

Private Sector Housing Civil Penalty Policy

Gravesham Borough Council

This document contains the Private Sector Housing Civil Penalty Policy and explains when we will impose a civil penalty and how we determine the amount.

Document Control

- Responsible Department: Private Sector Housing
- Responsible Manager: Service Manager (Housing Options)
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Introduction

Civil penalty is an alternative to prosecution under the Housing Act 2004, and this document sets out the Council's policy on deciding when to impose a civil penalty notice and how we will determine the penalty amount.

The legislation is set out in section 249A of the Housing Act 2004 (as implemented by section 126 and Schedule 9 of the Housing and Planning Act 2016) and section 23 of the Housing and Planning Act 2016. It allows financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for the following housing offences:

- failure to comply with an improvement notice (section 30 Housing Act 2004)
- offences in relation to licensing of houses in multiple occupation, commonly referred to as HMOs (section 72 Housing Act 2004)
- offences in relation to licensing of houses under Part 3 of the Act (section 95 Housing Act 2004)
- offences of contravention of an overcrowding notice (section 139 Housing Act 2004)
- failure to comply with Management Regulations in respect of houses in multiple occupation (section 234 Housing Act 2004)
- breach of a banning order (section 21 of the Housing and Planning Act 2016)

The Council is required to have a policy in place to determine when to prosecute and when to issue a civil penalty. To do this, we have had regard to statutory guidance issued by the Department of Levelling Up, Housing and Communities. This sets out the factors that we must consider as part of the financial penalty setting process. This policy must ensure proportionality, transparency, and consistency.

It places particular emphasis upon the severity of the offence and the landlord's previous record of offending. Read the [Civil Penalties under the Housing and Planning Act 2016](#).

In this guidance the term "landlord" also includes property agents (letting agents and property managers).

Decision making process

We will assess each case carefully to identify and apply the appropriate sanction dependant on the severity of the offence and any other relevant circumstances. The same criminal standard of proof is required for a civil penalty as for prosecution for a criminal offence in the Magistrates' Court, and we need to be satisfied and able to demonstrate beyond reasonable doubt that an offence has been committed. To assist us to do this, we will refer to the Code for Crown Prosecutors.

The Code has two stages:

- (i) the evidential stage – is there enough evidence against the defendant?
- (ii) the public interest stage – is it in the public interest to bring the case to court

Once satisfied beyond reasonable doubt that the conduct amounts to a relevant offence, we will decide on a case-by-case basis whether to prosecute or issue a civil penalty notice. Our policy is to use the civil penalty route as the principal way to apply a sanction and to deter re-offending. However, prosecution may be the most appropriate option

where an offence is particularly serious or where the offender has committed similar offences in the past.

A civil penalty matrix has been created to assist us to determine the most appropriate level of civil penalty, up to a maximum of £30,000 (see Appendix A). We will use the following factors to help ensure that the civil penalty is set at an appropriate level:

- severity of the offence
- culpability and track record of the offender
- the harm caused to the tenant (this may be actual harm or potential harm);
- punishment of the offender
- deterring the offender from repeating the offence
- deter others from committing the offence
- removing any financial benefit, the offender may have obtained from committing the offence.

The matrix provides transparency in our decision making, aids consistency in the enforcement process and assists in the defending of appeals in the First-tier Tribunal (Property Chamber).

Our policy is to issue the maximum penalty in serious cases and when proportionate to do so. It is intended this will help to achieve the maximum deterrent for criminal landlord behaviour and drive landlord behaviour change.

Procedure for imposing a civil penalty notice

When it has been determined that a civil penalty notice is appropriate, we will follow the following procedure.

We must give the person notice of our proposal by issuing a notice of intent to impose a financial penalty. This must be issued within six months from the date when we have sufficient evidence of the offence to which the financial penalty relates or at any time when the conduct is continuing. The notice of intent must specify:

- a. the amount of any proposed financial penalty
- b. the reasons for proposing the financial penalty
- c. information about the right to make representations to the council.

The person who is given a notice of intent may make written representations about the intention to impose a financial penalty.

Following the 28-day period for representations, we will consider the representations and decide:

- a. whether to impose a financial penalty, i.e. Have sufficient grounds been received to withdraw the notice of intent.
- b. the amount of any such penalty.

If we decide to impose a financial penalty, we must issue a final notice requiring that the penalty is paid within 28 days, beginning with the day after that on which the notice was given.

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 (28 days)
- e. information about the right of appeal to the First tier Tribunal
- f. the consequences of failure to comply with the notice.

We may at any time, by giving written notice.

- withdraw a notice of intent or final notice; or
- reduce the amount specified in the notice of intent or final notice.

Appeals

On receipt of the final notice imposing a financial penalty, the recipient may appeal to the First-tier Tribunal within 28 days, against the decision to impose the penalty or the amount of the penalty. The final notice is suspended until the appeal is determined or withdrawn. The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty, or cancel it.

Enforcement and consequences of non-compliance

Multiple offences

A civil penalty notice can be issued for each of the offences listed in Part 1 Introduction of this policy. A notice can be issued for each separate breach of the Management of Houses in Multiple Occupation (England) Regulations 2006. However, regarding improvement notices issued for hazards found under the Housing Health and Safety Rating System, only one civil penalty notice can be applied for each notice issued and not for each hazard.

When the Council are satisfied that more than one offence is being committed concurrently, we may issue multiple civil penalty notices. Where satisfied on the merits of a case and/or where we consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the Council to do so. We may decide to act in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

Failure to pay

Where a landlord fails to pay the whole or any part of a civil penalty including after any appeal has been finally determined or withdrawn, we will recover the penalty by order from the county court. If necessary, we will use county court bailiffs to enforce the order and recover the debt. We will also seek to recover the costs incurred in taking this action from the person.

Works in default

Our powers to carry out works in default under the Housing Act 2004 are unaffected by the civil penalty provisions.

Houses in multiple occupation

If a landlord or property agent receives a civil penalty notice, it can be considered when considering whether the person is a fit and proper person to be the licence holder for a house in multiple occupation, or any other property subject to licensing.

Database of rogue landlords and property agents

Where a landlord or property agent receives two or more civil penalties over a 12-month period, we will include that person's details in the database of rogue landlords and property agents. While it is not a compulsory requirement, the government's civil penalty guidance strongly encouraged councils to do so, to ensure that other councils are made aware that formal action has been taken.

[Read Database of rogue landlords and property agents under the Housing and Planning Act 2016.](#)

Reduction in penalty

We will consider mitigating factors, including any admission of guilt. Any reduction in the level of financial penalty will be decided on a case-by-case basis, with a discount of up to a maximum of 50% as dictated by legislation.

If the person on whom a notice of intent has been served carries out the required works or obligations before the final notice is served, we will consider a reduction of up to 25% in the civil penalty applied in the final notice. A discount for an admission of guilt and for completing required works may be applied, but the combined discount will not be greater than 50%.

Any reduction must not result in a financial penalty being less than the financial gain received from committing the offence.

The option of making an early payment, reduced sum if you make payment within 28 days beginning with the day after the date on the invoice. This option will not be available after the 28-day period, and the full amount will become payable.

Financial hardship

We will assess a landlord's assets and all income, and not just rental income, when determining an appropriate penalty. The landlord will have the opportunity to make representations following the service of the notice of intent and may set out any financial hardship in those representations. The onus is placed firmly on the landlord to provide sufficient documented evidence of income. We reserve the right to request further information to support any financial claim and where this is incomplete, appears to be inaccurate, or the person is being deliberately misleading, we may determine that the representations should not be considered.

It should be noted that due to the combination of high property and rental income levels in the Brough of Gravesham and an upper limit of £30,000 being associated with any civil penalty action, it is unlikely that owners of multiple properties will be able to demonstrate financial hardship.

Income from civil penalties

Any income received from a civil penalty can be retained by the local housing authority if it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations¹⁹.

Contact and complaints

If you require any further information or clarification on the civil penalty process the case officer will be able to assist. If after speaking with the case officer, you would like further

clarification or to make a complaint, then you should contact the Private Sector Housing Manager as follows:

Private Sector Housing Team
Gravesham Borough Council
Civic Centre
Windmill Street
Gravesend
Kent DA12 1AU

Tel No 01474 337960

E-mail fpn.representations@gravesham.gov.uk

Appendix 1 Matrix for Civil Penalties

Culpability

A key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium.

There are four culpability categories, namely:

1. Very High: This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium
2. High: This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take appropriate and/or timely action. This category is subject to an 80% culpability premium
3. Medium: This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium
4. Low: This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This category is subject to a 40% culpability premium.

Track Record

The council would expect a good landlord or agent to have very little contact with the council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements.

Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition. A historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment

relating to the offender's track record is therefore appropriate. This should help deter repeat offending.

The council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be considered. The evidence reviewed will include:

- Any previous convictions for housing related offence
 - Whether previously subject to a financial penalty for a housing related contravention
 - Whether previously subject to, or associated with, statutory enforcement action (e.g., Improvement Notice, Emergency Prohibition Order, etc.)
 - The number of genuine housing condition complaints received in respect of properties associated with the offender.
1. **Significant:** Where there is evidence of multiple enforcement interventions by the council's Private Sector Housing Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.
 2. **Some:** This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.
 3. **None or negligible:** This category will be used if, following a review of the council's records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. The council may also exercise its discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales. The descriptor "Negligible" has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in Gravesham, this category will be used.

Portfolio size

The size of an offender's portfolio will be considered when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be.

Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such the penalty should have regard to their ability to pay. Considering the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.

There are four portfolio size categories which relate to the number of units of accommodation the offender has ownership of responsibility for, or association with.

The size categories are:

- One unit of accommodation

- 2 - 4 units of accommodation
- 5 - 19 units of accommodation
- 20 or more units of accommodation.

A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation (“HMO”).

The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.

Some offender’s own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife, or partner. All units of accommodation that are clearly associated with the offender will be considered when determining the portfolio size.

The council will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment. If the council cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation.

However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

Risk of Harm

The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence. The council will assess the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high. The offence will be placed into one of the following four categories:

The harm caused to the tenant. An important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

- Level 1: This category will be used when the risk of harm does not fall within the Level 2, Level 3, or Level 4 categories.

Any offence associated with the operation of an unlicensed premise under the HMO and selective licensing regimes will at least fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned. Or if there are one or two tenants in occupation.

- Level 2: The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring low.

This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category

may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

- Level 3: The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.
- Level 4: The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

It must be noted offences relating to a breach of HMO licence conditions do not lend themselves to a standardised starting point and, therefore, would be considered on a case-by-case basis concerning seriousness.

Having made the four-step assessment described above, the council will determine the starting point for the financial penalty using the Table of Financial Penalties set out below.

This table was developed by Thanet District Council and has been widely adopted throughout Kent to ensure consistency in application.

| Culpability | Track Record | Portfolio Size | Risk of Harm | | | |
|--------------------------|--------------------|----------------|--------------|---------|---------|---------|
| | | | Level 1 | Level 2 | Level 3 | Level 4 |
| Very High (100% Premium) | Significant | 1 | £7,500 | £10,000 | £12,500 | £20,000 |
| | | 2 to 4 | £10,000 | £12,500 | £15,000 | £22,500 |
| | | 5 to 19 | £15,000 | £17,500 | £20,000 | £27,500 |
| | | 20 + | £17,500 | £20,000 | £22,500 | £30,000 |
| | Some | 1 | £5,000 | £7,500 | £10,000 | £17,500 |
| | | 2 to 4 | £7,500 | £10,000 | £12,500 | £20,000 |
| | | 5 to 19 | £12,500 | £15,000 | £17,500 | £25,000 |
| | | 20 + | £15,000 | £17,500 | £20,000 | £27,500 |
| | None or negligible | 1 | £2,500 | £5,000 | £7,500 | £15,000 |
| | | 2 to 4 | £5,000 | £7,500 | £10,000 | £17,500 |
| | | 5 to 19 | £10,000 | £12,500 | £15,000 | £22,500 |
| | | 20 + | £12,500 | £15,000 | £17,500 | £25,000 |
| High (80% Premium) | Significant | 1 | £6,000 | £8,000 | £10,000 | £16,000 |
| | | 2 to 4 | £8,000 | £10,000 | £12,000 | £18,000 |
| | | 5 to 19 | £12,000 | £14,000 | £16,000 | £22,000 |
| | | 20 + | £14,000 | £16,000 | £18,000 | £24,000 |
| | Some | 1 | £4,000 | £6,000 | £8,000 | £14,000 |
| | | 2 to 4 | £6,000 | £8,000 | £10,000 | £16,000 |
| | | 5 to 19 | £10,000 | £12,000 | £14,000 | £20,000 |
| | | 20 + | £12,000 | £14,000 | £16,000 | £22,000 |
| | None or negligible | 1 | £2,000 | £4,000 | £6,000 | £12,000 |
| | | 2 to 4 | £4,000 | £6,000 | £8,000 | £14,000 |
| | | 5 to 19 | £8,000 | £10,000 | £12,000 | £18,000 |
| | | 20 + | £10,000 | £12,000 | £14,000 | £20,000 |

| | | | | | | |
|----------------------|--------------------|---------|---------|---------|---------|---------|
| Medium (60% Premium) | Significant | 1 | £4,500 | £6,000 | £7,500 | £12,000 |
| | | 2 to 4 | £6,000 | £7,500 | £9,000 | £13,500 |
| | | 5 to 19 | £9,000 | £10,500 | £12,000 | £16,500 |
| | | 20 + | £10,500 | £12,000 | £13,500 | £18,000 |
| | Some | 1 | £3,000 | £4,500 | £6,000 | £10,500 |
| | | 2 to 4 | £4,500 | £6,000 | £7,500 | £12,000 |
| | | 5 to 19 | £7,500 | £9,000 | £10,500 | £15,000 |
| | | 20 + | £9,000 | £10,500 | £12,000 | £16,500 |
| | None or negligible | 1 | £1,500 | £3,000 | £4,500 | £9,000 |
| | | 2 to 4 | £3,000 | £4,500 | £6,000 | £10,500 |
| | | 5 to 19 | £6,000 | £7,500 | £9,000 | £13,500 |
| | | 20 + | £7,500 | £9,000 | £10,500 | £15,000 |
| Low (40% Premium) | Significant | 1 | £3,000 | £4,000 | £5,000 | £8,000 |
| | | 2 to 4 | £4,000 | £5,000 | £6,000 | £9,000 |
| | | 5 to 19 | £6,000 | £7,000 | £8,000 | £11,000 |
| | | 20 + | £7,000 | £8,000 | £9,000 | £12,000 |
| | Some | 1 | £2,000 | £3,000 | £4,000 | £7,000 |
| | | 2 to 4 | £3,000 | £4,000 | £5,000 | £8,000 |
| | | 5 to 19 | £5,000 | £6,000 | £7,000 | £10,000 |
| | | 20 + | £6,000 | £7,000 | £8,000 | £11,000 |
| | None or negligible | 1 | £1,000 | £2,000 | £3,000 | £6,000 |
| | | 2 to 4 | £2,000 | £3,000 | £4,000 | £7,000 |
| | | 5 to 19 | £4,000 | £5,000 | £6,000 | £9,000 |
| | | 20 + | £5,000 | £6,000 | £7,000 | £10,000 |