

## Civil Penalties Policy

East Suffolk Council (ESC) has adopted a policy under the Housing and Planning Act 2016 to enable them to impose Civil Penalties against private landlords who are found to have committed offences. The policy is set out below. It was originally adopted by Suffolk Coastal District Council and Waveney District Council which became East Suffolk Council on 1 April 2019

### What is a civil penalty?

Civil penalties are fines imposed by the Council as an alternative to prosecution. There is a need to demonstrate “beyond reasonable doubt” that an offence has been committed, so the burden of proof is similar to a prosecution case. The maximum fine that can be imposed is £30,000.

### When can a civil penalty be imposed?

A landlord, or letting agent, or both, may face a civil penalty if they:

- Fail to comply with improvement notice served under section 11 and/or 12 of the Housing Act 2004. These notices are served when there are significant hazards in premises that can be resolved in a reasonable and practicable way.
- Fail to apply for a licence for Houses in Multiple Occupation (HMOs). Councils currently license all HMOs housing 5 or more people, forming 2 or more households. Other HMO's are currently exempt from licensing.
- Contravene an overcrowding notice served on an (HMO) under section 139 of the Housing Act 2004.
- Breach the Management of Houses in Multiple Occupation (England) Regulations 2006. These cover matters such as maintenance of gas and electrical supplies, disrepair and safety.

### How is the amount of the fine determined?

The Department for Communities and Local Government (DCLG) published statutory guidance on civil penalties under the Housing and Planning Act 2016 (HPA). This guidance has been followed in establishing this policy. The ESC has adopted a scoring matrix to determine the level of penalty to be imposed. Each case will be reviewed against the matrix but it is recognized that it may be more appropriate to refer the matter for prosecution in the following circumstances.

- If there have been two or more previous offences by the same landlord or letting agent within 3 years.
- If the landlord has been listed on the Rogue Landlords database. This is a national database of landlords who have been subject to a banning order (imposed by the Courts to ban them from renting our properties) or received two or more civil penalties.

The following is the scoring matrix which has been adopted to give a consistent approach to the setting of fines. There is also a worked example.

Civil Penalty Charge	£1000	£2000	£5000	£7,000	£15,000	£30,000
Severity of offence <i>How significant was the offence?</i>	One cat 1 hazard or other breach <b>Score 1</b>	Two or more cat 1 hazards or breaches <b>Score 2</b>	Multiple cat 1 hazards B or C, or breaches <b>Score 3</b>	Multiple cat 1 hazards A and B or breaches <b>Score 4</b>	Multiple cat 1 hazards band A and B or breaches <b>Score 5</b>	Multiple cat 1 hazards band A or breaches <b>Score 6</b>
Harm or <b>potential</b> harm to tenant ( <i>Class of Harm taken from HHSRS guidance</i> ) <i>What was / could have been the result?</i>	Moderate e.g. occasional slight pneumonia, regular serious coughs and cold, broken finger, mild concussion <b>Score 3</b>	Moderate e.g. occasional slight pneumonia, regular serious coughs and cold, broken finger, mild concussion <b>Score 5</b>	Serious e.g. fractured skull, concussion, loss of finger, gastroenteritis, serious puncture wounds <b>Score 7</b>	Serious e.g. fractured skull, concussion, loss of finger, gastroenteritis, serious puncture wounds <b>Score 10</b>	Severe e.g. serious burns, serious fractures, anaphylactic shock, cardio respiratory disease <b>Score 15</b>	Extreme e.g. death <b>Score 25</b>
Track record of landlord / agent. <i>Previous experience with the landlord</i>	Good track record of high standards <b>Score 1</b>	Notices previously served and complied with <b>Score 2</b>	Enforcement action previously taken and prosecution or works in default (w.i.d) for moderate or serious risks <b>Score 3</b>	Enforcement action previously taken including prosecution or w.i.d for severe or extreme risks <b>Score 4</b>	Repeated enforcement action previously taken including prosecution or w.i. d <b>Score 5</b>	Repeated enforcement action previously taken including prosecution or w.i.d <b>Score 6</b>
Economic impact on offender – <i>what is their income?</i>	Landlord with 1-2 properties <b>Score 1</b>	Landlord with 3-4 properties <b>Score 2</b>	Landlord with small portfolio 5 - 10 <b>Score 3</b>	Large landlord 10+ properties <b>Score 4</b>	Large landlord 20+ properties <b>Score 5</b>	Large landlord 50+ properties <b>Score 6</b>
Deterrent to offender	Mild <b>Score 1</b>	Noticeable <b>Score 2</b>	Moderate <b>Score 3</b>	Significant <b>Score 4</b>	High <b>Score 5</b>	High <b>Score 6</b>
Proportionate punishment compared to prosecution	Level 4 <b>Score 2</b>			Level 5 <b>Score 4</b>		
Deterrent to others	Slight <b>Score 1</b>	Moderate <b>Score 2</b>	Moderate <b>Score 3</b>	Significant <b>Score 4</b>	High <b>Score 5</b>	High <b>Score 6</b>
Eliminate financial benefit of offence. <i>The penalty should exceed savings to the landlord of not doing works</i>	Penalty equivalent to cost of works <b>Score 1</b>	Penalty slightly higher than cost of works <b>Score 2</b>	Penalty 2x cost of works <b>Score 3</b>	Penalty 3x cost of works <b>Score 4</b>	Penalty 5x cost of work <b>Score 5s</b>	Penalty more than 5x cost of works <b>Score 6</b>

Inspection revealed :

One cat 1 hazard with potential for moderate harm\_e.g. rising damp. Landlord previously prosecuted, has 4 properties and need for a moderate deterrent. If prosecution taken, the level of fines in Magistrates court could be unlimited but estimated more likely to be in the region of £2500 -£5000. Fine needs to register with others as a deterrent. Penalty needs to be more than cost of works.

Severity of offence	1	2	3	4	5	6		
Harm or potential harm to tenant	3	5	7	10	15	25		
Track record of landlord / agent	1	2	3	4	5	6		
Economic impact on offender	1	2	3	4	5	6		
Deterrent to offender	1	2	3	4	5	6		
Proportionate punishment compared to prosecution	2			4				
Deterrent to others	1	2	3	4	5	6		
Eliminate financial benefit of the offence	1	2	3	4	5	6		
Total	4	6	12				22	22 points = penalty charge of £7000
Score range	7	8-14	15-21	22-28	29-35	36-42		
Charge linked to above score	1000	£2000	£5000	£7,000	£10,000	£30,000		

### Civil Penalty Review

The Principal Environmental Health Officer (PEHO) will review the case in conjunction with the Council's Legal Team to determine if there is sufficient evidence to be satisfied that, if the case were taken to the Magistrates Court, there would be a realistic prospect of conviction. Regard will be had to the Crown Prosecution Service *Code for Crown Prosecutors'11* for this purpose as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction. The Code has two stages: (i) the evidential stage and (ii) the public interest stage.

Once satisfied that the appropriate action is a Civil Penalty, the Council will serve a Notice of Intention to impose a Civil Penalty which will be signed by the PEHO.

There is a 28 day appeal period during which the recipient can appeal in writing. Any appeal would be heard by the Head of Housing, another Head of Service or Director.

### Final Notice

After the Appeal period if the Council still consider the issue of a Civil Penalty is correct a Final Notice will be served , signed by the PEHO. This Notice will include the following information:

- 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 (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

The local housing authority may at any time:

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

### Appeal to Residential Property Tribunal

On receipt of a final notice imposing a financial penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.

### Date of Policy Adoption

5 September 2017 – Suffolk Coastal DC

13 September 2017 Waveney District Council

Amended following transfer to East Suffolk Council: 1 September 2019