

Transcript

RRA Unit 4.9

The new Civil Penalties and Enforcement Powers for councils

Okay, we're going to have a look now at the new civil penalties and enforcement powers for councils. There is a lot of detail around the government's new enforcement powers. If you are an enforcement officer in a private sector housing team or environmental health with responsibility for enforcement, you would look at this in much more detail, because there is extensive guidance and instructions being issued by government on enforcement. This explanation is a general overview of the civil penalties and enforcement powers.

It is important to understand that the Renters' Rights Act moves away from criminal prosecution of landlords towards a new civil penalty led enforcement model. In the past, if councils wanted to prosecute a landlord, they had to take the landlord to court. The evidence standard was "beyond all reasonable doubt." It took a lot of time, and councils did not always have officers experienced in prosecutions. The evidence base, including PACE compliant statements, was substantial to successfully prosecute a landlord. As a result, what tended to happen was that councils issued warning letters to landlords but brought very few prosecutions. For example, if a landlord had illegally evicted a tenant, they might get away with it because the council lacked the experience, time, or money to take it through to a formal prosecution. The government recognised that problem and has therefore introduced a civil penalty model for councils to enforce against misconduct.

This does not mean councils can no longer prosecute. It means that prosecution becomes more of a last resort or is reserved for the most serious cases. What comes first is the option to fine with a civil penalty. That is likely to mean much quicker action by councils and far more cases of enforcement than before the Renters' Rights Act, because councils can now use the new civil penalties regime rather than full criminal prosecutions.

Enforcement of the new measures relates to two categories of landlord misconduct, and it is important to understand the difference: misconduct classed as a "breach," and misconduct classed as an "offence." Offences are more serious than breaches and can attract higher civil penalties. Both breaches and offences are forms of misconduct and can lead to a civil penalty for a landlord or managing agent.

Councils have been given substantial new investigatory powers. These include a power to enter business premises without a warrant to seize documents and equipment such as computers or laptops. It is important to be clear this applies to business premises, not a landlord's home. For example, a council can enter a managing agent's office to seize information and documents but cannot enter a landlord's private home on the same basis. Councils can also require the production of documents or allow their seizure. For most of the new breaches and offences that can lead to a civil penalty, the evidence standard is the civil standard of "balance of probabilities" – meaning it is more likely than not that the breach or offence took place. Previously, to prosecute a landlord criminally, the standard was "beyond all reasonable doubt." The new model uses a much lower standard, which makes issuing civil penalties easier.

Breaches sit in the part of the civil penalty regime where the maximum fine is up to £7,000. They are less serious than offences but still significant. Examples of breaches include: claiming to let a property on a fixed term tenancy instead of the new rolling monthly tenancy (for example, by adding an end date and still trying to let as an AST); ending a tenancy verbally; failure to give a tenant written notice that a specified ground for possession might be used where this is required by law (for example, pretending a section 8 notice in writing is not required); failure to give a written statement of terms containing the information required by regulations for new tenancies from 1 May; practising rental discrimination; failure to give an existing tenant a copy of the government's published information sheet on the changes by the required deadline; and using a possession ground in a section 8 notice when the landlord does not reasonably believe the court will grant possession on that ground – effectively "trying it on" to pressure a tenant into leaving. Each of these can attract a civil penalty of up to £7,000. The council decides the actual amount, guided by government guidance on levels of fines, though those are not binding instructions.

Offences are more serious and can result in a financial penalty of up to £40,000 as an alternative to prosecution. Because these are matters that could in principle be prosecuted, the civil penalty is used instead of going to court. Examples of offences include: reletting or remarketing the property within 12 months after regaining possession on grounds such as selling the property or needing it for close family, contrary to what was claimed to the court; knowingly using a ground for possession (or being reckless about it) when the landlord knows a court would not order possession on that ground, where the tenant then leaves within four months without a possession order actually being made – effectively conning the tenant into leaving; and certain repeat or continuing breaches. For example, committing a breach within five years of a previous offence or within five years of receiving a financial penalty for

a previous breach (not withdrawn) can escalate the matter from a breach to an offence and attract the higher penalty. Continuing to commit a breach for more than 28 days after receiving a financial penalty for that breach (where the penalty has not been withdrawn and is not under appeal) can also become an offence. In those cases, if a landlord simply ignores the civil penalty and continues the misconduct, the council can move to the higher, offence level penalty of up to £40,000.

There is a defined process for issuing civil penalties. Councils cannot simply issue them like a parking ticket. First, the council must give the landlord written notice that it intends to issue a civil penalty. This notice must set out the basis for the proposed fine and the evidence relied on. The landlord then has 28 days from the day after the notice is issued to make written representations to the council, explaining why they should not be fined or why the council's assessment is wrong. The council must consider these representations and then decide whether to proceed. After considering the landlord's response, the council must either issue a final notice requiring the fine to be paid or decide not to proceed.

If a final notice is issued, that is not the end of the matter. The landlord, agent, or anyone acting on their behalf can appeal the final notice to the First tier Tribunal (FTT). The FTT will already be dealing with many tenant rent increase appeals, but this is another major part of its work. In a civil penalty appeal, the FTT must decide two things: whether the decision to issue the civil penalty should be upheld at all, and, if so, whether the amount of the fine is appropriate. They can confirm the fine, reduce it, or set it aside altogether. The landlord must lodge any appeal within 28 days from the day the final notice is issued by the council, so there are strict timescales to appeal. From a landlord's point of view, there is often little reason not to appeal if they believe the council has overreached or set the fine too high, because the FTT can reconsider both liability and amount. From a council or officer's perspective, it is important to have strong evidence and to follow the process carefully, knowing that decisions may be scrutinised by the tribunal.

That is the outline of the new civil penalty process: how it works, what councils can do, the difference between a breach and an offence, how a council can issue a fine, and the appeal mechanism from the landlord or agent to the FTT. Enforcement officers will have much more detailed government guidance on each specific breach and offence, but this gives the overall model and process.