



## CABINET BRIEFING

Tuesday 2 February 2021

### CIVIL PENALTY POLICY (AMENDMENT)

#### EXECUTIVE SUMMARY

1. East Suffolk Council's Private Sector Housing team has a duty to ensure that the housing stock within the district is of a decent standard, and to do so, has a range of tools at its disposal including the ability to issue civil penalties under the Housing and Planning Act 2016.
2. This report seeks to amend the existing policy applied to administer these penalties, and to introduce specific matrices for houses in multiple occupancy and new electrical safety regulations.

Is the report Open or Exempt?	Open
<b>Wards Affected:</b>	All
<b>Cabinet Member:</b>	Councillor Richard Kerry Cabinet Member with responsibility for Housing
<b>Supporting Officer:</b>	Victoria Cotterill Senior Environmental Health Officer 07786 190570 <a href="mailto:victoria.cotterill@eastsoffolk.gov.uk">victoria.cotterill@eastsoffolk.gov.uk</a>

## **1 INTRODUCTION AND BACKGROUND**

1.1 The Housing and Planning Act 2016 allows local housing authorities to impose financial penalties (“civil penalties”) of up to £30,000 as an alternative to prosecution for a range of offences contained within the Housing Act 2004. These offences include:

- failing to comply with improvement notice. These notices are served when there are significant hazards in premises that can reasonably be remedied
- licensing failures in relation to Houses in Multiple Occupation (HMOs). Councils currently license all HMOs that are 3 storeys or higher and house 5 or more people, forming 2 or more households
- contravention of an overcrowding notice
- breach of HMO management regulations. These cover matters such as maintenance of gas and electrical supplies, disrepair and safety

1.2 The Council adopted a policy for issuing civil penalties, which now requires updating to reflect the introduction of a new type of penalty, to add specific matrices for houses in multiple occupation and to remove an inconsistency within its original scoring matrix whereby the minimum level of penalty could not be achieved using the scoring matrix.

1.3 Guidance from the Ministry for Homes, Communities and Local Government (MHCLG) states that local housing authorities should consider the following factors to help ensure that the financial penalty is set at an appropriate level:

- Severity of the offence.
- Culpability and track record of the offender.
- The harm caused to the occupier of the property.
- 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.

1.4 Additional considerations allow for adjustments to the level of the financial penalty to be levied based on repeat offending and the most unsafe properties warranting emergency action to be taken by the Council due to an imminent risk of harm.

1.5 When considering the use of Civil Penalties in enforcement full regard is had to the East Suffolk Corporate Compliance and Enforcement Policy of February 2019. At the heart of this policy are a set of principles incorporating the ideals of targeting the approach to highest risk offences; transparency; consistency; proportionality; intelligence led; joined up; risk based and accountable.

1.6 A revised version of our original scoring matrix and adopted civil penalty policy is provided at Appendix A. The matrix has been adjusted so that all levels of penalty are achievable.

## **2 HOUSES IN MULTIPLE OCCUPATION (HMO)**

- 2.1 Practical application of the civil penalty policy has shown that a new matrix is required to address breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006.
- 2.2 The legislation allows that a financial penalty can be issued as an alternative to prosecution for each separate breach of the HMO management regulation.
- 2.3 In cases where both the letting / managing agent and landlord can be prosecuted for failing to obtain a licence for a licensable HMO, then a financial penalty can also be imposed on both parties as an alternative to prosecution. The amount of the financial penalty issued to each party may differ depending on the individual circumstances of the case.
- 2.4 The suggested matrices for HMOs are provided within the proposed Civil Penalties Policy at **Appendix A**.

## **3 ELECTRICAL SAFETY STANDARDS (PRIVATE RENTED SECTOR) REGULATIONS 2020**

- 3.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the regulations”) came into force on 01 June 2020 and places a responsibility on landlords to ensure their electrical installations are safe, checked regularly and that reports for which are provided to tenants at specified times.
- 3.2 These requirements commenced for all new tenancies from 01 July 2020 and rolls out to existing tenancies from 01 April 2021.
- 3.3 Local housing authorities (LHA) must take action under the regulations where a landlord has failed to act. This is initially by way of a Remedial Notice. Where a Remedial Notice is not complied with, the LHA has the ability to carry out remedial action and re-charge the costs of this to the landlord. Where works are of an urgent nature (i.e. an imminent danger to life or significant risk of harm), the LHA is able to carry out urgent remedial action.
- 3.4 Where a landlord has failed to act, and the relevant action has been taken, the LHA has the ability to impose a financial penalty of up to £30,000 on the landlord.
- 3.5 There is no requirement to publish a matrix to determine the level of fines under these regulations, but to ensure a consistent approach to the issue of financial penalties, a suggested matrix for electrical safety related civil penalties is included in the revised Civil Penalties Policy at **Appendix A**.

## **4 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?**

- 4.1 The East Suffolk Council Strategic Plan seeks to support communities to enhance the places we live and work, with the Private Sector Housing team performing both an enforcement and educational role to improve the standard of all private residential accommodation within the district thereby improving the well-being of our residents.
- 4.2 Whilst we seek to take a graduated approach to enforcement, in line with the council’s general enforcement policy, there are instances where regulatory enforcement is necessary, for which must have a clear policy in place to guide our actions and provide clarity and consistency to our residents and stakeholders.

## 5 FINANCIAL AND GOVERNANCE IMPLICATIONS

5.1 No new implications are brought about by this amendment.

## 6 OTHER KEY ISSUES

6.1 This report has been prepared having considered the results of an Equality Impact Assessment and has no significant impact on any one particular group.

## 7 OTHER OPTIONS CONSIDERED

7.1 The existing policy has been in operation some time and following its use, and although is still in operation, has been found to require amendment. Should this revision not take place, the council would be open to challenge by appeal to a Tribunal by those to which a penalty has been issued.

## 8 REASON FOR RECOMMENDATION

8.1 To enable the council to continue to effectively deal with breaches of housing legislation, as an alternative to prosecution.

8.2 To enable the council to consistently, and fairly, issue civil penalties for the Electrical Safety Standards (Private Rented Sector) Regulations 2020.

### RECOMMENDATIONS

That the revised Civil Penalty Policy and associated matrices be adopted.

### APPENDICES

<b>Appendix A</b>	Proposed Civil Penalty Policy
<b>Appendix B</b>	East Suffolk Council Civil Penalties Policy - Current

### BACKGROUND PAPERS

Please note that copies of background papers have not been published on the Council's website [www.eastsuffolk.gov.uk](http://www.eastsuffolk.gov.uk) but copies of the background papers listed below are available for public inspection free of charge by contacting the relevant Council Department.

Date	Type	Available From
12 January 2021	MHCLG Guidance on Civil Penalties	<a href="#">Hyperlink</a>

## **Appendix A**

### **Civil Penalties Policy February 2021**

East Suffolk Council (ESC) has adopted a policy under the Housing and Planning Act 2016 to enable the imposition of Civil Penalties on private landlords who are found to have committed offences. The policy is set out below.

#### **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 HMOs 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 Ministry for Homes, Communities and Local Government (MHCLG) 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 and broadly cases will fall within three categories, which have their own matrix:

- Housing Disrepair and Overcrowding
- Electrical Safety
- Houses in Multiple Occupation

Each case will be reviewed against one or more of the matrices, 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 pages show each scoring matrix and a worked example of a housing disrepair case to show how a score may be considered.

## **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 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.

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.

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

Amended following Cabinet approval:

XXXXX

Civil Penalty Charge	£500	£1000	£2000	£5000	£7000	£15,000	£30,000
Severity of offence <i>How significant was the offence?</i>	Moderate scoring category 2 hazard(s) only  Score 0	One cat 1 hazard or at least one significant category 2  Score 1	Two or more cat 1 hazards or breaches  Score 2	Multiple cat 1 hazards B or C, or breaches  Score 3	Multiple cat 1 hazards A and B or breaches  Score 4	Multiple cat 1 hazards band A and B or breaches  Score 5	Multiple cat 1 hazards band A or breaches  Score 6
Harm or <b>potential</b> harm to tenant  <i>(Class of Harm taken from HHSRS guidance) What was / could have been the result?</i>	Likely to be comparatively minor.  Score 1	Moderate e.g. occasional slight pneumonia, regular serious coughs and cold, broken finger, mild concussion  Score 2	Moderate/ serious e.g. occasional slight pneumonia, regular serious coughs and cold, broken finger, mild concussion  Score 5	Serious e.g. fractured skull, concussion, loss of finger, gastroenteritis, serious puncture wounds  Score 7	Serious/ severe e.g. fractured skull, concussion, loss of finger, gastroenteritis, serious puncture wounds  Score 10	Severe e.g. serious burns, serious fractures, anaphylactic shock, cardio respiratory disease  Score 15	Extreme e.g. death  Score 25
Track record of landlord / agent.  <i>Previous experience with the landlord</i>	First dealings with landlord  Score 0	Good track record of high standards  Score 1	Notices previously served and complied with  Score 2	Enforcement action previously taken and prosecution or works in default (WID) for moderate or serious risks  Score 3	Enforcement action previously taken including prosecution or WID for severe or extreme risks  Score 4	Repeated enforcement action previously taken including prosecution or WID  Score 5	Repeated enforcement action previously taken including prosecution or WID  Score 6
Economic impact on offender <i>what is their income?</i>	Landlord with single property  Score 0	Landlord with 2 properties  Score 1	Landlord with 3-4 properties  Score 2	Landlord with small portfolio 5 - 10  Score 3	Large landlord 10+ properties  Score 4	Large landlord 20+ properties  Score 5	Large landlord 50+ properties  Score 6
Deterrent to offender	Noticeable Score 1	Noticeable Score 2	Noticeable Score 3	Moderate Score 4	Significant Score 5	High Score 6	High Score 7
Proportionate punishment compared to prosecution	Level 1 to 3  Score 1	Level 4  Score 2			Level 5  Score 4		
Deterrent to others	Possible Score 1	Noticeable Score 2	Moderate Score 3	Moderate Score 4	Significant Score 5	High Score 6	High Score 7
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  Score 1	Penalty equivalent to cost of works  Score 2	Penalty slightly higher than cost of works  Score 3	Penalty 2x cost of works  Score 4	Penalty 3x cost of works  Score 5	Penalty 5x cost of work  Score 6	Penalty more than 5x cost of works  Score 7

## Matrix Scoring Sheet – Housing Disrepair and Overcrowding

								Officer scoring
Severity of offence	0	1	2	3	4	5	6	
Harm or potential harm to tenant	1	2	5	7	10	15	25	
Track record of landlord / agent	0	1	2	3	4	5	6	
Economic impact on offender	0	1	2	3	4	5	6	
Deterrent to offender	1	2	3	4	5	6	7	
Proportionate punishment compared to prosecution	1	2			4			
Deterrent to others	1	2	3	4	5	6	7	
Eliminate financial benefit of the offence	1	2	3	4	5	6	7	
								<b>Total points:</b>
Score range	0-9	10-15	16-20	21-30	31-40	41-50	50+	<b>Score range:</b>
Charge linked to above score	£500	£1000	£2000	£5000	£7,000	£10,000	£30,000	<b>Financial Penalty:</b>

## Electrical Safety Matrix

Electrical Installation Condition Reports (EICR) should be completed by a qualified electrician, and provide a guide to officers as to the severity of any hazardous elements of an electrical installation. The EICR, categorises hazards into risk-based classification codes. These are:

C1 – Danger present – Risk of injury. Immediate remedial action required

C2 – Potentially Dangerous – Urgent remedial action required

C3 – Improvement Recommended

First Offence	Second Offence	Subsequent Offences for C1 and / or multiple C2
C1 Codes present £5,000	C1 code present £15,000	£30,000
C2 codes present (4+) £2,500		
C2 codes present (1-3) £1,000	C2 codes (no C1 codes) £10,000	
Failure to obtain EICR, with a satisfactory report being produced by the LHA under remedial action (no remedial works required) £500		

This electrical matrix also takes into account *the culpability of offender* as penalties increase for subsequent offences. Offences under other Acts, such as the Housing Act 2004, have been considered, but will not impact on penalties for these Regulations as LHAs are already able to charge penalties specifically for those offences.

The *severity of the offence*, incorporating the *harm posed to the occupants*, is linked to the condition reported by the qualified electrician and the relevant penalty increases to reflect the number and/or type of hazardous conditions found.

Where a landlord has failed to provide a report, where the LHA takes remedial action to commission such a report, with the installation found to be **in a satisfactory condition**, a penalty will be imposed to reflect:

- the attitude of the landlord
- failure to comply with the requirement for the report to be carried out
- the cost of obtaining a report, with the penalty being a deterrent

with a £500 maximum fine for this offence.

**SCORING MATRICES FOR OFFENCES RELATING TO HMOs:**

**Matrix 1: Culpability/ Severity:**

<b>Offence:</b>	<b>Low</b>	<b>Medium</b>	<b>High</b>
-----------------	------------	---------------	-------------

<p>Not having an HMO licence</p>	<p>Responsible person unaware of licensing requirement and had not been previously advised/ prompted by the LHA.</p> <p>Licence application and fee submitted quickly after offence identified.</p> <p>Responsible person a first time (inexperienced) landlord who is not a member of the RLA or working via an agent and HMO has been operational for less than 3-months.</p> <p>Responsible person unaware that his property has become an HMO and applies for a TEN when notified by the LHA.</p>	<p>Responsible person not a first-time landlord but does not have any HMOs within his portfolio.</p> <p>HMO has drifted into the mandatory licensing criteria due to a lack of proactive management by the responsible person.</p> <p>Responsible person is a member of the RLA/ELA and/ or is working in conjunction with a recognised estate agent.</p> <p>Responsible person has not been prompted by LHA to licence the HMO but is regarded as having sufficient experience of being a landlord to have known of the mandatory licensing criteria.</p>	<p>Responsible person has been notified of the need to licence the HMO or has previously been made aware of the mandatory licensing criteria by the Council or other agency but has failed to apply for a licence before it became occupied by 5 or more persons.</p> <p>Responsible person has provided false or misleading information in an attempt to obstruct/ deceive the LHA.</p> <p>Responsible person has provided false or misleading information or failed to provide adequate information that invalidates his licence application and continues not to provide the required information after being requested to do so.</p> <p>Responsible person continues to operate the house as a licensable HMO after the expiry of a TEN.</p> <p>Responsible person avoids applying for an HMO licence because they are not legally considered to be a fit and proper person.</p> <p>Responsible person is an experienced landlord that has or has had other HMOs in his portfolio.</p> <p>Responsible person wilfully obstructs the LHA and licensable HMO determination made by exercising a warrant of entry.</p>
----------------------------------	---	--	---

			<p>Responsible person has been prosecuted previously for operate a house as an HMO without the requisite licence.</p> <p>The unlicensed HMO is being used to provide accommodation for persons who do not have the right to rent/ remain in the country and/ or have been victims of modern day slavery/ human trafficking.</p> <p>Responsible person is the subject of a Banning Order.</p>
<b>Financial Penalty</b> (as a stand-alone offence):	<b>£1000</b>	<b>£2000</b>	<b>£5000</b>

**Matrix 2: Severity & Potential for Harm:**

Offence:	Low	Medium	High
<p>Failure to comply with the HMO Management Regulations:</p>	<p>1 – 2 minor regulation breaches that do not pose a serious risk to the health, safety &amp; well-being of the occupants of the HMO and HMO otherwise in a good condition. For example, not displaying contact information; untidy gardens.</p> <p>1 – 2 regulation breaches that contribute to low scoring category 2 hazards when assessed using the HHSRS.</p>	<p>1 – 3 regulation breaches that could cause moderate or serious harm to the occupants of the HMO if not attended to.</p> <p>1 – 3 regulation breaches that have not been adequately addressed after being brought to the attention of the responsible person.</p> <p>Persistent mismanagement of the HMO that gives rise to repeated regulation breaches, that is, the same breaches occur time and time again and are only addressed when brought to the attention of the responsible person.</p> <p>1 – 3 regulation breaches that contribute to category 2 hazards when assessed using the HHSRS.</p>	<p>4 or more regulation breaches of any description.</p> <p>1 or more serious regulation breaches that contributes to a category 1 hazard when assessed using the HHSRS.</p> <p>4 or more regulation breaches that have not been adequately addressed after being brought to the attention of the responsible person.</p> <p>Failure to maintain fire safety equipment or implement adequate fire safety precautions.</p> <p>Serious and regular mismanagement of the HMO by the responsible person leading to frequent breaches of the HMO management regulations.</p>
<p><b>Financial Penalty</b> (as a stand-alone offence):</p>	<p><b>£500</b></p>	<p><b>£1500</b></p>	<p><b>£2500</b></p>

**Matrix 3: Combined Offences:**

Offence:		Not having a licence		
		Low	Medium	High
HMO Regulation breaches	Low	£1500	£2500	£5500
	Medium	£2000	£3500	£6500
	High	£3500	£4500	£7500

**Matrix 4: Additional Considerations:**

Factor to be considered:		Adjustment to Financial Penalty:
Responsible person has received a financial penalty within last 3-years.		Add £1000
Responsible person has been previously prosecuted for Housing Act offences.		Add £1000
Responsible person has received a financial penalty within previous 12-months		Add £3000
Case HMO was found to be in such a condition that warranted the service of an Emergency Prohibition Order		Add £2500
Case HMO was found to be in such a condition that warranted the taking of Emergency Remedial Action		Add £2000
Responsible person is in breach of an Overcrowding Notice		Add £1000  Plus 2x the benefit received from additional rents collected or + £250 per person over the maximum occupancy stated in the Order, whichever is the greater sum.
Level of co-operation received following LHA's intervention:	First-time offender who co-operates fully with LHA with minimal intervention and follow-up action necessary.	Minus £1000
	Significant involvement by the LHA to achieve compliance.	Add £1000
	Significant lack of co-operation received from the responsible person resulting in further enforcement action.	Add £2500

**Matrix 5: Calculation Summary:**

<b>Matrix</b>	<b>Band/ Consideration:</b>	<b>Penalty Value (£):</b>	<b>Notes:</b>
<b>Culpability/ Severity</b>			
<b>Severity</b>			
<b>Matrix 3: Combined sub-total</b>			
<b>Additional Considerations</b>	Responsible person has received a financial penalty within last 3-years.		
	Responsible person has been previously prosecuted for Housing Act offences.		
	Responsible person has received a financial penalty within previous 12-months		
	Case HMO was found to be in such a condition that warranted the service of an Emergency Prohibition Order		
	Case HMO was found to be in such a condition that warranted the taking of Emergency Remedial Action		
	Responsible person is in breach of an Overcrowding Notice		
<b>Level of co-operation received following LHA's intervention:</b>	First-time offender who co-operates fully with LHA with minimal intervention and follow-up action necessary.		
	Significant involvement by the LHA to achieve compliance.		
	Significant lack of co-operation received from the responsible person resulting in further enforcement action.		
<b>TOTAL PENALTY AMOUNT:</b>			