

Luton Borough Council Housing & Planning Act 2016 Civil penalties and rent repayment orders

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Introduction

We've adopted the provisions of the Housing and Planning Act 2016 to introduce civil penalties.

Civil penalties will be used as an alternative to prosecution and rent repayment orders for certain offences relating to Housing Act 2004 and the Housing and Planning Act 2016.

Civil penalties

The [Housing and Planning Act 2016](#) enables local authorities to impose civil penalties as an alternative to prosecution for certain offences under the [Housing Act 2004](#), as listed here.

Section 30

Failure to comply with an improvement notice, which is a notice served by the council requiring the improvement and / or repair of a property within a certain timescale.

Section 72

Offences in relation to the licensing of houses in multiple occupation (HMO) including:

- operating an HMO without a licence when one is required
- breaching the licence conditions of a licensed HMO

Section 95

Offences in relation to the licensing of houses under part 3 of the act (selective licensing of residential accommodation), including operating a house without a licence when one is required.

Section 139

Offences in relation to the contravention of an overcrowding notice, including exceeding the occupancy levels in an HMO specified on an overcrowding notice.

Section 234

Offences in relation to the contravention of management regulations in respect of HMO, including the repair, maintenance, cleanliness and good order of the house, facilities and equipment in it.

In deciding how to proceed, the council will satisfy itself that there is sufficient evidence to prove beyond reasonable doubt that an offence has been committed.

This needs to be to the criminal burden. This means that, in determining that the issuing of a civil penalty as opposed to prosecution is the appropriate course of action, the council will consider each case individually and will take into consideration factors including:

- the seriousness of the offence
- the culpability of the offender
- the harm, or potential harm to tenants
- the impact on the wider community

The Housing and Planning Act 2016 also specifies that the amount of penalty that can be imposed is to be determined by the council but must not be more than £30,000.

In determining the amount of penalty the council will use a [financial penalty matrix](#) which takes into account relevant matters including:

- the government's desire that the penalty should be a punishment which has a real economic impact to the offender
- the penalty should act as a deterrent to repeating the offence

- the penalty should remove any financial benefit obtained as a result of the commission of the offence
- the severity and seriousness of the offence
- the culpability and past history of the offender
- the harm, or potential harm, caused to the tenant

The use of the matrix generates a financial penalty.

The following are (not exhaustive) examples of the circumstances in which the council may levy a civil penalty:

- failure to comply with an improvement notice
- breach of licence conditions
- operating an unlicensed property, where one is required, and there are no category 1 hazards
- breach of an overcrowding notice
- breach of HMO management regulations in a licensed HMO

In general, but not exclusively, prosecution will be considered only for more serious offences and/or repeat offenders.

Rent repayment orders

The Housing Act 2004 introduced rent repayment orders to cover situations where the responsible person for a property had failed to obtain a licence for a property that was required to be licensed.

These orders can be imposed for offences specifically relating to:

- licensing of HMO (section 72(1))
- houses under part 3 of the act (section 95(1))

Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover these additional offences:

Section 30 of the Housing Act 2004

Failure to comply with an improvement notice, which is a notice served by the council requiring the improvement and / or repair of a property within a certain timescale.

Section 32 of the Housing Act 2004

Failing to comply with a Prohibition Order – an Order served by the Council preventing the use of a premises, or part of a premises, as living accommodation

Section 21 of the Housing and Planning Act 2016

Breach of a banning order made by the [First-Tier Tribunal \(Property Chamber\)](#) on application by the local authority, banning a person from the following in England:

- letting housing
- engaging in letting agency or property management work

Section 6 of the Criminal Law Act 1977

Using violence, or threatening to use violence, to secure entry to a property.

Section 1 of the Protection from Eviction Act 1977

Illegal eviction or harassment of the occupiers of a property.

Where the council has secured a prosecution for a relevant offence they must consider applying for a rent repayment order.

Additionally, the council may apply for a rent repayment order when a relevant offence has been committed, whether or not the person responsible has been convicted.

In these circumstances, the council will satisfy itself that there is sufficient evidence to prove, beyond reasonable doubt, that an offence has been committed.

In deciding whether to apply for a rent repayment order for the commission of a relevant offence is appropriate the council will consider each case individually and will take into consideration factors including:

- the seriousness of the offence
- the culpability of the offender
- the harm, or potential harm to tenants
- the impact on the wider community

It should be noted that the Council may impose a civil penalty and apply for a rent repayment order for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:

- failure to comply with an improvement notice (section 30)
- offences in relation to licensing of HMO (section 72(1))
- offences in relation to licensing of houses under part 3 of the act (section 95(1))

Furthermore where the responsible person has not been convicted of the offence to which the rent repayment order application relates, the following factors will be taken into account when considering how much rent the council will seek to recover:

Punishment of the offender

Rent repayment orders are intended to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Factors that the council may consider include:

- conduct of the landlord and tenant,
- financial circumstances of the responsible person
- whether the landlord has previously been convicted of similar offences

Deter the offender from repeating the offence

The level of the penalty will be set at a high enough level such that it is likely to deter the offender from repeating the offence.

Dissuade others from committing similar offences

Rent repayment orders are imposed by the First-Tier Tribunal and the fact that someone has received a rent repayment order will be in the public domain. The council intends that robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.

Remove any financial benefit the offender may have obtained as a result of committing the offence

The responsible person is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.