



# Private Sector Housing Civil Penalty Policy

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## 1.0 Overview

1.1 The Housing and Planning Act 2016 introduced a range of measures for local authorities to use to enable appropriate enforcement against non-compliant landlords.

1.2 This policy, and the guidance within, is intended to work in accordance with the Dacorum Borough Council Private Sector Housing Enforcement Policy and the statutory guidance 'Civil Penalties under the Housing and Planning Act 2016, Guidance for Local Authorities'.

1.3 The purpose of this policy is to set out the framework for decisions regarding the issue of Civil Penalties by Dacorum Borough Council. Due to the nature of cases, there may be circumstances that justify departure from the policy and therefore each case will be dealt with on its own merits, with regard to its specific circumstances.

1.4 Where "the Council" is referred to, this is a reference to Dacorum Borough Council.

1.5 Where the "landlord" is referred to, this is a reference to "owner", "person having control", "person managing" or "licence holder", as defined under the Housing Act 2004.

## 2.0 Introduction

2.1 Dacorum Borough Council is committed to improving the housing standards within the borough, ensuring that properties within the private rented sector are well maintained, properly managed, free from hazards and safe for occupation.

2.2 The Council recognises that most landlords do meet the required standards, operating within the legislative framework and with a good level of professionalism.

2.3 There is a small minority of landlords who are criminal; irresponsibly managing and maintaining property as well as cases where legislation and regulation are knowingly disregarded.

2.4 To enable Local Authorities to tackle rogue landlords, the government has introduced powers within the Housing and Planning Act 2016 to make a number of amendments to enforcement under the Housing Act 2004, namely:

- Civil Penalties of up to £30,000 (per offence) as an alternative to prosecution for various offences where suitable
- Rent Repayment Order offences expanded to include illegal eviction, failure to comply with an improvement notice and other specific offences
- Database of Rogue Landlords – for specific offences and the serving of multiple Civil Penalties within a 12-month timescale
- Banning Orders – for the most prolific offenders

## 3.0 Government Guidance

3.1 In April 2017, the Department for Communities and Local Government (DCLG) published Statutory Guidance. This guidance recommends certain factors the Council should take into account when deciding on the level of a Civil Penalty. In addition, the Council is advised to develop and document its own policy on determining the appropriate level of financial penalty in individual cases. This policy takes into account the recommendations outlined in the published [guidance](#).

## 4.0 What is a Civil Penalty

4.1 A Civil Penalty is a financial penalty of up to £30,000 per offence. This may be imposed on a landlord as an alternative to prosecution for specific offences. The amount of each penalty is determined by the Council for each case. In determining an appropriate level of penalty, Local Authorities must have consideration for a number of factors as outlined in the MHCLG Guidance – Civil Penalties under the Housing and Planning Act 2016. A Civil Penalty will be determined at a level that is considered most appropriate and an effective sanction in a particular case.

## 5.0 Purpose of a Civil Penalty

5.1 A Civil Penalty is an alternative to prosecution and should not be regarded as an easy or lesser option compared with prosecution. The primary purpose of the Council's exercise of its regulatory powers is to protect the occupants' safety within a dwelling.

5.2 The primary aims will be to:

- Ensure landlords take proper responsibility for their properties
- Reprimand of the offender
- Eliminate any financial gain or benefit from non-compliance
- Lower the risk to tenants health and safety
- Aim to deter future non-compliance
- Deter others from committing similar offences

## 6.0 Civil Penalty Offences

6.1 Section 126 and Schedule 9 of the 2016 Act enables the Council to impose a Civil Penalty as an alternative to prosecution for specific offences under the Housing Act 2004 and Housing and Planning Act 2016:

- Failure to comply with an Improvement Notice – (Section 30 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation – (section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act – (section 95 of the Housing Act 2004)
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004)
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

6.2 On 1<sup>st</sup> June 2020, the Electrical Safety Standards in The Private Rented Sector (England) Regulations 2020 came into force for new tenancies and on 1<sup>st</sup> April 2021 for existing tenancies. A Civil Penalty can also be issued for failing to comply with landlord duties under these regulations.

6.3 Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 - since 1<sup>st</sup> April 2020, landlords can no longer let or continue to let properties covered by the Minimum Level of Energy Efficiency Regulations if they have an Energy Performance Contract (EPC) rating below E, unless they have a valid exemption in place.

6.4 The Council can enforce this minimum standard under the regulations and impose a financial penalty for those in breach.

## **7.0 Prosecution or Civil Penalty Determination**

7.1 The legislation does not permit the Council to impose both prosecution and Civil Penalty in regard to the same offence. The guidance leaves it open to the Council to develop policy as to when to prosecute and when to apply a Civil Penalty. Generally, the Council will prosecute for the more serious offences or in cases where the offender has previously committed similar offences, both of which would likely be determined as the higher levels of Civil Penalty.

7.2 The following is to be considered when determining appropriate course of action:

- Is there public interest in imposing a Civil Penalty on the offender in respect of the offence
- The culpability and track record of the offender
- The harm or potential harm caused to the tenant(s)
- The difficulty in recovery of a Civil Penalty
- Where an offence is ongoing
- Where the offence forms part of a wider/cross-team prosecution

7.3 The Council will consider the circumstances of each case and make a decision on taking a prosecution or apply a Civil Penalty in accordance with Dacorum Borough Council's Private Sector Housing Enforcement Policy.

7.4 The Public Interest Stage of the Full Code Test for criminal prosecutions -

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

## **8.0 Burden of Proof**

8.1 The same standard of proof is required for a Civil Penalty as for a criminal prosecution. This means that before issuing the Civil Penalty, the Council must be satisfied beyond reasonable doubt that the landlord committed the offence(s) and that if the matter were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

8.2 In the determination of whether there is sufficient evidence to secure a conviction, the Council will have regard to the Dacorum Borough Council Private Sector Housing Enforcement Policy and the Crown Prosecution Service Code for Crown Prosecutors. The determination will be based on an objective assessment of the evidence, including whether the evidence is admissible, reliable and credible and the impact of any defence.

8.3 Consideration must be given to any potential defences available and, in certain circumstances, the Council may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

8.4 The Evidential Stage of the Full Code Test for criminal prosecutions as set out in the Guide for Crown Prosecutors - <https://www.cps.gov.uk/publication/code-crown-prosecutors>

## 9.0 Determining Level of Civil Penalty

9.1 The Council has the power to apply a Civil Penalty of up to £30,000 per offence. Statutory guidance states that the Council must consider a number of factors in determining its level of penalty based on:

- **Severity of the offence** – the more serious the offence, the higher the penalty
- **Culpability and track record of the offender** – a higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- **The harm caused to the tenant** – the greater the harm, or the potential for harm, the higher the amount should be when imposing a Civil Penalty.
- **Punishment of the offender** – the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- **Deter the offender from repeating the offence** – the level of penalty should be set at a level high enough level such that it is likely to deter the offender from repeating the offence.
- **Deter others from committing similar offences** - the level of the penalty should therefore be set at a high enough level such that it is likely both to deter the offender from repeating the offence.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence** - it should never be cheaper to offend than to ensure a property is well maintained and properly managed.

9.2 **Culpability** - The level of culpability will depend on a number of factors:

High level culpability is considered to be intentional or reckless breach or wilfully disregarding the law, including any of the following:

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

Medium level culpability is considered to be offending through an act or omission a person exercising reasonable care would not commit:

- A first offence with no high level culpability criteria met
- Failure is not a significant risk
- The landlord/agent does have systems in place to manage risk to comply with legal obligations

Low level culpability is considered to be an offence committed with little fault:

- Minor breaches

- Isolated occurrence
- Significant effort made to comply but was inadequate to achieve compliance
- No or minimal warning of circumstance/risk

The above serve as examples only and are not exclusive – other factors may be taken into account when determining levels of culpability.

**9.3 Harm** - There are a number of factors to be considered when determining the level of harm – both the actual, potential and likelihood will be considered.

High level harm:

- Serious effect on person(s)
- Harm to a vulnerable person(s)
- Serious levels of overcrowding
- Harm to multiple persons

Medium level harm:

- Adverse effect on person(s) but not high level
- Medium risk of harm to an individual

Low level harm:

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

The above serve as examples only and are not exclusive – other factors may be taken into account when determining levels of harm.

#### **9.4 Vulnerability**

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

A vulnerable individual is a person who is at greater risk of harm, including:

- Elderly person
- Children
- Pregnant women
- Receives domiciliary care
- Has health needs – mental health, drug dependency, alcohol dependency, terminally ill etc
- requires assistance in conducting their own affairs
- Has payments made to him/her or to an accepted representative in pursuance of arrangements under the Health and Social legislation.
- Receives a service or participates in any activity provided specifically for persons who have particular needs because of age, has any form of disability or has a prescribed physical or mental problem.
- Those who have difficulty in understanding, speaking or reading English.

This list is not exclusive and other factors may affect vulnerability when considering the level of any penalty.

## 9.5 Civil Penalty Level

The following matrix is used by officers in determining the penalty amounts for a Civil Penalty under the Housing and Planning Act 2016. It has been devised to have specific regard to the Government Guidance for Local Authorities: Civil Penalties under the Housing and Planning Act 2016, published April 2018.

Each row in the matrix considers certain criteria with each row providing a score dependent of severity of an offence. The officer is required to justify the most appropriate score based on the case evidence. The scoring of each row will be added up to provide a total score that will determine an exact penalty amount as per the following table:

<b>Score Range</b>	<b>Fixed Penalty</b>
<b>1-5</b>	£250
<b>6-10</b>	£500
<b>11-20</b>	£750
<b>21-30</b>	£1000
<b>31-40</b>	£2500
<b>41-50</b>	£5000
<b>51-60</b>	£10,000
<b>61-70</b>	£15,000
<b>71-80</b>	£20,000
<b>81-90</b>	£25,000
<b>91-100</b>	£30,000



The officer using the matrix will consider each factor and severity and will at no point be setting the level of Civil Penalty as the matrix is designed to automatically calculate the value:

Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
<b>Deterrence and Prevention</b>	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrent.	Medium confidence that a financial penalty will deter repeat offending. Minor informal publicity required for mild deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat (eg. No contact from offender). Some informal publicity will be required to prevent similar offending in the landlord community.	Little confidence that a financial penalty will deter repeat offending. Likely that informal publicity will be required to prevent similar offending in the landlord community.	Very little confidence that a financial penalty will deter repeat offending. Informal publicity will be required to prevent similar offending in the landlord community.
<b>Removal of Financial Incentive</b>	No significant assets. No or very low financial profit made by the offender.	Little asset value. Little profit made by the offender.	Small portfolio landlord (between 2-3 properties). Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.
<b>Offence and History</b>	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offences of moderate to large severity or a single instance of a very severe offence or multiple breaches.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.
<b>Harm to Tenants (Weighting x 2)</b>	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	Likely some low level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary evidence.	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed; (High HHSRS score) Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.	Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed; (high HHSRS Score) Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).

- Each row must be scored and totalled for score range
- Harm to tenants has an additional weighting which will be double the selected score
- The score will then fall into a score range and equate to a fixed penalty level

## **10.0 Multiple Offences**

10.1 Where the Council is satisfied that more than one offence has been committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices for each offence (e.g. where there are multiple breaches of the HMO Management Regulations) with regards to a total level that is fair and proportionate but in all cases is of a level that fulfils its requirements to act as a deterrent and removes any gain.

## **11.0 Multiple Penalties**

11.1 Where satisfied on the merits of the case, or if the Council consider that imposing multiple Civil Penalties at the same time would result in an excessive cumulative penalty, the Council may take action in respect of one or some of the offences and provide a warning to the offender regarding the outstanding offences so that the Council may take action at a later date if the offence(s) continue.

## **12.0 Assessment of Income and Assets**

12.1 The Council may make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty. The perpetrator will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship in those representations. It will be for the perpetrator to provide sufficient documented evidence of income when relying upon such representations.

12.2 The Council reserves the right to request further information to support any financial claim, and where this is incomplete, appears to be inaccurate or is not sufficiently evidenced, may determine that the representation should not be considered. It should be noted that due to the average value of properties and the upper limit of £30,000 associated with any Civil Penalty action, it is unlikely that perpetrators with multiple properties will be able to demonstrate financial hardship.

## **13.0 Reduction of Civil Penalty**

13.1 The Council will take into account mitigating factors, including any admission of guilt.

13.2 The Council will also consider a reduction of up to a maximum of 15% in the event that the offender complied with the identified breach (for example by making an application to license a previously unlicensed property) within the representation period at the 'Notice of Intent' stage.

13.3 A reduction of 15% of the original calculated financial penalty will be applied should the penalty be paid within a specified time period (normally 28 days).

13.4 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 30% in total.

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

## 14.0 Process

14.1 Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a Civil Penalty.

14.2 A 'Notice of Intent' will be service on the offender/responsible party. The Notice must specify the following:

- The total amount of the proposed Civil Penalty
- The reasons for imposing the Civil Penalty
- Information on the right of the offender to make representations to the Council

14.3 Any offender who has received a 'Notice of Intent' will be given 28 days to make written representation to the Council. Representations can be made about the imposition of a penalty (including whether an offence/breach has been committed) and/or the proposed amount of the penalty, including any mitigating circumstances. The Council will consider any representations made. It will be the responsibility of the offender to provide appropriate and satisfactory documented evidence to support their representation. Failure to provide such evidence may mean the Council will not be able to consider any representations received.

14.4 Representations can only be made by the offender served with a Notice of Intent. No other parties will have an automatic right to make representations and the Council will determine whether to consider any on a case-by-case basis.

14.5 At the end of the 28-day period, any valid representations will be considered and the Council will decide:

- Whether to impose a Civil Penalty on the person and;
- The final amount of any such penalty to be imposed

14.6 If the Council decides to impose a Civil Penalty, a Final Notice will be issued. The notice will impose the penalty and specify:

- The total amount of the Civil Penalty
- The reason for imposing the Civil Penalty
- How to pay the Civil Penalty
- The period for payment of the penalty
- Information on rights of appeal to the First Tier Tribunal
- The consequences of failure to comply with the notice

## 15.0 Appeals

15.1 If a Civil Penalty is imposed on a perpetrator, they have the right of appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a penalty, or, the amount of the penalty that has been imposed. The First-tier Tribunal (Property Chamber) have the power to confirm, vary (increase or reduce) the amount of the Civil Penalty, or to instruct the withdrawal of the Civil Penalty.

15.2 Where an appeal has been made, the Civil Penalty will be suspended until the appeal has been heard and decided.

## **16.0 Payment of a Civil Penalty**

16.1 A Civil Penalty must be paid within 28 days of the final notice being given, unless the notice is suspended due to an application for appeal. Details of how to pay the penalty will be provided on the final notice.

## **17.0 Debt Recovery**

17.1 If a Civil Penalty is not paid within the appropriate time period, the Council will refer the case to the County Court for an order to seek its recovery. This will include the recovery of any additional costs to the Council from having to undertake such action.

## **18.0 Income from Civil Penalties**

18.1 Income received from the application of Civil Penalties will be retained by the Council and used for the purpose of meeting the costs and expenses incurred in relation to carrying out its enforcement functions within the private sector remit.

18.2 The retention of the income is detailed in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 - <https://www.legislation.gov.uk/ukxi/2017/367/made/data.pdf>

## **19.0 Consequences of a Civil Penalty**

19.1 A Civil Penalty is an alternative to prosecution and - unless withdrawn and the Council determines that in the public interest a prosecution for the ordinal offence is the preferred option - then a landlord cannot be prosecuted for the same offence once the penalty has been paid and the matter concluded.

19.2 Should a Civil Penalty be 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 own merits including the reason for the penalty and the extent of the offender's involvement in any property under consideration.

## **20.0 Database of Rogue Landlords and Letting Agents**

20.1 Where a landlord is in receipt of two or more Civil Penalties over a 12-month period, the Council will enter that person's details in the database of rogue landlords and letting agents.

## **21.0 Exceptions to Policy**

21.1 Any departure from this policy will be taken for escalation to the Team Manager and Head of Service, where a decision can be determined and documented.

## 22.0 Governance

22.1 This policy is subject to change and will be reviewed periodically and in line with changes in legislation, government statutory guidance and Council policy.

## 23.0 Reasonable Adjustments and Alternative Formats

23.1 Our aim is to make our services easy to use and accessible for everyone.

We will take steps to make any reasonable adjustments needed for you to contact us, access our policies, or any requests to provide responses in other formats.

Depending on the individual's needs, these might include:

- Using larger print, or a specific colour contrast
- Giving more time than usual to provide information or comments on a complaint
- Using the telephone rather than written communication
- Communicating with a person through their representative or advocate
- Arranging a single point of contact
- Having an 'easy read' version of the complaint process or decisions

If you would like to contact us about reasonable adjustments or alternative formats, please email [edi@dacorum.gov.uk](mailto:edi@dacorum.gov.uk) or call us on **01442 228000**

If you prefer to write to us, send your letter to:

**Equality, Diversity and Inclusion Team  
Dacorum Borough Council  
The Forum  
Marlowes  
Hemel Hempstead  
Hertfordshire  
HP1 1DN**

## 24.0 Links to Relevant Documents

- [The Code for Crown Prosecutors](#)
- [Housing Act 2004](#)
- [The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#)
- [Housing and Planning Act 2016](#)
- [The Energy Efficiency \(Private Rented Property\)\(England and Wales\) Regulations 2015](#)
- [The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#)
- [Civil Penalties under the Housing and Planning Act 2016 – Statutory Guidance](#)
- [The Rent Repayment Orders and Financial Penalties \(Amounts Recovered\) \(England\) Regulations 2017](#)
- Dacorum Borough Council Private Sector Housing Enforcement Policy
- [Dacorum Borough Council Private Sector Housing HMO Policy](#)