “Notification of Works Required” (in respect of contraventions of housing legislation).

Informal action will be considered appropriate in the following circumstances: -

- a) the act or omission is not serious enough to warrant formal action,
- b) from the individual/company’s past history it can be reasonably expected that informal action will achieve compliance,
- c) the consequences of non-compliance will not pose a significant risk to the health and safety of the public.
- d) in instances where action is deemed necessary to remedy breaches of housing legislation “Notification of Works Required” will normally be given to individuals/companies prior to any formal action being taken. The use of informal action in these circumstances will be related to risk to health/safety/welfare.

Any documentation sent to individuals/companies through informal action will: -

- i) indicate the legislation contravened (if appropriate), the measures to be taken to ensure compliance with any legal requirements and any timeframe for compliance
- ii) contain all the information necessary to understand what work is required

and why it is necessary

- iii) in the case of informal action taken under housing legislation, include an advisory warning that should it be necessary for the Council to take formal action in respect of the said matter that a charge will be made at a level fixed within the Council's agreed charges, and that the Authority will take steps to recover debts incurred in this way. This warning will also indicate methods by which the debt may be recovered.
- iv) give individuals/companies the opportunity to contact the appropriate officer to discuss the matter further.

Officers giving verbal advice will ensure that they clearly differentiate between those items, which are legal requirements, and those, which are recommended as good practice. Where necessary, any verbal advice given will be confirmed in writing.

2.2 Statutory Notices/Orders

The Council will serve statutory notices where they have a statutory responsibility to do so, taking into account the following criteria:-

- a) there are significant contraventions of legislation but prosecution is not appropriate,
- b) where informal action has not achieved the desired effect,
- c) there is a lack of confidence that the individual/company will respond to an informal approach,
- d) there is a history of non-compliance with informal action,
- e) standards are generally poor with little management awareness of statutory requirements,
- f) the consequences of non-compliance could be potentially serious to public health,
- g) Where a prosecution is envisaged but there is an identified need for effective action to be taken as quickly as possible in order to remedy conditions which pose an immediate risk to health/safety/welfare.

The use of statutory notices will normally be related to risk to health/safety/welfare.

Officers serving statutory notices will be prepared to discuss the works specified with individuals/company representatives and will fully consider any representations made.

Where a formal notice is served, the method and timeframe for appealing against

the notice (i.e. if you feel that the notice is excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right (where appropriate), what will happen if the notice is not complied with and, where statute dictates, will specify the reasons for the enforcement action being taken.

Failure to comply with a statutory notice will normally result in further enforcement action through either the issuing of a Civil Penalty Notice (where appropriate) or the instigation of legal proceedings.

The decision whether to take:

- Informal or Formal action
- Further enforcement action

will be documented.

Certain notices, orders and charges are required to be registered as a local land charge and whilst the matter is outstanding, these will be disclosed to any prospective purchaser making a local land search.

2.3 Civil Penalty Notices, Monetary/Financial Penalties and Penalty Charges

Civil Penalty Notices, Monetary/Financial Penalties or Penalty Charges can be applied under certain legislation where there is a breach in legal requirements.

The Council will normally serve civil penalty notices for relevant Housing Act offences in the first instance. The decision to do so will be based on risks, present and future, to health, safety and welfare.

Decisions relating to civil penalty notices or monetary/financial penalties will be made in line with the Council's policies and/or general principles relating to those specific duties and powers. All decisions will be documented.

Where a penalty is not paid within the prescribed period, legal proceedings will be instituted for non-payment.

The Council's policy and principles in relation to:

- Civil penalties issued under the Housing and Planning Act 2016 and
- Financial penalties issued under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- Financial penalties issued under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- Financial penalties issued under the Housing and Planning Act 2016 for a breach of a banning order
- Financial penalties issued under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

are attached to this policy at Appendix 1, 2 ,3, 4 and 5 respectively.

2.4 Rent Repayment Orders

A Rent Repayment Order (RRO) is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

The Council will normally consider applying to the First-tier Tribunal for a Rent Repayment Order where:

- a landlord has been convicted of a relevant offence under housing legislation relating to a specific property and
- where the rent for a tenancy at that specific property was being paid using Housing Benefit or the housing costs element of universal credit at the time of the offence

When making an application for a Rent Repayment Order officers will have regard to the Rent Repayment Orders under the Housing and Planning Act 2016 Guidance for Local Housing Authorities.

All decisions will be documented.

2.5 Simple Cautions

Administration of a simple caution is a serious matter. It may be used to influence any future decision whether or not to institute proceedings if the person should offend again. Simple Cautions may also be referred to in subsequent court proceedings.

The Council may offer simple cautions as an alternative to prosecution in order to: -

- a) deal quickly and simply with less serious offences
- b) to divert less serious offences away from the Courts, and
- c) where there is a low likelihood of repeat offences

The Council will normally only offer simple cautions where: -

- a) there is evidence of the offender's guilt sufficient to give a realistic prospect of conviction
- b) the offender admits the offence, and
- c) the offender clearly understands the significance of a formal caution and gives informed consent to being cautioned
- d) the use of a formal caution is considered to be in the public interest.

Simple cautions must not be used as a substitute for prosecutions, which would

otherwise be defective.

Simple cautions may not be appropriate where it would prevent a Compensation Order from being made through the Courts.

The Council would not normally offer a simple caution where a civil penalty notice is available as an alternative option to prosecution.

The decision process to determine whether to prosecute offenders, issue a civil penalty notice or issue a simple caution including the recommendation from the officer will be documented. This document should then be passed to the appropriate Housing Manager and Head of Service for their consideration.

The Head of Service may exercise discretion in reaching a decision to issue a formal caution, civil penalty notice or prosecute. The Head of Service must be able to justify a decision, which is contrary to that indicated by the documented decision matrix.

If the decision is taken to prosecute, a copy of the matrix must be placed in the prosecution file so that the advocate can indicate to the Court how the decision was arrived at, if necessary.

Simple cautions will only be administered by those officers listed in Section 3.1 – “Decision Making – Simple Cautions”. The Head of Service will normally administer the caution.

Simple cautions will only be administered in the Council’s offices except where the offender is elderly, infirm or otherwise vulnerable.

When considering the issuing of a simple caution the Head of Service may consult Legal Services if necessary.

A central register of cautions issued will be maintained. One copy of each simple caution issued must be sent to the Management Officer within one week of issue.

Where an individual/company declines the offer of a simple caution the Council will invariably instigate legal proceedings.

Any decisions to offer a simple caution will be made in accordance with guidance issued by the Ministry of Justice.

2.6 Prosecution

The Council recognises that the decision to prosecute is significant and could have far reaching consequences upon the alleged offender.

The Council will only instigate legal proceedings where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction and that prosecution for the offence is in the public interest.

The decision to prosecute will only be made by those officers listed in Section 3.2 - "Decision Making – Prosecutions".

In making the decision to prosecute the following factors will be considered, in line with the guidance in the Code of Practice for Crown Prosecutors: -

- a) the seriousness of the offence;
- b) the previous history of the landlord/owner or person responsible;
- c) the ability of witnesses and their willingness to co-operate;
- d) evidence that the individual or company is concerned to prevent a recurrence of the problem;
- e) whether a prosecution would be in the public interest and the importance of the case,
- f) whether other action, such as issuing a simple caution, a civil penalty notice or the service of a statutory notice would be more appropriate or effective
- g) any explanation by the individual/company.

In exceptional circumstances the Council will consider prosecution at the same time as the service of a statutory notice.

Any departure from this policy when making a decision with regard to prosecution will require justification and authorisation from a Head of Service.

The decision whether to prosecute or take an alternative course of action will be documented.

All prosecutions will be brought without unnecessary delay.

Where a prosecution results in a successful conviction the Council will normally consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State and best practise

available. All decisions will be documented.

2.7 Banning Orders

Where a prosecution for a banning order offence under the Housing Act results in a successful conviction the Council will normally consider whether to apply to the First Tier Tribunal for a banning order.

Decisions relating to banning orders will be made in line with the Council's policies and/or general principles relating to those specific duties and powers. All decisions will be documented.

The Council's policy and principles in relation to:

- Banning Order offences under The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018

is attached to this policy at Appendix 4.

2.8 Default

The Council will normally only carry out works in default of a statutory notice where:

- a) there is an imminent risk to health/safety/welfare, such that the consequences of not taking immediate and decisive action would be unacceptable or
- b) statute does not permit prosecution for non-compliance with a statutory notice, e.g. Local Government (Miscellaneous Provisions) Act 1982 section 29, Public Health Act 1936 section 79 or
- c) in the case of Building Act 1984 Section 59, where the Housing Manager is satisfied that circumstances are such that default is the best course of action.

In exceptional circumstances, the Council will consider default in addition to other enforcement action such as a civil penalty notice or prosecution.

Where the Council has undertaken work in default it will recover the actual capital costs for the work and an administrative charge to recover costs incurred in arranging for a contractor; supervising the work and all associated administrative procedures.

The Council will register all costs incurred in undertaking default works as a local land charge against the premises.

Authorised officers may exercise their power of entry to enter premises in order to perform the Council's statutory functions.

The Council will consider taking enforcement action in cases where officers or contractors are obstructed in undertaking their duties or carrying out works. The same obstruction offences still apply once emergency procedures have commenced.

2.9 Emergency Measures

The Council will only use emergency enforcement powers under housing legislation where there is an imminent risk of serious harm.

In such circumstances the Council will take whatever remedial action it considers necessary to remove an imminent risk of serious harm. This could include taking remedial action in respect of a hazard and the recovery of reasonable expenses or prohibiting the use of all or part of a property.

Such emergency measures will only be taken where the Housing Manager is satisfied that the use of emergency powers is the best course of action.

Where emergency measures are taken, the owner of the property or other relevant person will be advised of the method and timeframe for appeal against the action taken.

3.0 Decision Making

3.1 Simple Cautions

The following officers are authorised to administer formal cautions: -

Strategic Director of Place
Assistant Director (Economy and Development)
Head of Service (Housing Operations)

3.2 Prosecutions

The following officers may authorise the instigation of legal proceedings subject to the final approval of Legal Services: -

Strategic Director of Place
Assistant Director (Economy and Development)
Head of Service (Housing Operations)

The following officers will be consulted as part of the decision making process: -

Housing Managers
Senior Environmental Health Officer (where appropriate)
The Officer dealing with the case

4.0 Houses In Multiple Occupation (HMO's)

- 4.1 Housing legislation requires that certain categories of HMO must be licensed by the Council.
- 4.2 The Council charges a licence fee for HMO licences. Details of the licence fees are included in the Council's Fees and Charges.
- 4.3 Properties inspected will be assessed in accordance with the Council's approved standards for HMO's. These standards are available from the Housing Office and on the Authority's website.
- 4.4 The Council will seek to identify all HMO's in the District and will, in the first instance, assess each property under its approved risk assessment process and identify those that require a licence. It will endeavour to re-assess properties at least once every five years and owners, agents and occupiers will be encouraged to assess their own houses and to agree to carry out phased improvements.
- 4.5 The Council will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose themselves to enforcement action through lack of understanding or information. However, properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.
- 4.6 Licences for the mandatory HMO licensing scheme will normally be granted for a five year period. However, those who are late in making a licence application will be issued with a reduced term licence.
- 4.7 The Council will endeavour to inspect all licensed HMOs at least once during the licence period for that property. Properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.
- 4.8 Documentation issued as part of an HMO licence will include details of the appeals process.
- 4.9 The Council has a Zero tolerance approach to the mandatory licensing of H.M.Os. Where the Council becomes aware of a licensable HMO that is being operated without a licence it will normally take formal enforcement action such as issuing a civil penalty notice or prosecution.

In these circumstances the Council may issue a reduced term licence and remove any entitlement to any fee discount.
- 4.10 In line with legislation, the Council can refuse to issue, to vary or revoke a HMO licence. Where such action is deemed appropriate details of the decision will be documented.

5.0 Overcrowding and lack of space

- 5.1 Overcrowding and lack of space in houses/flats can give rise to issues such as inconvenience, lack of privacy, stress and increased risks to health through injuries and disease.
- 5.2 In order to minimise such risks for residents in the Bradford district the Council would normally expect any occupation of premises to comply with the following requirements:
- 5.3 For the purposes of the space standards, any child, regardless of age, is counted as a person.
- 5.4 No two persons of age 10 years or more, of opposite sex, to sleep in the same room unless they are married or are cohabiting.
- 5.5 All habitable rooms, kitchens, bathrooms and toilet compartments should have a minimum floor to ceiling height of 2.14m (7ft), except in the case of existing attic rooms, which shall have a minimum height of 2.14m (7ft) over an area of the floor equal to not less than $\frac{3}{4}$ of the area of the room, measured on a plane 1.5m (5ft) above the floor.
- 5.6 Any floor area with headroom of less than 1.5m (5 feet) will be discounted.
- 5.7 Irrespective of floor area, consideration shall be given to the shape and useable space within the kitchen or room, to determine whether it is suitable and safe for its proposed use.
- 5.8 The minimum sizes for rooms in different types of HMO's are stipulated in the respective specific standards document. These standards are available from the Housing Office and on the Authority's website.
- 5.9 In the case of all accommodation that has been commissioned by the Local Authority for use as Temporary Accommodation and where the Housing Operations Service assess the hazard of 'Crowding and Space' as a Category 2 hazard under the Housing, Health and Safety Rating System (England) Regulations 2005, no enforcement action will be taken under the Housing Act 2004 for a period normally not exceeding 6 months.

6.0 Property Redress Scheme

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 requires all letting agents or property management businesses to be a member of a government approved or administered redress scheme.

Where a letting agent or property manager is identified as not being registered with one of the schemes, then a monetary penalty will be imposed by the Council.

In line with the legislation, Notices will be served on an individual/organisation prior to a monetary penalty being issued.

Where a letting agent or property manager demonstrates to the Council that they have joined one of the above redress schemes within the 28 day notice period specified within the notice the Council will reduce the fine level to only recover the costs associated with administering these powers in relation to the specific case.

Details of the financial penalties are included in the Council's Fees and Charges.

There is no limit to the number of fines that can be levied on a single letting agent or property manager if they continue not to be a member of a scheme.

Decisions on when to enforce a monetary penalty will be documented.

Where a penalty is not paid within the prescribed period, legal proceedings will be instituted for non-payment.

7.0 Harassment and Unlawful Eviction

- 7.1 Where the service becomes aware of allegations of offences of harassment of illegal eviction which threaten a tenant's rights in their tenancy they will normally refer the tenant to an appropriate partner organisation for assistance.

8.0 Charging for Enforcement Action

The Council will normally make a reasonable charge to recover administrative and other expenses incurred when taking the enforcement action under the Housing Act 2004. This will include when the following notices are served or actions taken:

- Serving an Improvement Notice under Sections 11 and/or 12;
- Making a Prohibition Order under Section 20 or 21;
- Serving a Hazard Awareness Notice under Section 28 or 29;
- Taking Emergency Remedial Action under Section 40;
- Making an Emergency Prohibition Order under Section 43;
- Undertaking an annual review of a Suspended Improvement Notice or a Suspended Prohibition Order, and
- Making a Demolition Order under Section 265 of the Housing Act 1985.

Any charges made for taking enforcement action will be detailed in a 'Demand or Payment' notice. The Charge will be recovered through the Council's Debt Recovery Service.

This charge is registerable as a local land charge on the Land Charges Register. Details of the financial penalties are included in the Council's Fees and Charges.

9.0 Fines, Recovery of Costs and Proceeds of Crime

In prosecution cases the Council will seek to recover the costs incurred in taking a prosecution case, which include administrative costs incurred for preparing the prosecution file; attendance at court and Legal costs for preparing and presenting the case.

In cases where a property has been let illegally, or where there has been a breach of legal requirements, the Council will consider applying to the First Tier Tribunal Service to recover rent from a landlord through a Rent Repayment Order. It will also give advice to tenants on how they may recover rents through applying to the Tribunal Service in these circumstances.

Where there is substantial financial gain for a landlord or owner through non-compliance with legislative requirements in the private rented sector, the Council will consider taking action to confiscate or recover monies gained through illegal activities under the Proceeds of Crime Act 2002.

10.0 Compliments and Complaints

As required by the Regulators Code, the authority has a Compliments and Complaints Procedure which allows all service users to give a compliment, give feedback or make a formal complaint. This can be accessed through the Council's website or by telephoning the contact centre.

Further Contact

If you require any further information, you can contact this service at:

Housing Operations
Britannia House
Hall Ings
Bradford
BD1 1HX

Tel: 01274 434520

Email: CHPEnquiries@bradford.gov.uk

Appendix 1

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL

POLICY FOR THE USE OF CIVIL PENALTIES FOR HOUSING OFFENCES

This policy is intended to operate in accordance with the City of Bradford Metropolitan District Council's Private Sector Housing Enforcement Policy (the Enforcement Policy) published by the Council and the Civil Penalties under the Housing and Planning Act 2016, Guidance for Local Authorities published by the Ministry of Housing, Communities and Local Government (MHCLG).

Introduction

The Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. Schedule 9 of the Housing and Planning Act 2016 inserts a new Section 249A into the Housing Act 2004 which establishes the legal basis for imposing civil penalties as an alternative to prosecution for specific offences under the Housing Act 2004.

Civil penalties are an alternative when a landlord fails to comply with:

- Section 30 – failure to comply with an improvement notice
- Section 72 – mandatory licensing of HMO
- Section 95 – licensing under Part 3 of the Housing Act 2004
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO

The Government has laid out statutory guidance as to the process and the criteria that need to be considered when determining Civil Penalties. These are:

- Level of culpability
- Level of harm
- Severity of the offence
- Aggravating Factors
- Mitigating Factors
- Penalty to be fair and reasonable
- Penalty to be such as to be a deterrent and remove the gain derived through the failure to comply

The statutory guidance indicates that the Council should ensure that the civil penalty acts as a punishment, takes into account any previous patterns of offending and no offender should benefit as a result of committing an offence.

The legislation allows a maximum financial penalty of £30,000 per offence. In determining the level of any penalty the Council will have regard to local circumstances, the Private Sector Housing Enforcement policy and the relevant Government guidance detailing the factors to take into account, as shown above.

The overriding principle when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation.

What is the burden of proof for a civil penalty?

The proof is the same as set out previously for the offences under the Housing Act 2004. For a criminal prosecution the Council must satisfy itself that it can show beyond reasonable doubt that the landlord has committed the offence and that if heard in a magistrates' court there would be realistic prospect of conviction.

The Council will consider:

- Does it have sufficient evidence to prove beyond reasonable doubt that an offence has been committed by the landlord?
- Is there a public interest in imposing a Civil Penalty on the landlord in respect of the offence?
- Has the Council taken into account its own Enforcement Policy when deciding to impose the civil penalty including the alternative option of prosecuting for the offence?

In considering the evidence and making decisions officers will have regard to the Evidentiary State of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions and the Public Interest Stage of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutions" published by the Director of Public Prosecutions.

All decisions as to determining whether or not to pursue a Civil Penalty will be in accordance with the Private Sector Housing Enforcement Policy and will be documented.

Process for Imposing a Civil Penalty

Where it has been determined that a financial penalty is the most appropriate course of action 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:

- 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.

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.

To enable the Council to consider any representations made it will be the landlord's responsibility to provide appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence within the timescale will mean that the Council will not be able to consider any representation against the level of penalty imposed.

Representations can only be made by the recipients served with a Notice of Intention. No other parties have an automatic right to make representations. The Council will consider any information provided on a case by case basis.

Following the 28 day period the Council will decide, whether it receives written representation or not:

- a. Whether to impose a financial penalty on the person, and
- b. The value of any such penalty imposed.

If the Council decides to impose a financial penalty, a final notice will 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.

The Council can at any time withdraw either the Notice of Intent or Final Notice or reduce the level of penalty imposed. Where a decision is made to withdraw or vary a notice the person on whom the notice was served will be informed in writing.

If the Council decides to withdraw a civil penalty, it has the right to pursue a prosecution against the landlord for the original offence for which it was imposed. Each case will be considered on its merits and decisions will be taken having regard to Crown Prosecution Service guidance and the Council's Enforcement Policy.

A landlord who has been served a Final Notice has the right of appeal to a First Tier Tribunal. In the event of such an appeal the civil penalty would be suspended until the appeal is determined or withdrawn.

Payment of the civil penalty will be within 28 days of the date of the Final Notice, unless appealed. Where appealed and the decision to serve the Notice is upheld it will be for the Tribunal to specify the period in which the landlord is to pay any fine imposed.

The Council will normally consider a reduction of up to a third of the penalty if at the first opportunity the landlord admits guilt for the offence and immediately remedies any outstanding issues. This is in line with the Sentencing Guidelines. Any reduction will only be available for the first offence and will not be less than the minimum level of penalty or the level of financial gain plus £2000 or 10% (whichever is the greater). Any subsequent offence will not be subject to any reduction.

The discount will only be applied to the landlord when the Council serves the Final Notice and the following criteria is met:

- The payment is made within the 28 days of the date of the Final Notice and
- The payment is made in full

At any point after 28 days of service of the notice of the Final Notice there will be no further offer of any reduction in the level of penalty.

If the financial penalty imposed is not paid within the appropriate time period, either 28 days from the date of the Final Notice or within such time as determined by the First Tier Tribunal the Council will commend proceedings to recover the debt owed. This will include the recovery of any additional costs to the Council from having to undertake such action.

A certificate signed by the Chief Financial Officer for the Authority including the outstanding financial penalty imposed unless the offender has supplied any financial information to the contrary.

It is for the offender to disclose to the Council such data relevant to his financial position as this will enable it to assess and determine what they can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case. ***This may include the inference that the offender can pay any financial penalty.***

When considering the level of any financial penalty the final determining factor will always be the level of financial gain as a result of the landlord's failure to comply with the relevant legislation.

Consequence of a Civil Penalty

Financial Penalties are an alternative to criminal proceedings. A landlord cannot be prosecuted for the same offence once the penalty has been paid and the matter concluded.

Where a civil penalty has been imposed on a landlord it will not automatically prevent the Council from granting a licence under Part 2 or 3 of the Housing Act 2004. The Council will consider each case on its merits including the reasons for the penalty and the extent of the person's involvement in any property under consideration.

Where a person has received two financial penalties under the legislation in any 12 month period, irrespective of the locality in which the offences were committed, the Council will normally consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State and best practise available. All decisions will be documented.

Determining the Level of the Civil Penalties

Section 143(1) Criminal Justice Act 2003 states: “In considering the seriousness of any offence the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably cause”. It also considers harm as encompassing those offences where harm is caused but also those where neither individuals nor the community suffer harm but a risk of harm is present.

In order to set the level of the penalty the Council will determine the offence category using the culpability and harm factors below:

Level of Culpability

The level of culpability of a landlord will depend upon a number of factors:

High Level of Culpability

A landlord will be deemed to be highly culpable when they intentionally or recklessly breach or wilfully disregard the law.

Factors that will contribute to this assessment will include:

- They have a history of non-compliance
- Despite a number of opportunities to comply they have failed to do so
- They have been obstructive as part of the investigation
- Failure to comply results in significant risk to individuals
- They are a member of a recognised landlord association or accreditation scheme
- They are an experienced landlord with a portfolio of properties who is failing to comply with their obligations
- Serious and/or systematic failure to comply with their legal duties

Medium level of Culpability

A landlord commits an offence through an act or omission that a person exercising reasonable care would not commit.

Factors that will contribute to this assessment will include:

- It is a first offence – with no high level culpability criteria being met
- Failure is not a significant risk to individuals
- The landlord had systems in place to manage risk or comply with their legal duties but these were not sufficient or adhered to or implemented.

Low Level of Culpability

A landlord fails to comply or commit an offence with little fault.

Factors that will contribute to this assessment will include:

- No or minimal warning of circumstances
- Minor breaches
- Isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance

The above examples are not exclusive and other factors may be taken into account when considering the level of culpability.

Level of Harm

When considering the level of harm both the actual, potential and likelihood of the harm will be considered:

High Level of harm

A high level of harm could constitute:

- Serious effect on individual(s) or widespread impact
- Harm to a vulnerable individual
- High risk of an adverse effect on an individual

Medium Level of harm

A medium level of harm could constitute:

- Adverse effect on an individual – not high level of harm
- Medium risk of harm to an individual
- Low risk of a serious effect
- The Council's work as a regulator to address risks to health is inhibited.

Low Level of harm

A low level of harm could constitute:

- Low risk of harm or potential harm
- Little risk of an adverse effect on individual(s)

The above examples are not exclusive and other factors may be taken into account when considering the level of harm.

The statutory guidance states that the harm caused and vulnerability of the individual are important factors in determining the level of penalty.

The Housing Act 2004 defines a vulnerable individual(s) as one who is at greater harm and therefore the penalty proposed will normally be greater when vulnerability is an

issue.

Determination of the Level of Penalty

The statutory guidance makes it clear that it is for each Council to determine the level of fine imposed under the Housing and Planning Act. The table below shows the initial level of fine for each level of culpability and harm, including the minimum level of fine that the Council will normally impose for each classification.

DETERMINATION OF CIVIL PENALTY LEVEL				
LEVEL OF CULPABILITY	LEVEL OF HARM			MINIMUM FINE LEVEL (when considering mitigating factors)
	HIGH	MED	LOW	
HIGH	25000	15000	7500	6000
MED	15000	10000	5000	4000
LOW	7500	5000	2500	2000

Adjustments to the Initial Penalty Determination

In order to determine the final penalty the Council will consider both aggravating and mitigating factors in each case. Officers will then adjust the initial level of the penalty based on these factors.

Below is a list of both aggravating and mitigation factors which will be considered as part of the determination. The list is not exhaustive and other factors may be considered depending on the circumstances of each case.

Aggravating factors could include:

- Previous relevant convictions and time elapsed since those convictions
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation
- Record of poor management/inadequate management provision
- Lack of a tenancy agreement/rent paid in case

When considering previous offences regard will be given to the guidance on Banning Orders as well as any other relevant offence such as trafficking etc.

Mitigating factors could include:

- Co-operation with the investigation e.g. turns up for PACE interview
- Voluntary steps taken to address issues e.g. submits a licence application

- Acceptance of responsibility e.g. accepts guilt for the offence(s)
- Willingness to undertake training
- Willingness to join a recognised landlord accreditation scheme
- Health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence
- Good character and/or exemplary conduct

For each aggravating or mitigating factor which applies to each specific case the level of fine normally be adjusted by 5% of the initial fine, up to the maximum £30k or to the minimum fine for each determined level of culpability and harm as shown in the table above.

The only exception to this principle will normally be for the number of items of non-compliance which will be 5% for the first 5 items and 10% for any number of items greater than this level of non-compliance with items on any notice which has not been complied with.

Totality Principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, officers will consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, officers will consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality.

The total financial penalty is inevitably cumulative.

The Council will determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the Council.

Officers will add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate officers will consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved.

For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind,

especially when committed against the same person, it will be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;

- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no 'double-counting.'

Final determinant of the level of any civil penalty

The final determinant of any civil penalty **MUST** be the general principle:

THE CIVIL PENALTY SHOULD BE FAIR AND PROPORTIONATE BUT IN ALL INSTANCES SHOULD ACT AS A DETERRENT AND REMOVE ANY GAIN AS A RESULT OF THE OFFENCE

The statutory guidance states that a guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed must never be less than what it would have cost the landlord to comply with the legislation in the first place.

When determining any gain as a result of the offence the Council will take into account the following issues:

- Cost of the works required to comply with the legislation
- Any licence fees avoided
- Rent for the full period of the non-compliance
- Any other factors resulting in a financial benefit – potential cost of rehousing any tenants by the Council
- As a deterrent, the cost to the Council of the investigation.

When determining whether a penalty is fair and proportionate then the following issues will be considered:

- Impact of the financial penalty on the offender's ability to comply with the law
- Impact of the penalty on third party – employment of staff, customers etc.
- Impact on the offender – is it proportionate to their means – loss of home etc.

It must be remembered that as landlords they are property owners and if they claim

inability to pay and show their income is small then there can always be consideration to the property(ies) they own which can be sold or refinanced.

As part of any investigation into a landlord's ability to pay the following needs to be considered:

- Company House records if a limited company
- Credit checks – these will show outstanding debts and commitments on properties the landlord owns
- Size of portfolio – could a landlord sell a property to finance the penalty
- Refinance – is there the ability to raise money against their asset base
- Rental income on their portfolio not just the property to which the offence relates
- Personal income including their own home

All decisions will be documented. This will include the reasons for the financial penalty and how the amount of the penalty was determined.

Appendix 2

Statement of principles for determining financial penalties

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction

This statement sets out the principles that Bradford Metropolitan District Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

Purpose of this Statement of Principles

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

The Council may revise its statement principles at any time, but where it does so, it must publish a revised statement.

When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015.

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- checks are made by the landlord or someone acting on his behalf that the alarm(s) is/are in proper working order on the day the tenancy starts.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5.

If the landlord, then fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty comes from Regulation 8.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council within 28 days of when the remedial notice is served.

The Council will normally impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

Criteria for determining the amount of a financial penalty

A failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge.

Where a landlord fails to comply with a remedial notice within the specified time the Council will normally impose a financial penalty.

The Regulations state the amount of the penalty charge must not exceed £5,000.

The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirements to comply with a remedial notice and a cost element relating to investigative costs, officer time, administration and any remedial works arranged and carried out by the Council's contractors.

The penalty charge is payable within 30 days beginning with the day on which the penalty charge notice is served.

The Council has discretion to offer any early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served.

The charges are as follows:

- £2,500 for the first breach to comply with a remedial notice.
- £1,250 for early payment, representing 50% reduction, for the first breach to comply with a remedial notice.
- £5,000 for each subsequent breach to comply with a remedial notice
- £2,500 for early payment, representing 50% reduction, for each subsequent breach to comply with a remedial notice

Process for Imposing a Financial Penalty

Where it has been determined that a financial penalty is the most appropriate course of action 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 reasons for proposing the financial penalty
- The premises to which the penalty charge relates
- The number and type of prescribed alarms (if any) that an authorised person has installed at the premises
- The amount of any proposed financial penalty and details of how payment can be made
- That the landlord is required to pay the penalty charge within a period specified in the notice
- 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 representation to the Council about the proposal to impose a financial penalty.

To enable the Council to consider any representations made it will be the landlord’s responsibility to provide appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence within the timescale will mean that the Council will not be able to consider this when considering any representation against the level of penalty imposed.

Representations can only be made by the recipients served with a Notice of Intention. No other parties have an automatic right to make representations. The Council will consider any information provided on a case by case basis.

Following the 28 day period the Council will decide, whether it receives written representation or not:

- Whether to impose a financial penalty on the person, and
- The value of any such penalty imposed.

If the Council decides to impose a financial penalty, a final notice will 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.

The Council can at any time withdraw either the Notice of Intent or Final Notice or reduce the level of penalty imposed. Where a decision is made to withdraw or vary a notice the person on whom the notice was served will be informed in writing.

A landlord who has been served a Final Notice has the right of appeal to a First Tier Tribunal. In the event of such an appeal the financial penalty would be suspended until the appeal is determined or withdrawn.

Payment of the civil penalty will be within 30 days of the date of the Final Notice, unless appealed. Where appealed and the decision to serve the Notice is upheld it will be for the Tribunal to specify the period in which the landlord is to pay any fine imposed.

If the financial penalty imposed is not paid within the appropriate time period, either 30 days from the date of the Final Notice or within such time as determined by the First Tier Tribunal the Council will commence proceedings to recover the debt owed. This will include the recovery of any additional costs to the Council from having to undertake such action.

Remedial Action taken in default of the landlord

Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke Alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats,
- having an unsafe internal layout where fire escape routes pass through a living room or kitchens, or
- is 3 or more storeys high.

A full fire risk assessment will subsequently be undertaken, with regards to the Council's Fire Safety Principles and LACORS Housing – fire safety guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Any further works required to address serious fire safety hazards in residential property, that are not undertake though informal agreement, will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combings appliance.

All communications for representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be sent to:

Housing Operations
Britannia House
Hall Ings
Bradford
BD1 1HX

Or by email to CHPEnquiries@bradford.gov.uk

Appendix 3

Financial penalties issued under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Introduction

This statement sets out the principles that Bradford Metropolitan District Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

The legal framework

The powers come from the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 962).

Part 1 and Part 2 came into force on 1st April 2016, and Part 3 came into force on 1st October 2016.

The Regulations set out the minimum level of energy efficiency for private rented property in England and Wales. In relation to the domestic private rented sector (PRS) the minimum level is an Energy Performance Certificate (EPC) rating of E.

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- From 1st April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property);
- From 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property).

Where a property does not achieve the required EPC rating, landlords must normally make energy efficiency improvements which raise the EPC rate to a minimum rating of E before they let the property.

In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting a property that does not meet the minimum EPC rating. All exemptions must be registered on the Government's Private Rented Sector (PRS) Exemptions Register.

To access the PRS Exemption Register visit <https://prsregister.beis.gov.uk>

Where the Council believes that a landlord may be in breach of the above duties, or

believes that a landlord has been in breach of the duties at any time within the past 12 months, they will normally serve a compliance notice requesting information from the landlord which will help them decide whether that landlord is in breach of the above duties.

Where the landlord fails to provide information requested by the compliance notice to the Council or fails to register an exemption, the Council will normally serve a penalty notice imposing a financial penalty.

The amount of a financial penalty

A failure to comply with:

- a compliance notice or
- renting out a non-compliant property in breach of their legal duty without registering an exemption or
- providing false or misleading information on the Government's Private Rented Sector Exemptions Register

allow the Council to require payment of a financial penalty.

The level of the penalty charge will be as follows:

- Renting out a non-compliant property for less than 3 months - £1000 plus publication penalty.
- Renting out a non-compliant property for three months or more - £2000 plus publication penalty.
- Providing false or misleading information on the Government's Private Rented Sector (PRS) Exemptions Register - £1000 plus publication penalty.
- Failing to comply with a compliance notice £2000 plus publication penalty.
- For second or subsequent offences for the same property the penalties for renting out a non-compliant property will be doubled.
- There is a maximum financial penalty of £5000 per property and per breach of the regulations.

The publication penalty will apply for a period of 12 months. The publication penalty means that the Council will publish some details of the landlords breach on a publicly accessible part of the Government's Private Rented Sector (PRS) Exemptions Register for a period of 12 months.

Right of Review and Right of Appeal

If you do not agree with a penalty notice you may ask the Council to review its decision.

If following a review, the Council decides to uphold the penalty notice, the landlord may appeal to the First Tier Tribunal.

All communications for representations made against a compliance notice or the Penalty Charge Notice are to be sent to:

Housing Operations
Britannia House
Hall Ings
Bradford
BD1 1HX

Or by email to CHPEnquiries@bradford.gov.uk

Appendix 4

POLICY FOR THE USE OF BANNING ORDERS FOR HOUSING OFFENCES

This policy is intended to operate in accordance with the City of Bradford Metropolitan District Council's Private Sector Housing Enforcement Policy (the Enforcement Policy) published by the Council, the Housing and Planning Act 2016, The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and the Guidance for Local Authorities published by the Ministry of Housing, Communities and Local Government (MHCLG).

Introduction

The Housing and Planning Act 2016 introduces new powers to ban landlords from renting out property in the private rented sector.

Under these new powers the Council will be able to apply to the First Tier Tribunal for a Banning Order that will ban a landlord from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work or
- Doing two or more of those things

when the landlord has been convicted of a banning order offence.

The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 provides the list of offences for which a banning order can be applied for following a successful conviction.

The Government has issued guidance for Local Authorities to help them use their powers to ban landlords from renting out property in the private rented sector. This guidance states that the Government's expectation is that banning orders will be pursued for the most serious offenders.

In determining whether to apply for a banning order officers will refer to the National Rogue Landlord Database to investigate whether a landlord has committed offences in other Local Authority areas.

The Government has laid out in legislation and guidance the process and criteria that need to be considered when determining whether to apply for a banning order. These are:

- The seriousness of the offence
- Previous convictions and breaches

When making an application for a banning order, officers will recommend how long a banning order should be for and will set out their reasons. In doing so they will take the

following factors into consideration:

- The harm caused to the tenant
- Punishment of the offender
- The need to deter the offender from repeating the offence
- The need to deter others from committing similar offences

The First Tier Tribunal will determine the length of time that a landlord is banned for. The minimum ban will be for 12 months, there is no maximum length of time.

Process for Applying for a Banning Order

Where a landlord has been convicted of a banning order offence, officers will normally consider whether to apply for a Banning Order.

All decisions will be in accordance with the Private Sector Housing Enforcement Policy and will be documented.

Where it is determined that an application for a Banning order is the most appropriate course of action officers will follow the process set out below:

A “Notice of Intended Proceedings” will be served on the person and/or body corporate that has been convicted of the Banning order offence. The Notice will:

- a. Inform the person and/or body corporate that the Council is proposing to apply for a Banning Order
- b. State the length of each proposed ban
- c. Include information about the right to make representation to the Council

The person and/or body corporate to which the notice relates will be given 28 days to make written representation to the Council about the proposal to apply for a Banning Order.

To enable the Council to consider any representations made it will be the landlord’s responsibility to provide any appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence within the timescale will mean that the Council will not be able to consider it as part of any representation made.

Representations can only be made by the recipients served with a Notice of Intended Proceedings. No other parties have an automatic right to make representations. The Council will consider any information provided on a case by case basis.

Following the 28 day period the Council will decide, whether it receives written representation or not:

- a. Whether to apply for a Banning Order and
- b. The length of any proposed ban.

Any person who has a Banning Order in force against them is not considered a “fit and proper person” for the purposes of licensing under the Housing Act 2004. The Council will revoke any licence issued under the Housing Act to any person when a Banning Order is made against them.

Offence of Breach of a Banning Order

It is an offence to breach a Banning Order.

The Council will normally serve a Financial Penalty for a breach of a Banning Order in the first instance.

The legislation allows a maximum financial penalty of £30,000 per offence. In determining the level of any penalty the Council will have regard to local circumstances, the Private Sector Housing Enforcement policy and the relevant Government guidance detailing the factors to take into account.

Any decision will be based on risks, present and future, to health, safety and welfare. All decisions will be documented.

Appendix 5

Financial penalties issued under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

This policy is intended to operate in accordance with the City of Bradford Metropolitan District Council's Private Sector Housing Enforcement Policy (the Enforcement Policy) published by the Council and the Guidance for Local Authorities published by the Ministry of Housing, Communities and Local Government (MHCLG) relating to the enforcement of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and Civil Penalties under the Housing and Planning Act 2016.

Introduction

This statement sets out the principles that Bradford Metropolitan District Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

The legal framework

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Regulations), being a Statutory Instrument (2020 No 312).

These Regulations came into force on 1st June 2020 and apply to:

- (a) all new specified tenancies from 1st July 2020; and
- (b) all existing specified tenancies from 1st April 2021.

The Government has laid out statutory guidance as to the process and the criteria that need to be considered when determining Financial or Civil Penalties. These are:

- Level of culpability
- Level of harm
- Severity of the offence
- Aggravating Factors
- Mitigating Factors
- Penalty to be fair and reasonable
- Penalty to be such as to be a deterrent and remove the gain derived through the failure to comply

The statutory guidance indicates that the Council should ensure that the penalty acts as a punishment, takes into account any previous patterns of offending and no offender should benefit as a result of committing an offence.

The legislation allows a maximum financial penalty of £30,000 per offence. In determining the level of any penalty the Council will have regard to local circumstances, the Private Sector Housing Enforcement policy and the relevant Government guidance

detailing the factors to take into account, as shown above.

The overriding principle when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation.

What is the burden of proof for a financial penalty?

The Council must satisfy itself that it can show beyond reasonable doubt that the landlord has committed the offence and that if heard in a magistrates' court there would be realistic prospect of conviction.

The Council will consider:

- Does it have sufficient evidence to prove beyond reasonable doubt that an offence has been committed by the landlord?
- Is there a public interest in imposing a Civil Penalty on the landlord in respect of the offence?
- Has the Council taken into account its own Enforcement Policy when deciding to impose the penalty

In considering the evidence and making decisions officers will have regard to the Evidentiary State of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions and the Public Interest Stage of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutions" published by the Director of Public Prosecutions.

All decisions as to determining whether or not to pursue a financial penalty will be in accordance with the Private Sector Housing Enforcement Policy and will be documented.

Process for Imposing a Financial Penalty

Where it has been determined that a financial penalty is the most appropriate course of action 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:

- d. The amount of any proposed financial penalty
- e. The reasons for proposing the financial penalty
- f. 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 representation to the Council about the proposal to impose a financial penalty.

To enable the Council to consider any representations made it will be the landlord's responsibility to provide appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence within the timescale will mean that the Council will not be able to consider any representation against the level of penalty imposed.

Representations can only be made by the recipients served with a Notice of Intention. No other parties have an automatic right to make representations. The Council will consider any information provided on a case by case basis.

Within 28 days of the 28 day period for representations expiring the Council will decide, whether it receives written representation or not:

- c. Whether to impose a financial penalty on the person, and
- d. The value of any such penalty imposed.

If the Council decides to impose a financial penalty, a final notice will be issued imposing that penalty. The final notice will specify:

- g. the amount of the financial penalty,
- h. the reasons for imposing the penalty,
- i. information about how to pay the penalty,
- j. the period for payment of the penalty,
- k. information about rights of appeal to the First Tier Tribunal,
- l. the consequences of failure to comply with the notice.

The Council can at any time withdraw either the Notice of Intent or Final Notice or reduce the level of penalty imposed. Where a decision is made to withdraw or vary a notice the person on whom the notice was served will be informed in writing.

A landlord who has been served a Final Notice has the right of appeal to a First Tier Tribunal. In the event of such an appeal the financial penalty would be suspended until the appeal is determined or withdrawn.

Payment of the civil penalty will be within 28 days of the date of the Final Notice, unless appealed. Where appealed and the decision to serve the Notice is upheld it will be for the Tribunal to specify the period in which the landlord is to pay any fine imposed.

The Council will normally consider a reduction of up to a third of the penalty if at the first opportunity the landlord admits guilt for the offence and immediately remedies any outstanding issues. This is in line with the Sentencing Guidelines. Any reduction will only be available for the first offence and will not be less than the minimum level of penalty or the level of financial gain plus £2000 or 10% (whichever is the greater). Any subsequent offence will not be subject to any reduction.

The discount will only be applied to the landlord when the Council serves the Final Notice and the following criteria is met:

- The payment is made within the 28 days of the date of the Final Notice and

- The payment is made in full

At any point after 28 days of service of the notice of the Final Notice there will be no further offer of any reduction in the level of penalty.

If the financial penalty imposed is not paid within the appropriate time period, either 28 days from the date of the Final Notice or within such time as determined by the First Tier Tribunal the Council will commend proceedings to recover the debt owed. This will include the recovery of any additional costs to the Council from having to undertake such action.

A certificate signed by the Chief Financial Officer for the Authority including the outstanding financial penalty imposed unless the offender has supplied any financial information to the contrary.

It is for the offender to disclose to the Council such data relevant to his financial position as this will enable it to assess and determine what they can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case. ***This may include the inference that the offender can pay any financial penalty.***

When considering the level of any financial penalty the final determining factor will always be the level of financial gain as a result of the landlord's failure to comply with the relevant legislation.

Consequence of a Civil Penalty

Financial Penalties are an alternative to criminal proceedings.

Where a financial penalty has been imposed on a landlord it will not automatically prevent the Council from granting a licence under Part 2 or 3 of the Housing Act 2004. The Council will consider each case on its merits including the reasons for the penalty and the extent of the person's involvement in any property under consideration.

Determining the Level of the Civil Penalties

Section 143(1) Criminal Justice Act 2003 states: "In considering the seriousness of any offence the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably cause". It also considers harm as encompassing those offences where harm is caused but also those where neither individuals nor the community suffer harm but a risk of harm is present.

In order to set the level of the penalty the Council will determine the offence category using the culpability and harm factors below:

Level of Culpability

The level of culpability of a landlord will depend upon a number of factors:

High Level of Culpability

A landlord will be deemed to be highly culpable when they intentionally or recklessly breach or wilfully disregard the law.

Factors that will contribute to this assessment will include:

- They have a history of non-compliance
- Despite a number of opportunities to comply they have failed to do so
- They have been obstructive as part of the investigation
- Failure to comply results in significant risk to individuals
- They are a member of a recognised landlord association or accreditation scheme
- They are an experienced landlord with a portfolio of properties who is failing to comply with their obligations
- Serious and/or systematic failure to comply with their legal duties

Medium level of Culpability

A landlord commits an offence through an act or omission that a person exercising reasonable care would not commit.

Factors that will contribute to this assessment will include:

- It is a first offence – with no high level culpability criteria being met
- Failure is not a significant risk to individuals
- The landlord had systems in place to manage risk or comply with their legal duties but these were not sufficient or adhered to or implemented.

Low Level of Culpability

A landlord fails to comply or commit an offence with little fault.

Factors that will contribute to this assessment will include:

- No or minimal warning of circumstances
- Minor breaches
- Isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance

The above examples are not exclusive and other factors may be taken into account when considering the level of culpability.

Level of Harm

When considering the level of harm both the actual, potential and likelihood of the harm will be considered:

High level of harm

A high level of harm could constitute:

- Serious effect on individual(s) or widespread impact
- Harm to a vulnerable individual
- High risk of an adverse effect on an individual

Medium level of harm

A medium level of harm could constitute:

- Adverse effect on an individual – not high level of harm
- Medium risk of harm to an individual
- Low risk of a serious effect
- The Council's work as a regulator to address risks to health is inhibited.

Low level of harm

A low level of harm could constitute:

- Low risk of harm or potential harm
- Little risk of an adverse effect on individual(s)

The above examples are not exclusive and other factors may be taken into account when considering the level of harm.

The statutory guidance states that the harm caused and vulnerability of the individual are important factors in determining the level of penalty.

The Housing Act 2004 defines a vulnerable individual(s) as one who is at greater harm and therefore the penalty proposed will normally be greater when vulnerability is an issue.

Determination of the Level of Penalty

The statutory guidance makes it clear that it is for each Council to determine the level of fine imposed under the Regulations. The table below shows the initial level of fine for each level of culpability and harm, including the minimum level of fine that the Council will normally impose for each classification.

DETERMINATION OF CIVIL PENALTY LEVEL				
LEVEL OF CULPABILITY	LEVEL OF HARM			MINIMUM FINE LEVEL (when considering mitigating factors)
	HIGH	MED	LOW	
HIGH	25000	15000	7500	6000
MED	15000	10000	5000	4000
LOW	7500	5000	2500	2000

Adjustments to the Initial Penalty Determination

In order to determine the final penalty the Council will consider both aggravating and mitigating factors in each case. Officers will then adjust the initial level of the penalty based on these factors.

Below is a list of both aggravating and mitigation factors which will be considered as part of the determination. The list is not exhaustive and other factors may be considered depending on the circumstances of each case.

Aggravating factors could include:

- Previous relevant convictions and time elapsed since those convictions
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation
- Record of poor management/inadequate management provision
- Lack of a tenancy agreement/rent paid in case

When considering previous offences regard will be given to the guidance on Banning Orders as well as any other relevant offence such as trafficking etc.

Mitigating factors could include:

- Co-operation with the investigation e.g. turns up for PACE interview
- Voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt for the offence(s)
- Willingness to undertake training
- Willingness to join a recognised landlord accreditation scheme
- Health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence
- Good character and/or exemplary conduct

For each aggravating or mitigating factor which applies to each specific case the level of fine normally be adjusted by 5% of the initial fine, up to the maximum £30k or to the minimum fine for each determined level of culpability and harm as shown in the table above.

The only exception to this principle will normally be for the number of items of non-compliance which will be 5% for the first 5 items and 10% for any number of items greater than this level of non-compliance with items on any notice which has not been complied with.

Totality Principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, officers will consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, officers will consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality.

‘The total financial penalty is inevitably cumulative.

The Council will determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the Council.

Officers will add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate officers will consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved.

For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no 'double-counting.'

Final determinant of the level of any civil penalty

The final determinant of any civil penalty MUST be the general principle:

THE CIVIL PENALTY SHOULD BE FAIR AND PROPORTIONATE BUT IN ALL INSTANCES SHOULD ACT AS A DETERRENT AND REMOVE ANY GAIN AS A RESULT OF THE OFFENCE

The statutory guidance states that a guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed must never be less than what it would have cost the landlord to comply with the legislation in the first place.

When determining any gain as a result of the offence the Council will take into account the following issues:

- Cost of the works required to comply with the legislation
- Rent for the full period of the non-compliance
- Any other factors resulting in a financial benefit – potential cost of rehousing any tenants by the Council
- As a deterrent, the cost to the Council of the investigation.

When determining whether a penalty is fair and proportionate then the following issues will be considered:

- Impact of the financial penalty on the offender's ability to comply with the law
- Impact of the penalty on third party – employment of staff, customers etc.
- Impact on the offender – is it proportionate to their means – loss of home etc.

It must be remembered that as landlords they are property owners and if they claim inability to pay and show their income is small then there can always be consideration to the property(ies) they own which can be sold or refinanced.

As part of any investigation into a landlord's ability to pay the following needs to be considered:

- Company House records if a limited company
- Credit checks – these will show outstanding debts and commitments on properties the landlord owns
- Size of portfolio – could a landlord sell a property to finance the penalty
- Refinance – is there the ability to raise money against their asset base
- Rental income on their portfolio not just the property to which the offence relates
- Personal income including their own home

All decisions will be documented. This will include the reasons for the financial penalty and how the amount of the penalty was determined.