

Crawley Borough Council

The use of civil penalties and rent repayment orders under the Housing Act 2004

2.0 Rent Repayment Orders

2.1 Deciding whether to apply for a Rent Repayment Order

If a landlord has been convicted of any offence for which a rent repayment order (RRO) can be made and the offence was committed in their area, it *must consider* applying for a rent repayment order. Where there has not been a prior conviction, the local authority *may consider* applying for a rent repayment order.

If a conviction for a relevant offence has been obtained then it is normally expected that a rent repayment order will be pursued (where the Council have paid housing benefit, or the housing element of Universal Credit). The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances.

Where no conviction has taken place, the matrix below should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

No.	Question	Outcome
1.	Has evidence been obtained to confirm that housing benefit/universal credit was paid directly or indirectly to the landlord over the relevant period?	If no no case for RRO. If yes, proceed to step 2.
2.	Is there (Is the evidence reliable? Is there no credible defence?)	If no no case for RRO. If yes, proceed to step 3.
3.	Is it in the public interest to proceed to apply for an RRO?	

- For a second offence, if the offence is considered less serious a civil penalty will usually be considered, but in cases where the offence is considered to be more serious, a prosecution will usually be preferred;
- For subsequent offences, prosecution would usually be preferred.

3.2 *Deciding the Amount of Penalty*

If it has been determined that the use of a civil penalty is appropriate, section 3.5 of under the Housing and Planning Act 2016: Guidance for Local Authorities should be considered in setting the penalty:

- Severity of the offence.
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Aggravating factors:

- If there are present multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant[s] in the property, this would justify an increase in the level of the civil penalty
- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include works in default, and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.

Failure to licence a mandatory HMO or breach of a condition of an HMO licence:

Failure to comply with HMO licence conditions would be viewed as a **moderate** matter, representing a minimum band 1 offence and attracting a civil penalty with an initial starting point of £1,000.

Where a person or body controls five or fewer properties, the failure to licence a mandatory HMO would be viewed as a **serious** matter, representing a minimum band 3 offence and attracting a civil penalty with an initial starting point of £10,000. Where a person or body controls six or more properties, the failure to licence a mandatory HMO would be viewed as a **severe** matter, representing a minimum band 5 offence and attracting a civil penalty with an initial starting point of

In determining the final level of civil penalty to be imposed, the Council will have regard to the non-exhaustive list of aggravating factors set out below and the non-exhaustive list of mitigating factors at 3.4. When determining the final level of penalty, officers should identify whether any combination of these factors, or other relevant factors, should result in an adjustment up (including up into another band) or down from the initial starting point specified above.

Aggravating factors:

- The nature o

Aggravating factors:

- If there are other hazards present that are considered to have a significant impact on the health and/or safety of the tenant/s in the property.
- A previous history of non-compliance with a duty under regulation 3 or under the Housing Act 2004 would justify an increased civil penalty. Examples of non-compliance would include carrying out works in default, and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action.
- Previously been the subject of formal enforcement action taken in respect of residential accommodation either in Crawley or any other geographical location within the United Kingdom. No account will be taken of any failed enforcement action taken by a local housing authority.

3.4 Mitigating factors

Examples of mitigating factors that may be considered when setting the financial penalty:

- The offender complied with the identified breach (for example by making an application to licence a previously unlicensed property) by the end of the representation period at the
- The offender has taken other significant steps to remedy any deficiencies (such as significant steps to comply with an improvement notice).
- The offender fully cooperated with the Council in investigating the offence e.g. turned up for a PACE interview
- Acceptance of responsibility e.g. accepts guilt for the offence(s)
- The offender has joined a recognised landlord accreditation scheme
- Health issues impacted the offenders ability to comply mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence

4.0 Approval

This policy was originally adopted by Crawley Borough Council on 29th November 2017 (amended in October 2023).