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Dorset Councils Partnership: Statement of principles for determining financial penalties for Housing Act Offences

Policy Details

What is this policy for?	Sets out the principles that Dorset Councils Partnership (DCP) will apply in exercising powers to impose a financial penalty for specified criminal offences under the Housing Act 2004 as an alternative to prosecution.
Who does this policy affect?	The Housing and Planning Act 2016 amended the Housing Act 2004 so that a range of offences can be subject to a financial penalty as an alternative to prosecution. Landlords, tenants
Keywords	Housing, Planning, financial, penalty, enforcement, policy
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Dorset Council policy adopted from	Dorset Councils Partnership. Dorset Council has adopted policies from its constituent councils. Please be aware varying policies apply within the Dorset Council area. Policies will be reviewed and/or harmonised by 1 April 2021.
Does this policy relate to any laws?	<ul style="list-style-type: none"> • The Housing and Planning Act 2016 • Housing Act 2004 • The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006
Is this policy linked to any other Dorset Council policies?	Reference number and details of any other Dorset Council policies this policy is linked to, and in what way they are linked.
Equality Impact Assessment (EqIA)	An EQIA will be completed when the policy is reviewed/harmonised for Dorset Council.
Other Impact Assessments	None.

Status and Approvals

Status	Live	Version	
Last review date	October 2017	Next review date	
Approved by (Director)		Date approved	
Member/ Partnership Board Approval	Full Council's of: West Dorset District Council, North Dorset District Council, Weymouth & Portland Borough Council	Date approved	October 2017



Housing Improvement Team

Housing Department

Enforcement Policy 2017

**Statement of principles for
determining financial penalties
for Housing Act offences.**

1. Introduction

This statement sets out the principles that the North Dorset District, West Dorset District and Weymouth & Portland Borough Councils (the Council) will apply in exercising powers to impose a financial penalty for specified criminal offences under the Housing Act 2004 for which they are the enforcing authority. A second document deals with financial penalties for civil breaches contrary to other housing related legislation.

2. The Council's power to impose financial penalties.

In recent years legislation has been introduced which has provided the enforcing authority with a power to impose and charge a financial penalty in prescribed circumstances.

The Housing and Planning Act 2016 has subsequently amended the Housing Act 2004 so that a range of offences can be subject to a financial penalty as an alternative to prosecution. Guidance for local authorities on implementing this option is provided in DCLG publication 'Civil penalties under the Housing and Planning Act 2016'.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf

The DCLG publication is statutory guidance to which local housing authorities must have regard. It recommends certain factors a local authority should take into account when deciding on the level of financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

In accordance with the new section 249A(4) of the 2004 Act the amount of a financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding on the level of penalty, it does not go into any level of detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of penalty in a particular case and seeks to set out further guidance through this policy as to how it will do so.

In developing its policy the Council has had regard to principles set out in a number of publications including the Magistrates' Court Sentencing Guidelines issued by the Sentencing Council.

In anticipation of further legislative provisions being introduced enabling the imposition of a financial penalty the principles detailed in this document will be applied in setting any charge.

3. The Scope of the document

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.

Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:

- section 30 (failure to comply with improvement notice),
- section 72 (licensing of Houses in Multiple Occupation (HMOs)),
- section 95 (licensing of houses under Part 3),
- section 139(7) (failure to comply with overcrowding notice), or
- section 234 (management regulations in respect of HMOs).

A new Schedule 13A has also been inserted into the 2004 Act which prescribes the procedures that a local housing authority must follow before imposing a financial penalty, details of the appeal process and the procedure for recovery of the penalty.

The Housing Department of the Council acknowledge that such a statement represents good practice and has produced this document in order to publicise the principles that will be adopted in any circumstance that permits the imposition of a financial penalty for an offence against The Housing Act 2004 and associated legislation.

Where a financial penalty is charged the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty.

The Council may revise its statement of principles and, where it does so, it will publish the revised statement.

4. General principles and factors to be applied to the imposition of a financial penalty.

The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public.

The aim of any financial penalty will therefore be to:

- Change the behaviour of the landlord / agent concerned.
- Deter future non-compliance by landlords / agents.
- Eliminate any financial gain or benefit from non-compliance with the regulations.
- Be proportionate to the nature of the breach / seriousness of the offence and the potential harm outcomes.
- Reimburse the cost incurred by the Council in undertaking work in default and/ or fulfilling its enforcement duties.

DCLG guidance on the imposition of financial penalties advises local authorities to take account of the following seven factors when calculating the amount of any penalty.

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

The Council will take those seven factors into account when determining the amount of any financial penalty to be imposed and in doing so will specifically consider:

- The extent to which the non-compliance was the result of direct acts or omissions of the landlord / agent.
- Whether the non-compliance was deliberate or resulted from a matter of which the landlord / agent should reasonably be aware.
- Whether any other body has or is likely to apply sanctions associated with the non-compliance.
- The level of cooperation provided by the landlord / agent concerned.
- Any history of previous contraventions of Housing or Housing related legislation.
- The level of financial gain achieved by the non-compliance.
- The level of risk created by the non-compliance.

- The degree of responsibility held by the landlord / agent for the non-compliance.
- The cost incurred by the Council in enforcing the relevant provision.
- Any additional aggravating or mitigating factors that may warrant an increase or decrease in the financial penalty.

5. Financial penalties applicable to specific legislation

Housing Act 2004.

Financial or Civil penalties can be considered as an alternative to prosecution for the following offences (“relevant housing offences”) :

- section 30 (failure to comply with improvement notice),
- section 72 (licensing of Houses in multiple occupation (HMOs)),
- section 95 (licensing of houses under Part 3),
- section 139(7) (failure to comply with overcrowding notice), or
- section 234 (management regulations in respect of HMOs).

The maximum civil penalty permitted is £30,000.

The standard of proof required before a financial penalty can be imposed is the same as that required to prove an offence in a criminal prosecution. Therefore, before taking such formal action, the Council must satisfy itself ‘beyond reasonable doubt’ that a relevant housing offence has been committed.

Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the Council must be able to demonstrate ‘beyond reasonable doubt’ that the offence had been committed.

The Council will consult the Crown Prosecution Service Code for Crown Prosecutors’ for guidance when assessing whether there is likely to be sufficient evidence to impose a civil penalty, to prosecute or pursue any other available sanction. https://www.cps.gov.uk/publications/code_for_crown_prosecutors/

The Code has two stages: (i) the evidential stage and (ii) the public interest stage. The Council will commit to rigorous scrutiny of the facts of any case to ensure that the two stages have been adequately addressed prior to considering any potential sanction.

The Council will consider whether to prosecute, impose a civil penalty, pursue an alternative sanction or take no action on a case by case basis with reference to the stated principles within this policy. Initially, the reasons for a particular course of action being pursued will be documented and presented by the Housing Improvement Manager to the Council’s Corporate Manager – Legal for approval to ensure that the appropriate tests have been passed and that the

preferred sanction is the most 'appropriate and effective'. Should both the Housing and Legal Managers be in agreement on the preferred sanction, the briefholder / portfolio holder will be advised of the proposed action and invited to confirm their support, prior to any sanction being progressed.

The procedure for imposing a civil penalty is set out in Schedule 13A of the 2004 Act. Where a civil penalty is considered the appropriate sanction the level of penalty will initially be set by reference to the Financial Penalty Matrix attached to this policy as App I.

The matrix accounts for the seven factors detailed in the DCLG guidance under four headings, with the resultant 'score' split into eleven bands. Each band provides a range of possible penalty with the lowest band having a penalty of up to £250 and the highest band imposing a penalty up to the maximum £30,000. The maximum penalty for any band will be assumed to apply unless there are accepted mitigating circumstances associated with the case. In all cases a view will be taken on the level of penalty calculated from the matrix compared to the offence committed and if necessary the penalty will be adjusted subject to documented evidence. Prior to final determination of a penalty the Council will satisfy itself that the penalty is just and proportionate.

Where the offender is issued with more than one financial penalty, the Council will have regard to guidance from the definitive guideline on [Offences Taken into Consideration and Totality](#), and consider the totality of the penalties.

If the aggregate total of the penalties is not considered just and proportionate the Council will consider how to reach a just and proportionate financial penalty.

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, to make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, either singular or cumulative, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained, or the offender has supplied, any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Where it is determined that a financial penalty is appropriate the Council will serve a 'notice of intent' on the person responsible for the offence within 6 months of the offence being evidenced, setting out:

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the penalty; and
- Information about the right of the landlord to make representations.

The Council will invite representations which must be made within 28 days of receipt of the notice of Intent. Having considered any representations received the Council must then decide if it still wishes to impose a civil penalty and, if so, the amount. If a civil penalty continues to be considered appropriate a 'final notice' will be served confirming

- 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.

A person who receives a final notice may appeal to the First-tier Tribunal against:

- The decision to impose a penalty; or
- The amount of the penalty.

If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

Other legislation.

Where Housing or Housing related legislation is introduced which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge the Council will seek to fully implement any duty or power conferred upon it. Charges will be published and will be based on this statement of principles, or the sister document referring to civil penalties..

Other Fees and charges

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving a Hazard Awareness Notice; Improvement Notice; making a Prohibition, Emergency Prohibition or Demolition Order: taking Emergency Remedial Action; or reviewing suspended notices. Charges will be made on a cost recovery basis using the hourly rates of the officers involved at

the time plus any associated costs e.g. travelling costs etc. The minimum charge for 2017/18 will be £260 + VAT. The minimum charge will be revised annually by the Council.

The Council will advise the landlord of the charge associated with the serving of a notice by the issue of a demand providing full details of the right to appeal.

Appendix 1. Financial Penalty Matrix.

FACTORS	Score =1	Score = 5	Score = 10	Score =15	Score = 20	Total
1. Severity of offence and culpability	Single low level offence and no previous enforcement history.	Single offence and minor previous enforcement history.	Offence has moderate severity or small but frequent impact(s), and /or recent second time offender.	Ongoing offence of moderate to large severity or a single instance of a very severe offence, or multiple offender.	Continuing serious offence. Serial offender. History of enforcement action being necessary.	
2. Deterrence of offender and others	High confidence that a financial penalty will deter repeat offending, and / or publicity not required to prevent similar offending by others.	Medium confidence that a financial penalty will deter repeat offending, and / or only minimal publicity required to prevent similar offending by others.	Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender), and /or some publicity will be required to prevent similar offending by others.	Little confidence that a financial penalty will deter repeat offending, and publicity will be required to prevent similar offending by others.	Very little confidence that a financial penalty will deter repeat offending, and publicity essential to prevent similar offending by others.	
3. Removal of financial benefit	Minimal assets and no or very low financial profit made by offender.	Little asset value and /or little profit made by offender.	Small portfolio landlord with low asset value, and low profit made by offender.	Medium portfolio landlord or a small Managing Agent, with Medium asset value, and medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent, with high asset value, and /or high profit made by offender.	

<p>4. Harm to the tenants (x2 weighting)</p>	<p>Very little or no harm caused, and no vulnerable occupants, or tenant provides no information on impact.</p>	<p>Low level health/harm risk(s) to occupant deemed likely. No vulnerable occupants, and /or only poor quality information on impact available.</p>	<p>Moderate level health/harm risk(s) to occupant likely, or low level risk(s) to vulnerable occupants. Some information on impact available but with no primary or secondary evidence</p>	<p>High level of health/harm risk(s) to occupants likely, and tenant(s) will be affected frequently or by occasional high impact occurrences, or vulnerable occupants. more than likely exposed to moderate level of risk. Good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.</p>	<p>Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected, or vulnerable occupants. Excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).</p>
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Score range	Max Penalty
<6	£250.00
6<11	£500.00
11<21	£750.00
21<31	£1,000.00
31<41	£2,500.00
41<51	£5,000.00

Score range	Max Penalty
51<61	£10,000.00
61<71	£15,000.00
71<81	£20,000.00
81<91	£25,000.00
91+	£30,000.00