

## **Appendix B Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016**

### 1.0 Introduction

1.1 The Council is committed to supporting good, responsible landlords and ensuring that residents renting private accommodation in the Borough live in homes that are safe, decent, well managed and properly maintained.

1.2 Although the majority of landlords in the Borough operate lawfully and responsibly, a small minority of rogue landlords choose to operate outside the law, knowingly renting out (often to our most vulnerable residents) accommodation that is unlicensed, substandard and/or unsafe.

1.3 The Housing and Planning Act 2016 (the 2016 Act) introduced several measures designed to enable Local Authorities to deal more robustly with rogue landlords. These changes included:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences in the Housing Act 2004
- Banning orders for the most serious and prolific offenders
- The extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences
- Powers to require the sharing of certain data held by the three main Tenancy Deposit Protection schemes to assist councils in identifying privately rented accommodation in their area: and
- A database of rogue landlords and property agents convicted of certain offences.

1.4 The Department for Communities and Local Government (now the Ministry for Housing, Communities and Local Government) has published Statutory Guidance for Local Housing Authorities in implementing the legislation under Schedule 9 of the 2014 Act (Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities) – hereafter ‘the Guidance’.

In this policy, the term “landlord” will be used to refer to the “owner”, “person having control”, “person managing” or “licence holder”, as defined under the Housing Act 2004.

### 2.0 Purpose

2.1 This Policy outlines the way in which the Council will use these powers, how it will decide when to prosecute or impose a civil penalty and, where the imposition of a civil penalty is considered to be a suitable alternative to a prosecution, how it will determine the amount of that penalty.

2.2 Section 126 and Schedule 9 of the 2016 Act provides Local Authorities with the power to impose a civil penalty of up to £30,000 as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30).
- Offences in relation to the licensing of Houses in Multiple Occupation (HMO's) (section 72).
- Offences in relation to licensing of houses under Part 3 of the Act (section 95).
- Offences of contravention of an overcrowding notice (section 139) and
- Failure to comply with management regulations in respect of HMO's (section 234).

2.3 Section 23 of the 2016 Act also extends a power to impose a Civil Penalty for the breach of a Banning Order (see Appendix 4). Breach of a Banning Order would be considered a very serious matter and as such the amount of any financial penalty would be considered on a case by case basis, taking account of relevant factors and exceptional circumstances.

### 3.0 General principles

3.1 The Council will conduct its housing enforcement activities in a manner that is consistent with its obligations under the Regulators Code and in accordance with the above Private Rented Sector Housing Enforcement Policy 21 and the Public Protection Enforcement Policy 2020, that is to say in a manner which is targeted, proportionate, fair and objective, transparent, consistent and accountable.

3.2 Underpinning our enforcement approach are two principles: That offenders pay the cost of the enforcement work we do (rather than good landlords or the taxpayer) and that those who chose to flout the law do not profit from their crimes. This approach ensures that we continuously drive up standards in the sector and improve housing conditions for our residents, whilst at the same time levelling the playing field for good and responsible landlords.

3.3 A Civil Penalty is intended to provide an alternative to prosecution. The Council cannot impose a Civil Penalty and pursue a prosecution for the same offence. Whilst only one Civil Penalty can be issued for each of the first 4 offences in the list set out above, a Civil Penalty can be issued for each separate breach of the HMO Management Regulations (section 234).

3.4 Where an offence has been committed by both a landlord and property/letting or managing agent, (including offences arising from the failure to licence a property), a civil penalty may be imposed on both as an alternative to prosecution. The amount of the penalty imposed on each party may in such cases differ depending on the individual circumstances of the case.

### 4.0 Burden of Proof

4.1 Although a Civil Penalty is intended as an alternative to prosecution, it should not be considered a lesser or easier option. In all cases where a formal sanction is being considered (whether that be by way of prosecution or the imposition of a Civil Penalty) the supporting evidence must rise to the criminal standard of

proof and officers should be satisfied that the evidence is sufficient to demonstrate beyond reasonable doubt that the offence has been committed and such that, if the matter were prosecuted in the Magistrates Court, there would be a realistic prospect of conviction. The same considerations would apply where a Civil Penalty is imposed, and an appeal is subsequently made to the First-tier Tribunal.

4.2 In determining whether the evidence meets this test, the Council will have regard to the Crown Prosecution Service 'Code for Crown Prosecutors'. The Code sets out a two-part test:

1. The evidential test- this involves an objective assessment of all available evidence taking into consideration the admissibility, reliability, and credibility of the evidence.
2. The public interest test- this involves an examination of the seriousness of the offences, the level of culpability of the offender, the impact of the offence on victims and the community, the age of the offender, whether a prosecution is a proportionate response and the need to protect sources of information.

## 5.0 Decision making - When to prosecute

5.1 The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or issue a Civil Penalty, taking into account all the evidence available and the circumstances of the offence and offender.

5.2 In general, prosecution will be reserved for those cases deemed particularly serious or where the offender has committed a similar offence in the past. This does not however mean that Civil Penalties will not be used where serious offences have been committed and in such cases (for what the Guidance refers to as 'the worst offenders') the Council reserves the right to apply the maximum civil penalty where this is considered to be an appropriate and effective sanction.

5.3 Prosecution may be appropriate in a case where a strong zero-tolerance message is necessary and where publicising a conviction will serve as a deterrent to the offender and other rogue landlords. A prosecution may also be pursued 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. Note that the issue of a civil penalty is not generally a matter of public record (although see paragraph below on Rogue Landlords Database).

5.4 A prosecution may also be pursued in the following (non-exhaustive) instances:

- Where the offence is not one for which a Civil Penalty may be imposed.
- Where the case involves external agencies such as LFEPA, internal colleagues such as Planning or Trading Standards or other local authorities, where this supports regional or sub-regional activity.
- Where an individual or company has imperilled the health, safety or wellbeing of occupiers, visitors, or members of the public.

- Where an individual or company has deliberately, negligently, or persistently breached their legal obligations.
- Where an individual or company has deliberately or persistently ignored written warnings or formal notices /orders, or no reasonable progress has been made in relation to the carrying out of the requirements.
- Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.

All decisions made will need to be properly documented in accordance with this policy

## 6.0 Reviews

- 6.1 Before imposing a Civil Penalty, the Council must within 6 months of becoming aware of the offence, give the landlord notice of its proposal to do so (“Notice of Intent”), setting out, amongst other things, why it proposes to do so and the level of fine to be imposed. The recipient has a right to make written representations to the Council asking the Council to review its decision, including the decision to sanction him or her, but this must be lodged in a period of not less than 28 days beginning on the day the penalty was served. The Council must consider all representations received and decide whether to confirm, vary or withdraw the Notice. If the Notice is confirmed (i.e. a Final Notice served) and the landlord remains dissatisfied; he has a right of appeal to the First Tier Tribunal.

## 7.0 Civil Penalties - Factors determining the level of penalty

- 7.1 The Council has the power to impose a Civil Penalty of up to £30,000. There is no minimum penalty. Although the amount of any penalty falls to be determined by the Council, we must have regard to the Guidance when exercising our functions in this respect. Of relevance is Paragraph 3.5 of that document which states that “The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlords previous record of offending.” The same paragraph goes on to set out several factors that should be taken into account to ensure that the penalty is set at an appropriate level, namely:

### **a) Severity of the offence.**

The more serious the offence, the higher the penalty should be.

### **b) 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.

**c) 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 imposing a civil penalty.

**d) 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 also 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.

**e) 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.

**f) Deter others from committing similar offences**

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.

**g) 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.

When setting a civil penalty, the Council will, in addition to the above, take into account the cost of investigating the offence(s); preparing the case for formal action; and include any costs that are or may be incurred from defending its decision at the First Tier Tribunal.

**8.0 Setting an appropriate Civil Penalty**

To ensure that we exercise this power in a consistent and transparent manner, the Council has developed a calculation matrix for determining the level of penalty to be applied in any individual case.

## 8.2 Calculating the Financial Penalty

Each offence receives its own civil penalty calculated on the matrixes below.

Failure to License a mandatory licensable HMO	
<b>Penalty</b>	£15,000

## 8.3 Penalties relating to housing conditions, management, licence conditions

A score for each of the five areas below is chosen depending on the seriousness of each area and reasons for each score must be accompanied by a full justification and production of relevant evidence.

Civil Penalty Calculation Matrix

Factors	Low Seriousness	Medium Seriousness	High Seriousness
<b>1. Severity of Offence</b>	<b>Score 5</b> Low level offence e.g. broken glazing (cat. 2)	<b>Score 15</b> Medium level offence e.g. defective boiler, no hot water (cat. 1)	<b>Score 25</b> Serious Offence e.g. multiple management issues, inadequate/defective fire detection (imminent risk)
<b>2. Deterrence &amp; Prevention</b>	<b>Score 5</b> High confidence a fine will deter repeat offending	<b>Score 15</b> Medium confidence a fine will deter repeat offending	<b>Score 25</b> Low confidence a fine will deter repeat offending
<b>3. Harm to Tenants</b>	<b>Score 5</b> Low level harm	<b>Score 15</b> Moderate level harm	<b>Score 25</b> High level harm
<b>4. Size of Business</b>	<b>Score 5</b> 1 property	<b>Score 15</b> 2-5 properties	<b>Score 25</b> 6+ properties
<b>5. History of Offending</b>	<b>Score -5</b> First time offence	<b>Score 5</b> Second time offence (previous FPN)	<b>Score 10</b> Conviction in the Magistrates Court (within previous 2 years)

The combined score from the above matrix is then used to determine the penalty based on the table below.

Score	Penalty	Score	Penalty
<b>15-20</b>	£250	<b>66-70</b>	£14,000
<b>21-25</b>	£500	<b>71-75</b>	£16,000
<b>26-30</b>	£750	<b>76-80</b>	£18,000
<b>31-35</b>	£1000	<b>81-85</b>	£20,000
<b>36-40</b>	£2000	<b>86-90</b>	£22,000
<b>41-45</b>	£4000	<b>91-95</b>	£24,000
<b>46-50</b>	£6000	<b>96-100</b>	£26,000
<b>51-55</b>	£8000	<b>101-105</b>	£28,000
<b>56-60</b>	£10,000	<b>105-110</b>	£30,000
<b>61-65</b>	£12,000		

