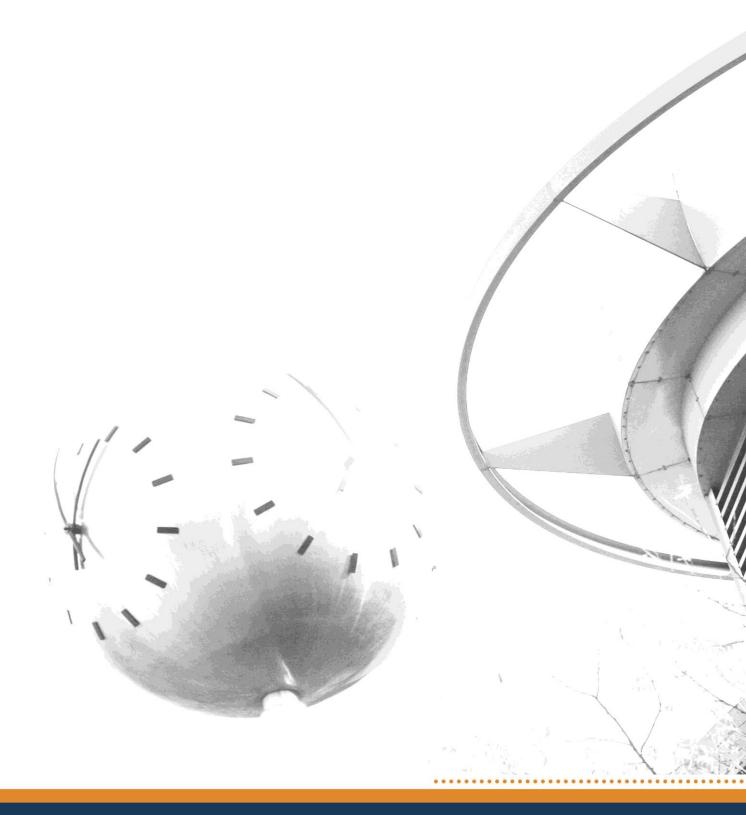
CIVIL PENALTIES POLICY Basildon Borough Council 2018



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Content

		Page/s
1.	Introduction	4
2.	Executive Summary	4
3.	Policy Statement	4
4.	Context	
	NationalLocalCouncil Promises	5 6 7
5.	Policy Detail	7
6.	Outcomes & Priorities	13
7.	Links to other Corporate Policies & Documents	13
8.	Appendix	
	 1 - Vulnerable age groups for different hazards as denoted by the land Safety Rating System 	Housing Health 15
	2 – Civil Penalty Notification Procedure	16

1. INTRODUCTION

Basildon Borough Council is committed to improving standards in private sector housing, ensuring that all private rented accommodation is well managed, properly maintained and safe and habitable.

The Council shares the Government's desire to support good landlords who provide decent well-maintained homes, and to crack down on those unscrupulous landlords who are flouting the law and seeking to profit from their non-compliance. It welcomes the measures introduced under the Housing and Planning Act 2016 and is committed to making use of these powers to improve standards in Basildon's private rented sector.

2. EXECUTIVE SUMMARY

Since 6 April 2017, for certain offences under the Housing Act 2004, local housing authorities have had the power to impose civil penalties (financial penalties) of up to £30,000 on individuals and/or organisations, as an alternative to prosecution.

This Private Sector Housing Civil Penalties Policy contains information about civil penalties and how the Council is planning to use them. It takes into account the statutory guidance that has been issued by the Government under Schedule 9 of the Housing and Planning Act 2016, and should be read in conjunction with the Environmental Health Service Enforcement Policy.

It will assist in ensuring residents in the Borough's private rented sector will enjoy improved health and wellbeing through improvements in their homes and landlords who flout the law compromising tenants' welfare will be financially penalized for their non compliance.

3. POLICY STATEMENT

Basildon Borough Council's approach to housing enforcement is based on the principle that it should be the offender who pays for the cost of enforcement and that no-one who breaks the law should gain a financial advantage over someone who has not.

We will achieve this by

- A risk based inspection programme for houses in multiple occupation
- Targeted enforcement action on the people and properties that pose the greatest risk
- Proportionate enforcement action that reflects the nature, scale and seriousness of any breach or non-compliance.
- Fair and objective action taking into account all available facts

4. CONTEXT

National

The Government wants to support good landlords who provide decent, well-maintained homes, and avoid unnecessary regulation which increases costs for landlords and pushes up rents for tenants. It has pledged to crack down on rogue landlords who flout the law and knowingly rent out unsafe and substandard accommodation. The Housing and Planning Act 2016 introduced a number of measures to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:-

- **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017);
- Database of rogue landlords and property agents who have been convicted of certain offences or received 2 or more civil penalties over a 12 month period (came into force on 6 April 2018);
- **Banning orders** for the most serious and prolific offenders (came into force on 6 April 2018).

When introducing civil penalties through the Housing and Planning Act 2016, Ministers made it clear that they expect local housing authorities to use these powers robustly as a way of clamping down on rogue landlords. This power effectively gives local authorities an alternative to prosecution for offences committed under the Housing Act 2004. The benefit of imposing such penalties is that the Council will be able to retain any money recovered, which is not currently the case with fines imposed in the magistrates' court.

The Department for Communities and Local Government guidance issued in April 2017 states that, generally, it would expect the maximum civil penalty of £30,000 to be "reserved for the very worst offenders", it recommends that the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord's previous record of offending.

In order to ensure that the civil penalty is set at an appropriate level local authorities should consider the following factors:-

• The severity of the offence

The more serious the offence the higher the civil penalty should be

The 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

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when the local housing authority imposes a civil penalty.

• The punishment of the offender

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While 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 demonstrates the consequences of not complying with their responsibilities.

Whether it will deter the offender from repeating the offence

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

Whether it will deter others from committing the offence

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Local

There has been significant growth in Basildon Borough Council's private rented sector in recent years from 4% in 2001 to 13% in 2017. Privately rented premises continue to grow and their condition is increasingly important in view of the Borough's population growth and the difficulty experienced by residents in purchasing homes which, on average, cost nine times the average household income (assuming a 5% deposit). It is estimated that 1,402 privately rented dwellings have category 1 hazards. This equates to 14% of all properties in this sector .

The Borough contains an additional approximately 400 houses in multiple occupation (HMO) that will require licensing when the revised and expanded licensing regime comes into force in October 2018.

It has long been established that tenants in HMOs face greater risks to their health and safety, particularly from fire. Statistics show residents are six times more likely to die in a house fire if they live in an HMO. Many are managed to good standards by reputable landlords but unfortunately this is not always the case. Typical poor practices include

overcrowding, failure to meet the required health and safety standards and intimidation of tenants when legitimate complaints are made.

The powers under the Housing & Planning Act 2016 enable local authorities to deal with criminal and irresponsible landlords. Local authorities are able to levy civil penalties as an alternative to prosecution.

The purpose of this Civil Penalties Policy is to describe how the Council will use its new powers, how it will decide when to prosecute and when to impose a civil penalty and how it will determine the size of each civil penalty. It sets out the level of penalty to be applied by the Council and how this is calculated based on a Culpability and Harm matrix.

The Policy aims to not only prevent rogue landlords from profiting from dangerous and illegal practices but also to demonstrate the Council's commitment to ensuring that it is offenders who pay the cost of housing enforcement. As the Council is able to retain the income it receives from civil penalties it provides the Council with an opportunity to support and enhance its housing enforcement by ploughing back the money received from errant landlords into its private sector enforcement budget.

The Policy relates only to private sector housing enforcement and not all environmental enforcement undertaken by Council Services.

Council Promises

Corporate Promises	Levels of Impact			
	High	Medium	Low	None
1.Strong, safe and healthy communities with access to quality homes 2.Vibrant town centres and a thriving economy for everyone	X		х	
thriving economy for everyone 3.Enhanced local environment and increased pride in our Borough	X			

5 POLICY DETAIL

Housing offences covered by civil penalties

Civil penalties are intended to be used against landlords who are in breach of one or more of the following sections of the Housing Act 2004:-

- Section 30 Failure to comply with an Improvement Notice
- Section 72 Offences in relation to licensing of houses in multiple occupation

- Section 95 Offences in relation to licensing of houses under Part 3 of the Act
- Section 139 Offences relating to contravention of an overcrowding notice

Section 234 Failure to comply with Management Regulations in respect of houses in multiple occupation

General considerations in relation to civil penalties

- The maximum civil penalty that can be imposed for an offence is £30,000 however it is for the Council to determine the level of civil penalty
- Civil penalties can only be used as an alternative to prosecution.
- Although only one civil penalty can be issued for offences under sections 30, 72, 95 and 139, a civil penalty can be issued for each separate breach of the HMO Management Regulations.
- Where the Council is in a position to prosecute a letting agent and landlord for failing to obtain a licence for a licensable HMO, it has the option of imposing a civil penalty on the letting agent and the landlord as an alternative to prosecution.
- Where the letting/managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both of them, as an alternative to prosecution. The level of civil penalty imposed on each offender may differ depending on the circumstances of the case.

Deciding on an appropriate sanction

- The same criminal standard of proof (beyond reasonable doubt) is required for a
 civil penalty as for prosecution. This means that, before taking formal action, the
 Council needs to satisfy itself that, if the case were to be prosecuted in the
 Magistrates' Court, there would be a realistic prospect of conviction, having regard
 to the Code for Crown Prosecutors (Crown Prosecution Service)
- Where a civil penalty is imposed and an appeal is subsequently made to the First-Tier Tribunal, the Council will need to be able to demonstrate beyond reasonable doubt that the offence had been committed.
- Prosecution will be considered where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that civil penalties will be ruled out in cases where serious offences have been committed. A prosecution will, in particular be considered where this will enable the council (on the back of a conviction) to apply for a Banning Order under Section 15 of the Housing and Planning Act 2016. A Banning Order can be imposed to prevent an individual or corporate body from letting or being engaged in letting of housing. It can also ban a person from holding a licence for a HMO. This option will be reserved for the most serious offenders (e.g. where a landlord).

has been convicted of one or more offences specified in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there have been several breaches), rather than prosecution.

Where both a landlord and a letting/managing agent have committed the same
offence, consideration will be given to imposing a civil penalty on both parties as
an alternative to prosecution. The amount of penalty will be separately assessed
and therefore may result in different penalties.

Factors taken into account when deciding on the level of civil penalty

- The maximum civil penalties will be reserved for the very worst offenders. The
 actual amount levied in any particular case will reflect the severity of the offence
 and take into account the landlord's previous record of offending.
- The Council will consider the following factors (previously detailed in section 4 of this policy) that the Government has identified in its statutory guidance:-
 - 1 The severity of the offence
 - 2 The culpability and track record of the offender
 - 3 The harm caused to the tenant
 - 4 The punishment of the offender
 - 5 Whether it will deter the offender from repeating the offence
 - Whether it deters others from committing the offence
 - Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.

The costs of investigating, determining and applying a civil penalty

In keeping with the key principle of ensuring that costs of enforcement are borne by the offender (rather than by responsible landlords), the costs associated with investigatin, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed.

Cases that result in the Council issuing civil penalties clearly entail investigative and preparation costs and may involve costs defending an appeal. These costs, comprising resources and officer time, will be built into the civil penalty charge. The final civil penalty amount is made up of two main financial elements – the investigative charge and the punitive charge (calculated having regard to the civil penalty matrix).

Investigative costs will be calculated for each of the offences that are covered by civil penalties, by considering the number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs.

CIVIL PENALTY MATRIX

Step 1 – Determining the offence category

To determine the financial starting point, the culpability and harm factors in the lists below shall be considered. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

Extreme

Deliberate failure to comply with legal obligations.

High

- Knew or ought to have known a breach of legal responsibilities exists and/or
- Wilful blindness to the risk of offending and/or
- Non-compliance over a long period and/or
- Ignoring concerns raised by regulators, tenants or others.

Medium

 Offence committed through an act or omission which a person exercising reasonable care would not commit.

Low

- Offence committed with little fault, for example, because significant efforts were made to address the risk although they were inadequate on this occasion.
- Failings were minor and occurred as an isolated incident.

Harm

High

 The property conditions pose a high risk of serious adverse effects to the occupants and/or visitors

Medium

 The property conditions pose medium risk of serious adverse effects to the occupants and/or visitors.

Low

 The property conditions pose a low risk of serious adverse effect to the occupants and/or visitors

Step 2 – Starting point

Having determined the culpability and harm levels, the appropriate offence matrix will be referred to in order to calculate the starting point for the civil penalty.

HARM→

CULPABILITY **↑**

	low	medium	high
low	£1,000	£2,000	£4,000
medium	£2,000	£4,000	£8,000
high	£4,000	£8,000	£15,000
extreme	£10,000	£15,000	£25,000

Step 3 - Consider factors to increase or reduce the civil penalty

The Case Officer will, after taking into account aggravating and mitigating factors, consider whether any adjustments should be made from the starting point. Set out below is a non-exhaustive list of factors that will be considered, either in combination or individually, to determine whether or not a downwards or upwards adjustment will be made from the starting point. The maximum penalty shall not exceed that permissible under the current legislation.

Factors increasing seriousness

Aggravating factors include:-

- History of failing to comply with obligations.
- Motivated by financial gain.
- Deliberate concealment of illegal nature of activity.
- Established evidence of wider/community impact.
- Obstruction of justice.
- Landlord or agent of multiple properties which may include licensed HMOs.
- Vulnerable age group present.

Factors reducing seriousness or reflecting personal mitigation

- Steps taken to remedy the problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- A history of good communication and compliance regarding work as a landlord.
- Co-operation and acceptance of responsibility.
- Mental disorder or learning disability, where linked to the commission of the offence.
- Serious medical conditions requiring urgent, intensive or long-term treatment.
- Age and/or lack of maturity where it affects the responsibility of the offender.

Step 4 - Review offender's financial means - Prior to any Final Notice

The level of civil penalty must be proportionate to the seriousness of the offence and

the financial circumstances of the offender. It is for the offender to disclose to the Council such data relevant to his financial position as will enable the Council to assess what s/he can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.

As some offenders will own one or more properties in the Borough, it is likely that they will have assets that they can sell or borrow against. After taking into account any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.

Step 5 – Case and penalty review

After reviewing the offender's financial status and all other relevant information the Council may increase or reduce the proposed financial penalty reached at the end of step four.

The level of civil penalty should reflect the extent to which the offender fell below the required standard. The civil penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to comply with the law.

Step 6 - Data recording

The reasons for determining to proceed with a civil penalty notice, the reason for determining the level of that penalty and the outcome of any appeal or representation will be recorded and retained on the working file notes. Notification of the civil penalty will be completed in accordance with the steps set out at **Appendix 2**.

The Use of Rent Repayment Orders

Section 40 of the Housing and Planning Act confers a power on the First Tier Tribunal to make a Rent Repayment Order where a landlord has committed one of a number of offences.

The Housing Act 2004 introduced the power to make Rent Repayment Orders. The Housing and Planning Act 2016 extended the range of offences covered by the power to make Rent Repayment Orders, including:

- Failure to comply with and Improvement Notice under section 30 of the Housing Act 2004:
- Failure to comply with a Prohibition Order under section 32 of the Housing Act
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016.
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977;

 Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

Rent Repayment Orders can be granted to either the tenant where they paid the rent themselves or the local housing authority where the rent was paid through Housing Benefit or Universal Credit or a combination of both.

Basildon Council, as the local housing authority can impose a civil penalty or prosecute for the offence and apply for a Rent Repayment Order for certain offences. Where the Council imposes a civil penalty an application can also be made to the First Tier Tribunal for a Rent Repayment Order for the following offences (after any relevant appeal period has passed):

- Failure to comply with an Improvement Notice (section 30, Housing Act 2004);
- Offences in relation to the licensing of Houses in Multiple Occupation (section 72(1), Housing Act 2004)

The First Tier Tribunal must order that the maximum amount of rent (up to 12 months) is repaid where the landlord has been convicted of the offence to which the Rent Repayment Order applies. This is regardless of whether or not Basildon Council or tenant has applied for a lesser amount. Where the landlord has not been convicted, the First Tier Tribunal will determine the amount to be repaid in accordance with section 44 (tenants) or section 45 (local housing authorities) of the Housing and Planning Act 2016,

6 OUTCOMES & PRIORITIES

This policy aims to achieve the following outcomes through the priorities for action shown below.

Outcome Residents in the Borough's private rented sector will enjoy improved

health and wellbeing through improvements in their homes.

Priority Tackle rogue landlords

Outcome Landlords will have a heightened awareness of what being a

responsible landlord entails and the penalties they can expect for not

complying with the law.

Priority Publicise civil penalties obtained by the Council for non-compliance

with Housing Act 2004

7. LINKS TO OTHER CORPORATE POLICIES & DOCUMENTS

Tackling rogue landlords and improving housing standards in the private rented sector through a considered rigorously enforced civil penalties policy contributes the following Council policies and documents:-

Corporate Plan

Two of the three promises set out in its Corporate Plan:-

- Strong, safe and healthy communities with access to quality homes
- Enhanced local environment and increased pride in our Borough

Housing Strategy 2017-2022

Our Housing Strategy details four priorities, one of which is "Make the best use of existing homes".

To this end three aspirations relate specifically to private sector housing. These are:-

- Residents living in the private rented sector will enjoy improved health and wellbeing through improvements in their homes
- Our HMOs will be well managed and will meet statutory standards
- Landlords will have a heightened awareness of what being a responsible landlord entails

Environmental Health Service Enforcement Policy

The Civil Penalties Policy should be read in conjunction with the above policy, adopted by Cabinet in February 2015 after a period of public consultation. The Environmental Health Service Enforcement Policy provides advice for officers, businesses, consumers and the public. It takes into account the requirements of other key agencies such as the Local Better Regulation Office, Health and Safety Executive and the Food Standards Agency.

Appendix 1

Vulnerable age groups for different hazards (age of occupant)

Damp and mould growth 14 and under
Excess Cold 65 or over
Excess Heat 65 or over
Carbon Monoxide 65 or over
Lead under 3 years
Personal Hygiene, Sanitation and Drainage under 5 years
Falls associated with baths etc. 60 or over
Falling on level surfaces etc. 60 or over
Falling on stairs etc. 60 or over
falling between levels under 5 years
Electrical hazards under 5 years
Fire 60 or over
Flames, hot surfaces etc. under 5 years
Collision and entrapment under 5 years

Collision and entrapment - low headroom 16 or over Position and operability of amenities etc. 60 or over

Appendix 2

Civil Penalty Notification Procedure

Notice of Intent

Before issuing a Civil Penalty, the Council must be satisfied that if the case were to be prosecuted in court that there would be a realistic chance of conviction. The Council must initially give the individual in question a Notice of Intent that it is going to impose a financial penalty.

Where a civil penalty is considered the most appropriate sanction, the investigating officer will:

- Cost all enforcement activity;
- Identify the civil penalty justified on the basis of the facts of the case;
- Record their reasons for the level of penalty determined including any adjustments applied;
- Refer the case to the Environmental Health Services Manager for authority to proceed to a civil penalty;
- Service a notice of intent of the council's proposal to impose a financial penalty (Notice of Intent)

The Notice of Intent must be given no later than 6 months after the authority has sufficient evidence of the conduct to which the penalty relates, or any time when the conduct is continuing. The Notice of Intent must set out the following:

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

Representations must be made within 28 days from when the notice was issued. Following the end of the 28 day period for representations, the Council must decide whether to issue the penalty or cease action.

Written representations must be sent to: Environmental Health Services The Basildon Centre St Martin's Square Basildon Essex SS14 1DL

Following receipt of representation, the council may confirm, vary or withdraw a charge based on the information provided in the representation, and other factors including for example, the level of co-operation demonstrated by the landlord/organisation; compliance history; period of time the property has been let.

Final Notice

If the Council decides to proceed with the Civil Penalty, it must give the individual a notice (Final Notice) requiring that the penalty is paid within 28 days. The Final Notice must set out:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information on how to pay the penalty
- The period for payment of the penalty (28 days)
- Information about the right to appeal; and
- The consequences of failure to comply with the notice.

As part of the process, the Council may at any time withdraw the Notice of Intent or Final Notice, or reduce the amount specified in the Notice of Intent or Final Notice.

Appeal

The individual/organisation on whom the penalty was imposed then has the opportunity to appeal the Final Notice to the First Tier Tribunal against:

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

If an appeal is lodged, the Final Notice is suspended until the appeal is determined or withdrawn. The Tribunal may choose to confirm, vary, increase/reduce the size of the penalty or cancel the penalty.

Recording of Civil Penalties on Database of Rogue Landlords

The Secretary of State for Housing, Communities and Local Government operates a database of rogue landlords and property agents. Where a landlord receives two or more civil penalties over a 12 month period, Basildon Council will in general, include that individual's details in the database of rogue landlords and property agents, on the basis that the imposition of two or more civil penalties over a 12 month period will in general be indicative of poor levels of compliance along with high culpability and evidence of serial offending. Prior to adding any such entry, a decision notice will be issued to the person/organisation specifying the period for which the entry will be maintained. This will give the subject of the proposed entry on the register 21 days in which to appeal that decision to the First Tier Tribunal. The First Tier Tribunal may confirm, vary or cancel the decision notice.

Non-Payment of Civil Penalties

Where the landlord or property agent fails to pay a civil penalty, Basildon Council will refer the case to the County Court for an order of that court. If necessary though the use of County Court bailiffs. A certificate signed by the Chief Finance Officer will be supplied as evidence to the courts of non-payment.



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