

Crawley Borough Council

The use of civil penalties and rent repayment orders under the Housing Act 2004

1.0 Introduction

Local authorities already have powers to apply for a rent repayment order for the following specified offences under the Housing Act 2004:

- Section 72 – Having control or management of an unlicensed House in Multiple Occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004
- Section 95 – Having control or management of an unlicensed house which is required to be licensed under Part 3 of the Housing Act 2004

Part 2, Chapter 4 of the Housing and Planning Act 2016 introduced powers to apply for a rent repayment order for the following specified offences:

- Section 30, Housing Act 2004 – Failure to comply with an Improvement Notice
- Section 32, Housing Act 2004 – Failure to comply with a Prohibition Order
- Section 21, Housing Act 2004 – Breach of a Banning Order (once they come into force)
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of occupiers of a property under section 1 of the Protection from Eviction Act 1977

Section 126 of the Housing and Planning Act 2016 gave local authorities the power to impose a civil [financial] penalty as an alternative to prosecution for specified offences under the Housing Act 2004:

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

Regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the Electrical Safety Regulations”) confers a power on local housing authorities to impose civil penalties where an authority is satisfied beyond all reasonable doubt that a private landlord has breached a duty under Regulation 3, they may impose a financial penalty (or more than one in the event of continuing failure) in respect of that breach.

The Department for Communities and Local Government (DCLG) published: “Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities” and “Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities” as statutory guidance to which local authorities must have regard. They state that local authorities are expected to develop and document their own policy on determining when to apply for a rent repayment order and/or issue a civil penalty. This addendum to the Council’s General Enforcement Policy seeks to guide Officers in use of these powers.

On 1 April 2021 the Government also issued non-statutory guidance regarding the Electrical Safety Regulations entitled “Guide for local authorities: electrical safety standards in the private rented sector”.

2.0 Rent Repayment Orders

2.1 Deciding whether to apply for a Rent Repayment Order

If a landlord has been convicted of any offence for which a rent repayment order (RRO) can be made and the offence was committed in their area, it *must consider* applying for a rent repayment order. Where there has not been a prior conviction, the local authority *may consider* applying for a rent repayment order.

If a conviction for a relevant offence has been obtained then it is normally expected that a rent repayment order will be pursued (where the Council have paid housing benefit, or the housing element of Universal Credit). The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances.

Where no conviction has taken place, the matrix below should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

No.	Question	Outcome
1.	Has evidence been obtained to confirm that housing benefit/universal credit was paid directly or indirectly to the landlord over the relevant period?	If no – no case for RRO. If yes, proceed to step 2.
2.	Is there sufficient evidence to prove ‘beyond reasonable doubt’ that a relevant offence has been committed? (Is the evidence reliable? Is there no credible defence?)	If no – no case for RRO. If yes, proceed to step 3.
3.	Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused)	If no – no case for RRO. If yes, proceed to step 4.
4.	Is pursuing an RRO proportionate to the offence?	If no – no case for RRO. If yes, proceed to step 5.
5.	Does the offender have any previous related convictions?	If yes – proceed to 2.2 below. If no, proceed to step 6.
6.	Where no previous offence – is the issuing of a RRO likely to deter offender from future offences?	If yes – proceed to 2.2 below. If no, consider closing and not pursuing.

2.2 Mitigating and other factors which might tend against applying for an RRO

Where the above indicates that the Council ought to proceed with an RRO, the Council should then consider whether applying for an RRO is likely to cause substantial hardship to the offender and/or whether there are mitigating circumstances or other factors which suggest that the Council should not proceed.

2.3 Final decision whether to apply for an RRO

The final decision as to whether to apply for an RRO will be made on a case by case basis. Each decision should be carefully considered, proportionate and balanced and should take all factors (including those in 2.2) into account.

3.0 Civil Penalty Orders

3.1 Deciding whether to Prosecute or Issue a Civil Penalty

In deciding whether to undertake a prosecution or issue a civil penalty, the Officer will have regard to section 3.3 “Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities”. Each case will be decided on its own merits, however the following general principles will be considered when a decision is made whether to issue a civil penalty or to commence with a prosecution:

- A civil penalty will usually be preferred to prosecution where it is the person’s first offence (or first known offence), however where the offence is considered to be more serious a prosecution will be considered;

- For a second offence, if the offence is considered less serious a civil penalty will usually be considered, but in cases where the offence is considered to be more serious, a prosecution will usually be preferred;
- For subsequent offences, prosecution would usually be preferred.

3.2 Deciding the Amount of Penalty

If it has been determined that the use of a civil penalty is appropriate, section 3.5 of “Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities” sets out factors that should be considered in setting the penalty:

- Severity of the offence.
- Culpability and track record of the offender.
- The harm caused to the tenant.
- Punishment of the offender.
- Deter the offender from repeating the offence.
- Deter others from committing similar offences.
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

In determining the level of a civil penalty, officers are to have regard to the matrix set out in table one below, which is to be read in conjunction with the associated guidance below. The matrix is intended to provide an indicative scale under the various offence categories, with the final level of the civil penalty being adjusted in each case to take into account other relevant or aggravating factors.

Table One – Scoring matrix

Band number	Severity of offence	Band width
1	Moderate	£0 - £4,999
2		£5,000 - £9,999
3	Serious	£10,000 - £14,999
4		£15,000 - £19,999
5	Severe	£20,000 - £24,999
6		£25,000 - £30,000

3.3 Use of the Scoring Matrix

Failure to comply with an Improvement Notice:

Where a person or body controls five or fewer properties*, the failure to comply with the requirements of an Improvement Notice would be viewed as a **moderate** matter, representing a minimum band 3 offence and attracting a civil penalty with an initial starting point of £1,000.

**For the purpose of this policy, this and every other reference to ‘property’ or ‘properties’ means any flat, house or other building (including a HMO whether or not it is licensed or required to be licensed) let as residential accommodation, or any combination of these.*

Where a person or body controls six or more properties, the failure to comply with the requirements of an Improvement Notice would be viewed as a **severe** matter, representing a minimum band 5 offence and attracting a civil penalty with an initial starting point of £20,000.

In determining the final level of civil penalty to be imposed, the Council will have regard to the non-exhaustive list of aggravating factors set out below and the non-exhaustive list of mitigating factors at 3.4. When determining the final level of penalty, officers should identify whether any combination of these factors, or other relevant factors, should result in an adjustment up (including up into another band) or down from the initial starting point specified above.

Aggravating factors:

- If there are present multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property, this would justify an increase in the level of the civil penalty
- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include works in default, and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.

Failure to licence a mandatory HMO or breach of a condition of an HMO licence:

Failure to comply with HMO licence conditions would be viewed as a **moderate** matter, representing a minimum band 1 offence and attracting a civil penalty with an initial starting point of £1,000.

Where a person or body controls five or fewer properties, the failure to licence a mandatory HMO would be viewed as a **serious** matter, representing a minimum band 3 offence and attracting a civil penalty with an initial starting point of £10,000. Where a person or body controls six or more properties, the failure to licence a mandatory HMO would be viewed as a **severe** matter, representing a minimum band 5 offence and attracting a civil penalty with an initial starting point of £20,000.

In determining the final level of civil penalty to be imposed, the Council will have regard to the non-exhaustive list of aggravating factors set out below and the non-exhaustive list of mitigating factors at 3.4. When determining the final level of penalty, officers should identify whether any combination of these factors, or other relevant factors, should result in an adjustment up (including up into another band) or down from the initial starting point specified above.

Aggravating factors:

- The condition of the unlicensed property and if the nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, a mandatory HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with their need to obtain a property licence e.g. being a named licence holder or manager in respect of an already licensed premises
- A previous history of non-compliance whether or not the subject of separate formal action.

Breach of HMO regulations:

In determining the level of penalty, the Council will initially consider the number and nature of the breaches of the HMO regulations. The circumstances of each breach can vary widely from case to case but, as a guide:

Where a person or body who controls five or fewer properties breaches the regulations by failing to provide tenants with their contact details or by failing to address minor disrepair, this will be regarded as **moderate** band 1 offence, attracting a civil penalty with an initial starting point of £1,000. Where a person or body controls six or more properties, these same offences would be regarded as **moderate** band 2 offences, attracting a civil penalty with an initial starting point of £5,000.

Where a person or body who controls five or fewer properties, breaches any other regulation/s this will be regarded as a **serious** minimum band 3 offence, attracting a civil penalty with an initial starting point of £10,000. Where a person or body controls six or more properties, these same offences would be regarded as a **severe** minimum band 5 offences, attracting a civil penalty with an initial starting point of £20,000.

In determining the final level of civil penalty to be imposed, the Council will have regard to the non-exhaustive list of aggravating factors set out below and the non-exhaustive list of mitigating factors at 3.4. When determining the final level of penalty, officers should identify whether any combination of these factors, or other relevant factors, should result in an adjustment up (including up into another band) or down from the initial starting point specified above.

Aggravating factors:

- The nature of the licence condition breaches and their impact upon the occupiers
- A previous history of non-compliance whether or not the subject of separate formal action.

Failure to comply with an Overcrowding Notice:

Where a person or body controls five or fewer properties fails to comply with an Overcrowding Notice, the offence would be regarded as a **serious** minimum band 3 offence, attracting a civil penalty with an initial starting point of £10,000. It would be considered a **severe** minimum band 5 offence, attracting a civil penalty with a starting point of £20,000, for a person or body controlling six or more properties.

In determining the final level of civil penalty to be imposed, the Council will have regard to the non-exhaustive list of aggravating factors set out below and the non-exhaustive list of mitigating factors at 3.4. When determining the final level of penalty, officers should identify whether any combination of these factors, or other relevant factors, should result in an adjustment from the initial starting point specified above.

Aggravating factors:

- The level of overcrowding present
- A previous history of non-compliance whether or not the subject of separate formal action.

Failure to comply with a Banning Order:

Banning Orders are reserved for the most serious housing-related offences. In the event that the Council was satisfied that the offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

Failure to comply with duties under the Electrical Safety Regulations

In determining the level of penalty, the Council will initially consider the number and nature of the breaches of the Electrical Safety Regulations. The circumstances of each breach can vary widely from case to case but, as a guide:

Where a person or body who controls five or fewer properties fails to comply with any of the duties set out in regulation 3(3), this will be regarded as **moderate** band 1 offence, attracting a civil penalty with an initial starting point of £1,000. Where a person or body controls six or more properties, these same offences would be regarded as **moderate** band 2 offence, attracting a civil penalty with an initial starting point of £5,000.

Where a person or body who controls five or fewer properties, breaches any a duty under regulation 3 (other than those set out in regulation 3(3)) this will be regarded as a **serious** minimum band 3 offence, attracting a civil penalty with an initial starting point of £10,000. Where a person or body controls six or more properties, these same offences would be regarded as a **severe** minimum band 5 offences, attracting a civil penalty with an initial starting point of £20,000.

In determining the final level of civil penalty to be imposed, the Council will have regard to the non-exhaustive list of aggravating factors set out below and the non-exhaustive list of mitigating factors at 3.4. When determining the final level of penalty, officers should identify whether any combination of these factors, or other relevant factors, should result in an adjustment up (including up into another band) or down from the initial starting point specified above.

Aggravating factors:

- If there are other hazards present that are considered to have a significant impact on the health and/or safety of the tenant/s in the property.
- A previous history of non-compliance with a duty under regulation 3 or under the Housing Act 2004 would justify an increased civil penalty. Examples of non-compliance would include carrying out works in default, and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- Previously been the subject of formal enforcement action taken in respect of residential accommodation either in Crawley or any other geographical location within the United Kingdom. No account will be taken of any failed enforcement action taken by a local housing authority.

3.4 Mitigating factors

Examples of mitigating factors that may be considered when setting the financial penalty:

- The offender complied with the identified breach (for example by making an application to licence a previously unlicensed property) by the end of the representation period at the 'Notice of Intent' stage.
- The offender has taken other significant steps to remedy any deficiencies (such as significant steps to comply with an improvement notice).
- The offender fully cooperated with the Council in investigating the offence e.g. turned up for a PACE interview
- Acceptance of responsibility e.g. accepts guilt for the offence(s)
- The offender has joined a recognised landlord accreditation scheme
- Health issues impacted the offenders ability to comply – mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence

4.0 Approval

This policy was originally adopted by Crawley Borough Council on 29th November 2017 (amended in July 2021).