

**EXECUTIVE MEMBER FOR ADULT SOCIAL CARE, PUBLIC HEALTH, PUBLIC  
PROTECTION AND DIGITAL INCLUSION**

<b>Date:</b> Thursday 20th October, 2022 <b>Time:</b> 10.00 am <b>Venue:</b> Oberhausen room
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**AGENDA**

- |    |   |         |
|----|---|---------|
| 1. | Approval of the framework for calculating the level of civil penalty charge in relation to breaches of the Tenant Fees Act 2019 and relevant Letting Agency legislation | 3 - 22  |
| 2. | Approval of the framework for calculating the level of civil penalty charge for breaches of landlord duties under private sector housing laws                           | 23 - 40 |

Charlotte Benjamin  
Director of Legal and Governance Services

Town Hall  
Middlesbrough  
Friday 14 October 2022

**MEMBERSHIP**

Councillors D Coupe

**Assistance in accessing information**

**Should you have any queries on accessing the Agenda and associated information please contact Susie Blood, 01642 729645, [susie\\_blood@middlesbrough.gov.uk](mailto:susie_blood@middlesbrough.gov.uk)**

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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Director of Adult Social Care and Health Integration Executive Member for Adult Social Care and Public Protection, ICT and Digital Inclusion
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<b>Submitted to:</b>	Executive Member for Adult Social Care and Public Protection, ICT and Digital Inclusion
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<b>Date:</b>	20 <sup>th</sup> October 2022
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<b>Title:</b>	Approval of the framework for calculating the level of civil penalty charge in relation to breaches of the Tenant Fees Act 2019 and relevant Letting Agency legislation.
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<b>Report for:</b>	Decision
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	Crime and anti-social behaviour
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<b>Key decision:</b>	Yes
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<b>Why:</b>	Decision(s) will have a significant impact in two or more wards
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<b>Urgent:</b>	No
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<b>Why:</b>	
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<b>Executive summary</b>
<p>Approval is being sought for a framework for calculating financial penalty charges for offences committed by letting agencies, landlords and property management companies under the Tenant Fees Act 2019. The ability to issue financial penalty charges is an alternative to prosecution and is in accordance with Public Protection Regulatory Services Enforcement Policy and follows Tenant Fees Act Statutory Guidance for enforcement authorities.</p> <p>The framework has been developed in line with national guidance however, the method for calculating the financial penalty charge is not prescribed in law or by Government. It lies with local authorities to develop their own framework.</p> <p>The implications of the recommendation(s) have been considered by the appropriate officers of the Council and are set out in the main body of the report. This report falls within the Terms of Reference of this Committee as the policies proposed will impact on</p>

all wards within the Borough and represents a change in the policy on the approach of enforcement.

## **Purpose**

1. To seek approval for the framework to calculate the financial penalty charges for breaches of relevant letting agency legislation by landlords, letting agents and property management companies.

## **Background and relevant information**

2. The Public Protection Service is the enforcing authority for the Tenant Fees Act 2019 (the Act) and relevant legislation relating to the letting of private sector residential properties. The Act places a duty on enforcing authorities to protect consumers from unfair payments and practices in relation to their tenancies and imposes requirements regarding the conduct of landlords, lettings agents and property management companies
3. The Public Protection Service carries out inspections of rented accommodation under housing laws and includes matters relating to the management of properties. The Service also responds to complaints or concerns regarding fees or charges for services provided by landlords and/or their agents. Following investigation if breaches of relevant legislation are found, the Act allows the Council, as the enforcing authority, to impose a financial penalty as an alternative to prosecution. This includes a penalty on the person(s) breaching the laws of up to £5,000 for a first breach of prohibited payments restrictions and up to £30,000 for a breach of a redress scheme, client money protection scheme or subsequent breaches of prohibited payments. Civil penalties can be used as a more appropriate cost effective alternative to prosecution.
4. The Act sets out the fees and charges that are permitted, making any other fees or charges unlawful. Fees that are permitted include;
  - a. the rent
  - b. a refundable deposit capped at no more than 5 weeks rent if the annual rent is less than £50,000, and 6 weeks if the annual rent is more than £50,000
  - c. a deposit to reserve a property capped at no more than one weeks rent
  - d. a default fee under the terms of the tenancy agreement (for example replacing lost keys or for late payment of rent)
  - e. fees of up to £50 for the administration of changes to tenancy agreements requested by the tenant.
  - f. payments associated with early termination of a tenancy when requested by the tenant, which must not exceed the loss of income from early termination.

The Act also amends other legislation including the Consumer Rights Act 2015 which requires agents to display information about their fees and membership of redress and client money protection schemes; and the Housing and Planning Act 2016 which includes requirements in regard to the protection of tenant's deposit. Breaching the requirements of these Acts can be dealt with by civil penalty.

5. The Act does not set a level of civil penalty that can be imposed. It is the decision of every enforcing authority to determine how it applies civil penalties and the monetary amount of any penalty issued. However, there is statutory guidance that enforcing

authorities are required to consider when deciding on enforcement options under the Act and associated legislation.

6. It is proposed that Middlesbrough Council applies the civil penalty charging model detailed in Appendix 1 to this report. It is a model developed by National Trading Standards Estate and Letting Agency Team and this approach would be consistent with local, regional and national enforcement authorities.
7. The recovery of unpaid penalties is through the County Court and the Council would consider the most appropriate means of recovery the debt, such as to seek;
  - A Warrant of Control for amounts below £5000
  - A Third Party Debt Order
  - A Charging Order
  - Bankruptcy or insolvency

#### **What decision(s) are being recommended?**

8. That the Executive approves the framework for calculating the civil penalty charges in relation to the Act and associated legislation.

#### **Rationale for the recommended decision(s)**

9. Using a civil penalty charge instead of prosecution is considered to deal more effectively with breaches of law, to encourage compliance, drive up standards in private rented accommodation and deter unfair practices. It also provides an alternative way for the Council to deal with criminal, rogue and irresponsible landlords, letting agents and property management companies.
10. The Civil penalty charge can be up to £5,000 for first breaches in respect of prohibited payments, non-publication of lettings fees, transparency issues in relation to membership of redress and client money protection schemes, and up to £30,000 for subsequent breaches or for other offences including non-membership of redress or client money protection schemes. Establishing a means for calculating the level of penalty is designed to ensure transparency, consistency and fairness.
11. The use of civil penalties will not remove the Council's ability to take legal action and for the most serious breaches this option will be considered first. Any enforcement decision will be made in accordance with the Council's Public Protection Enforcement Policy.

#### **Other potential decision(s) and why these have not been recommended**

12. Do not introduce a civil penalty charge. If this is not introduced there would be no change to current enforcement practices in that prosecution action would be taken for offences, where appropriate. This is a time consuming process for officers and Legal

Services, it can take many months or years to achieve an outcome and does not always achieve the desired results in terms of level of penalty or a deterrent.

13. The use of civil penalties offers a reduced cost enforcement option that will act as an immediate and more effective deterrent. This enforcement tool will address the poor management of properties and unfair business practices in the private rented sector and drive up standards and levels of compliance. The framework for calculating the level of charge will provide transparency and consistency in this approach.

## **Impact(s) of the recommended decision(s)**

### ***Legal Section***

14. The Act allows enforcing authorities to impose civil penalties as a financial sanction for breaches of the Act and associated legislation. Civil penalties are used as an alternative to prosecution with the amount of penalty determined by the Council but in line within maximum statutory levels. Civil penalties are treated as if they had been issued by a Court. Non-payment of a civil penalty may be enforced through the County or High Court by an Order of that Court. There is a right of Appeal against the Civil Penalty in the First Tier Property Tribunal that has the power to confirm, vary, increase or reduce the size of the penalty or cancel the civil penalty. Ultimately the local authority may be required to use County Court Bailiffs to recover the debt, which may result in additional administrative and legal costs.

### ***Strategic priorities and risks***

15. The use of civil penalties as an additional regulatory tool will help improve compliance with property lettings laws. There would be no impact on the policy framework.
16. Non-payment of a civil penalty may be enforced through the County or High Court by an Order of that Court. There is a right of Appeal against the Civil Penalty in the First Tier Property Tribunal which has the power to confirm, vary, increase or reduce the size of the penalty or cancel the civil penalty.

### ***Human Rights, Equality and Data Protection***

17. An Equality Impact Assessment has been completed and is attached to this report (Appendix 2). There will be no negative, differential impact on diverse groups and communities associated with this report.

### ***Financial***

18. Local Authorities are able to retain income from civil penalties. Any income from penalties related to Prohibited payments and client money protection is required to be used for furthering the statutory functions in relation to private sector housing, otherwise it must be returned to the Secretary of State. There will be minimal costs associated with setting up the scheme. The council will seek to recover any legal costs in the event that it is required to defend its decision at a tribunal.

## **Actions to be taken to implement the recommended decision(s)**

Action	Responsible Officer	Deadline
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The civil penalty scheme will be implemented upon approval and will become part of the enforcement options available to the Council when dealing with breaches under relevant letting agency legislation. The use of civil penalties will become part of the enforcement policy.	Judith Hedgley, Head of Public Protection	Within 6 weeks of Executive approval
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## Appendices

1	Civil Penalty Charging Procedure for relevant letting agency legislation
2	Equality Impact Assessment Screening

## Background papers

Body	Report title	Date
Ministry of Housing, Communities and Local Government	Tenant Fees Act 2019: STATUTORY GUIDANCE FOR ENFORCEMENT AUTHORITIES	Published 1 <sup>st</sup> April 2019, last updated 30 <sup>th</sup> September 2020

**Contact:** Judith Hedgley, Head of Public Protection  
**Email:** [Judith\\_hedgley@middlesbrough.gov.uk](mailto:Judith_hedgley@middlesbrough.gov.uk)

## **Appendix 1: Civil penalties charging framework**

The Tenant Fees Act 2019 introduced the ability for enforcing authorities to issue a civil penalty as an alternative to prosecution for breaches under relevant lettings legislation, namely:

- The Tenant Fees Act 2019 [the Act]
- The Consumer Rights Act 2015 (Chapter 3 of Part 3)
- The Enterprise and Regulatory Reform Act 2013 (section 83(1) and 84(1))
- The Housing and Planning Act 2016 (sections 133 – 135)

Civil penalties can be imposed by the enforcing authority to the value determined by the authority but to a maximum of £5,000 or £30,000 as follows:-

### **Fines up to £5,000**

- Prohibited payments under the Tenants Fees Act 2019 (s1 and s2- first breach only) or breach of schedule 2. (fees associated with rent, tenancy deposits, holding deposits, default payments eg lost keys or security devices, fees for late payment of rent, changed to tenancy agreement, early repayment charges, services included in the rent).
- Non-publication of letting agents fees s83(3) of the Consumer Rights Act 2015
- Non membership of a redress scheme - The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 - Art 3 & 5)
- Failure to notify client of alteration or revocation of a client money protection scheme (CMP) within 14 days - Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, 4(2)
- Failure to obtain, display, publish on website, or produce certification in relation to client money protection scheme (Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019,R 4(1))

### **Fines up to £30,000**

- Non membership of approved or designated client money protection scheme - Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc. Regulations 2019, Reg 3
- Repeated breaches in relation to offences for prohibited payments under the Tenant Fees Act 2019 within 5 years (s1, s2, s12). For this offence there is also a power to prosecute in the Magistrates Court where an unlimited fine may be imposed



The decision to issue a civil penalty comprises two stages: The first stage is to determine whether a civil penalty is an appropriate sanction and, if appropriate, to determine the level of the proposed civil penalty.

Statutory guidance issued by the Ministry of Housing, Communities and Local Government sets out the factors that must be taken into account when deciding on the appropriate level of penalty:

### **Sections in this procedure**

- 1 Decision to impose a Civil Penalty (Notice) (CPN)
- 2 Authority to serve a CPN
- 3 Format of the CPN
- 4 How to decide the level of penalty amount
- 5 Recovery of penalty

### **Appendices**

Appendix A: Summary of CPN calculation

Appendix B List of vulnerable persons

Appendix C List of relevant convictions

## 1 Decision to impose a CPN

The decision to impose a civil penalty will be taken in line the Public Protection Regulatory Services Enforcement Policy. Any penalty imposed will be in addition to the requirement for the landlord, letting agent or property management company to repay tenants in respect of any unlawful payments made.

The following are to be taken into consideration when determining the most appropriate course of action;

**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.** The greater the harm or the potential for harm the higher amount of civil penalty.

**d) Punishment of the offender.** A civil penalty is not 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.

**e) Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending ensuring future compliance with legal responsibilities 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.** Although issuing a civil penalty is not a matter of public record it is possible that other landlords ,letting agents and property management companies will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that the Council is proactive in levying civil penalties where the need to do so exists and that the level of civil penalty will be set high enough to both punish the offender and deter offending.

**g) Remove any financial benefit the offender may have obtained as a result of committing the offence.** The offender must not benefit as a result of committing an offence, for example, it should not be cheaper to offend than to rent out housing responsibly.

## 2 Authority to serve a CPN

The Council has adopted the powers provided to it under Tenants Fees Act 2019, Consumer Rights Act 2015, Enterprise and Regulatory Reform Act 2013 and sections 133-136 of the Housing and Planning Act 2016. Only officers who are deemed competent and duly authorised may carry out inspection and enforcement activities under letting agency law. Decisions in regard to prosecution or the issuing of a CPN will be taken in accordance with the Council's Scheme of Delegation, Public Protection Enforcement Policy and relevant statutory and non-statutory guidelines.

### **3 Format of the CPN**

A notice of intent must be served prior to the CPN which sets out (a) the amount of the fixed penalty; (b) the reasons for the penalty, and (c) information about the recipients right to make representations.

The notice of intent must be served no later than six months after the offence occurred and gives the recipient the following number of days to make representation to the Council:- 7 days in respect of a holding deposit, 7-14 days (As specified in notice) in respect of overpayment to be refunded to the tenant, 28 days in respect of prohibited payments and 29 days in respect of publication of fees, redress and client money protection matters. Any representations are to be considered by the Head of Service or their authorised deputy.

Where a landlord has challenged the amount of the penalty they must provide documentary evidence as to why the amount is wrong. It is important, therefore that the notice of intent gives detail as to how the penalty has been calculated.

Responses to the representations must be made in writing.

Following the representation period and after the Council has considered any representations, the final notice can be served. After consideration of representations the value of the penalty can be reduced but it cannot be increased.

The Final Notice must contain:

- The amount of the financial penalty,
- The reasons for the penalty,
- Information on how to pay,
- Period of payment which must be 28 days starting the day after the date of the notice,
- Information about the rights of appeal,
- The consequences of failure to comply with the notice.

The recipient has the right to appeal to the First Tier Tribunal. During the appeal period the requirement to pay the penalty is suspended until the appeal has been determined or withdrawn.

### **4 Calculation of the penalty amount**

There are four stages to determining the amount of the civil penalty to be imposed.

#### **Stage 1: Determine the starting penalty for the offence**

The penalty band is based upon the landlord, letting agent or management company's culpability for the offence and the severity of harm.

#### **Culpability**

When assessing culpability the evidence gathered as part of the investigation together with any aggravating or mitigating factors will be carefully considered. This will include statements from tenants, the findings of inspections, interviews with parties involved and consideration of past compliance with relevant laws.

There are four levels of culpability (shown in the table below). Each offence will be considered separately and culpability determined for each offence.

Level of culpability	Examples of offences applicable
Very high	Intentional breach or a flagrant disregard of the law.
High	Actual foresight of, or wilful blindness to, risk of breach but risk nevertheless taken.
Medium	Breach committed through act or omission which a person exercising reasonable care would not commit.
Low	Breach committed with little fault, for example, because - <ul style="list-style-type: none"> <li>significant effort was made to address the risks, breaches or offences but measures taken were inadequate on this occasion</li> <li>there was no warning/circumstance indicating that there was a risk of the breach</li> <li>failings were minor and occurred as an isolated incident</li> </ul>

## Harm

There are three categories of harm. Dealing with a risk of harm requires consideration of both the likelihood of harm occurring and the extent of harm caused.

Category 1 High likelihood of harm	<ul style="list-style-type: none"> <li>serious adverse effect(s) on individuals and/or having widespread impact due to the nature and /or scale of the landlord's or agent's or property management company's business</li> <li>high risk of an adverse effect on individual(s), including where persons are vulnerable</li> </ul>
Category 2 Medium likelihood of harm	<ul style="list-style-type: none"> <li>adverse effect on individual (s) (not amounting to category 1)</li> <li>medium risk of an adverse effect on individuals or low risk of serious adverse effect</li> <li>tenants and /or legitimate landlords or agents substantially undermined by the conduct</li> <li>the Council's work as a regulator is inhibited</li> <li>tenant or prospective tenant misled</li> </ul>
Category 3 Low likelihood of harm	<ul style="list-style-type: none"> <li>Low risk of an adverse effect on actual or prospective tenants</li> <li>Public misled but little or no risk of actual adverse effect on individual(s)</li> </ul>

Harm is to be considered widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all these categories.

The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a crime on the victim.

In some cases, no actual harm may have resulted and the Council will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

Some offences cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

## Penalty

Once the levels of culpability and harm have been determined the starting point for the penalty is a combination of the two. The tables below show the starting point (SP) and the maximum penalty (MP) that can be issued. Consideration is then given to increasing or decreasing the penalty for aggravating and mitigating factors.

Offences up to £5,000

Culpability	Very high	High	Medium	Low
Harm				
Category 1	SP £4000 MP £5000	£3250 £4250	£2500 £3500	£1750 £2750
Category 2	SP £3750 MP £4750	£3000 £4000	£2250 £3250	£1500 £2500
Category 3	SP £3500 MP £4500	£2750 £3750	£2000 £3000	£1250 £2250

Offences up to £30,000

Culpability	Very High	High	Medium	Low
Harm				
Category 1	SP £20000 MP £30000	£18000 £26000	£12500 £22000	£8500 £15000
Category2	SP £17500 MP £28000	£15000 £24000	£10500 £20000	£6500 £10000
Category 3	SP £15000 MP £24000	£10500 £20000	£6500 £17000	£3500 £8000

## Stage 2 – Adjusting the penalty for aggravating and/or mitigating factors

### Aggravating factors

The track record and behaviour of the landlord, letting agent or property management company will be an important factor in determining the final amount of civil penalty to be imposed. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point of the penalty. A higher penalty will be appropriate where the landlord, letting agent or property management company has a history of non-compliance.

<b>Factors increasing seriousness</b>	amount to be added to starting point	monetary value
Is there historic offending (non-compliance with law, cautioned, prosecuted, issued a CPN for any relevant offence in the last 5 years?	10%	
There are multiple offences of relevant lettings laws to be taken into consideration	20%	
They have gained financially or caused loss to others	10%	
The offending has been concealed / others have been blamed.	10%	
Did they obstruct the investigation	10%	
There is evidence of targeting or exploiting a vulnerable person	10%	
Have they demonstrated a reticence to engage with enforcement authorities eg not accepted advice or refused training or not become a member of an accreditation scheme	10%	

## Mitigating factors

Factors decreasing seriousness	amount to be deducted from starting point	monetary value
Reasonable voluntarily steps to remedy the problem have been taken and prohibited payments repaid to tenants	10%	
Have they cooperated with the investigation beyond what would be reasonably expected	10%	
Have they made full admissions and accepted responsibility for the breach(s)	10%	
Has the financial investigation shown that penalties may cause financial difficulties ( landlord or agents primary trade or income connected with private rented sector	10%	
Previous good character /exemplary conduct ,no previous breaches	10%	

## Stage 3 Calculating financial benefit from the offence(s)

The guiding principle of civil penalties is that they should remove any financial benefit that has been gained by the landlord, agent or managing company by committing the offence. This means that the penalty should never be less than it would have reasonably cost the landlord to comply in the first instance There must be clear proof that financial benefit was obtained but where it can be proven, in monetary terms, the amount of benefit will be considered in deciding the penalty amount.

It is important that tenants should not suffer detriment as a result of the breach or penalty. Therefore the penalty is in addition to the requirement for the landlord, letting agent or property management company to repay the tenants in respect of any prohibited payment or holding deposit. S10 of the Tenant Fees Act enables enforcement authorities to require such payments to be made.

Other related gains from non-compliance such as avoided costs or operating savings will be added to the penalty amount. For example £500 for membership of redress scheme (amount to be confirmed for time of offence).

## Stage 4 Final Penalty calculation

Cost will be those identified in stage 1 plus adjustments for factors in stage 2; Aggravating factors to be added, Mitigating factors to be deducted, plus any costs/savings identified in stage 3, assessed against maximum penalty. If amount is higher than the maximum penalty in that penalty band then the cost will be the maximum fine. If the fine is less then that will be the penalty

A summary of the CPN calculation form is attached in Appendix A

## **Multiple Breaches**

Where multiple breaches have occurred and more than one financial penalty is being considered, the Council will take in account the Sentencing Council's guideline on Offences taken into consideration and Totality. In such cases the financial penalty for each individual breach will be determined then the penalties added together. If the total is not considered just and proportionate then there are a number of ways in which this can be achieved.

For example: Where a Landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches.

Where a Landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. The Council should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed. Where separate financial penalties are passed, the Council must take care to ensure that there is no double-counting

## **Recovery of Penalty**

The Council will consider all legal options for the collection of unpaid civil penalties and to pursue unpaid penalties through the county courts, such as to seek;

- A Warrant of Control for amounts below £5000
- A Third Party Debt Order
- A Charging Order
- Bankruptcy or insolvency

The courts will accept a certificate signed by the Director of Finance stating that the amount due has not been received by the required date as conclusive evidence of the outstanding debt. Unpaid repayment of prohibited charges to tenants would be enforced by tenants, who would be referred to Citizens Advice for assistance with any claim.

Any income from Civil Penalties is retained by the Local Weight and Measures Authority which imposed the penalty. The Council must only spend any income from Civil Penalties in relation to Prohibited payments or client money protection on its enforcement functions in relation to the private rented sector, any excess must be returned to the Secretary of State.



## Appendices to Framework

### Appendix A – Summary of CPN calculation

Starting amount	B1	Enter starting amount determined in Stage 1
Increase due to aggravating factors	B2	Enter the amount to be added as determined in Stage 2
Decrease due to mitigating factors	B3	Enter the amount to be deducted as determined in Stage 2
Maximum penalty	B4	Enter the maximum penalty for the penalty category in stage 1
Sum of B1, add B2 and deduct B3	B5	
Is the amount in B5 higher than B4 – If Yes enter the amount in B4 in B7. If the amount in B5 is lower than in B4 enter this amount in B7	B7	
Was there financial benefit from the offence other than that already required to be paid back to tenants for prohibited payments ie avoided costs/operating savings If Yes enter the amount in B8. If No enter 0 (zero) in B8	B8	
Add the amount in B8 to B7 and enter in B9	B9	
If the amount in B9 is lower than figure in B4 enter the value in B10. If the figure is higher than B4 enter the figure in B4. Into B10	B10	This is the amount of Civil Penalty which is to be written in the Notice of Intent to Impose a Financial Penalty.

**Appendix B – Non exhaustive list of vulnerable people to be taken in to consideration when determining level of harm:**

- Young adults and children
- Persons vulnerable by virtue of age
- Persons vulnerable by virtue of disability or sensory impairment
- People on a low income
- Persons with a Drug or alcohol addiction
- Victims of domestic abuse
- Children in care or otherwise vulnerable by virtue of age
- People with complex health conditions
- People exploited where English is not their first language.
- Victims of Trafficking or sexual exploitation
- Refugees
- Asylum seekers
- People at risk of harassment or eviction
- People at risk of homelessness.

**Appendix C – Non exhaustive list of relevant offences /breaches:**to be taken into consideration when determining aggravating features.

- Housing law or landlord and tenant related
- Offences under:
  - The Public Health Acts of 1936 and 1961
  - The Building Act 1984
  - The Environmental Protection Act 1990
  - The Town and Country Planning Act 1990
  - The Prevention of Damage by Pests Act 1949
  - The Protection from Eviction Act 1977
  - The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
  - The Housing Grants, Construction and Regeneration Act 1996
  - The Local Government and Housing Act 1989
  - The Housing Act 2004
  - The Consumer Protection from Unfair Trading Regulations 2008

**Offences involving fraud**

Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a company director

## **Offences involving violence**

A conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

## **Offences involving drugs**

- Consideration shall be given to the nature of the offence and what bearing it could have on the Landlord or Agents business activities. The nature, quantity, purity and class of drugs should be considered. In addition, where an offence of possession with intent to supply is involved regard should be had to the role and importance of, the subject in the supply chain.

## **Offences involving sexual offences**

- An offence contained in schedule 3 of the Sexual Offences Act 2003.

## **Unlawful discrimination**

- Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration shall be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

## **Other offences**

- Modern Slavery/ Human Trafficking
- Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation is likely to attach a lower level of culpability.

## Appendix 2: Equality Impact Assessment Level 1: Initial screening assessment

<b>Subject of assessment:</b>	Approval of the framework for calculating the level of civil penalty charge in relation to breaches of the Tenant Fees Act 2019 and relevant letting agency legislation.			
<b>Coverage:</b>	All properties in the private rented sector in Middlesbrough			
<b>This is a decision relating to:</b>	<input type="checkbox"/> <b>Strategy</b>	<input checked="" type="checkbox"/> <b>Policy</b>	<input type="checkbox"/> <b>Service</b>	<input type="checkbox"/> <b>Function</b>
	<input checked="" type="checkbox"/> <b>Process/procedure</b>	<input type="checkbox"/> <b>Programme</b>	<input type="checkbox"/> <b>Project</b>	<input type="checkbox"/> <b>Review</b>
	<input type="checkbox"/> <b>Organisational change</b>	<input type="checkbox"/> <b>Other (please state)</b>		
<b>It is a:</b>	<b>New approach:</b>	<input checked="" type="checkbox"/>	<b>Revision of an existing approach:</b>	<input type="checkbox"/>
<b>It is driven by:</b>	<b>Legislation:</b>	<input checked="" type="checkbox"/>	<b>Local or corporate requirements:</b>	<input type="checkbox"/>
<b>Description:</b>	Seek approval for the penalty charges associated with enforcement of the Regulations.			
<b>Live date:</b>	Date of approval			
<b>Lifespan:</b>	Ongoing			
<b>Date of next review:</b>	12-18 months following implementation to ensure that the procedure is adequate.			

Screening questions	Response			Evidence
	No	Yes	Uncertain	
<b>Human Rights</b> Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?	√	<input type="checkbox"/>	<input type="checkbox"/>	It is considered that the implementation of the policy will not have an unjustified or disproportionate adverse impact upon any of the groups affected by the enforcement.
<b>Equality</b> Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?	√	<input type="checkbox"/>	<input type="checkbox"/>	It is considered that the implementation of the policy will not have an adverse differential impact on groups or individuals with characteristics protected in UK equality law, or other commonly disadvantaged groups
<b>Community cohesion</b> Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?	√	<input type="checkbox"/>	<input type="checkbox"/>	It is considered that implementation of the policy will not have a negative impact upon the community.
<b>Next steps:</b> ➡ If the answer to all of the above screening questions is No then the process is completed. ➡ If the answer of any of the questions is Yes or Uncertain, then a Level 2 Full Impact Assessment must be completed.				

\* Consult the Impact Assessment further guidance appendix for details on the issues covered by each of these broad questions prior to completion.

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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Director of Adult Social Care and Health Integration Executive Member for Adult Social Care and Public Protection, ICT and Digital Inclusion
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<b>Submitted to:</b>	Executive Member for Adult Social Care and Public Protection, ICT and Digital Inclusion
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<b>Date:</b>	20 October 2022
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<b>Title:</b>	Approval of the framework for calculating the level of civil penalty charge for breaches of duties under private sector housing laws
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<b>Report for:</b>	Decision
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	Crime and anti-social behaviour
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<b>Key decision:</b>	Yes
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<b>Why:</b>	Decision(s) will have a significant impact in two or more wards
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<b>Urgent:</b>	No
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<b>Why:</b>	
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<b>Executive summary</b>	
<p>Approval is being sought for a framework for calculating financial penalty charges for offences committed by persons who have duties under housing laws, which includes landlords, lettings agents, managing agents and license holders. The use of penalty charges has been brought into effect under the provisions of the Housing and Planning Act 2016 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. The ability to issue financial penalty charges is an alternative to prosecution, in accordance with the Public Protection Regulatory Services Enforcement Policy.</p> <p>Where conditions in a rented property do not meet legal standards or there is a failure to meet statutory obligations such as with regard to the management of properties, the Council (Public Protection Service) has power to serve enforcement notices to require remedial action, including physical improvement to properties, better management of shared accommodation or to invoke prohibitions on the use of properties. The Housing and Planning Act 2016 amends the primary housing legislation (the Housing Act</p>	

2004) to enable local authorities as the enforcing authority under the housing laws to impose a financial penalty as an alternative to prosecution for certain offences. Similarly, penalty charges imposed under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will be determined using the framework approved for civil penalty charges.

The method for calculating the financial penalty charges is not prescribed in law or by Government and it lies with local authorities to develop their own framework.

The implications of the recommendation(s) have been considered by the appropriate officers of the Council and are set out in the main body of the report. This report falls within the Terms of Reference of this Committee as the policies proposed will impact on all wards within the Borough and represents a change in the policy on the approach housing enforcement.

## **Purpose**

1. To seek approval for the framework to calculate the financial penalty charges for offences committed under the Housing Act 2004 as amended by the Housing and Planning Act 2016 and under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 for housing-related offences.

## **Background and relevant information**

2. The Public Protection Service acts as the enforcing authority under the Housing Act 2004 for standards in the private rented housing sector in Middlesbrough. An assessment tool, known as the Housing, Health and Safety Rating System (HHSRS) is used to identify where improvements in housing standards are needed. Where significant risks to the safety of occupants or others are found the Council has power to serve enforcement notices to require remedial action, including physical improvement to properties, better management of shared accommodation or to invoke prohibitions on the use of properties. For serious breaches of housing laws the Council may take a prosecution against landlords, lettings and management agents.
3. The Housing Act 2004 was amended by the Housing and Planning Act 2016 to enable local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences. Local Authorities have the power under the Housing and Planning Act 2016 to impose civil penalties of up to £30,000 on individuals and organisations for relevant housing offences as an alternative to prosecution. If applied, Civil Penalties can result in a quicker and more cost effective method of enforcement action.
4. The relevant offences to which a civil penalty can be applied are:
  - section 30 (failure to comply with an improvement notice)
  - section 72 (licensing of Houses in Multiple Occupation (HMOs))
  - section 95 (licensing of houses under Part 3 of the Act)
  - section 139(7) (failure to comply with an overcrowding notice)
  - section 234 (management regulations in respect of HMOs)
5. The Act prescribes how the Council may use its powers, how it will decide when to prosecute, when to impose a civil fixed penalty and how it will determine the value of the



civil penalty. Enforcement decisions are taken in line with the Council's Enforcement Policy.

6. The Government recommends that to ensure a civil penalty is set at an appropriate level, local housing authorities should consider:
  - the severity of the offence,
  - the harm caused, the culpability of the offender, and
  - the track record of the offender.
7. The level of harm is based on the categories found in the Housing Health and Safety Rating System. For example - a low harm may include minor cuts or bruising whereas a high harm could include serious fractures and burns. Very high harm would include fatality or paralysis.
8. When setting the level of civil penalty, aggravating factors such as poor history of compliance, abuse of trust and lack of remorse are to be taken into consideration. Mitigating factors may include a good history of compliance, the specific circumstances at the time of offence including mental or physical illness, culpability of victims and genuine remorse. There is a right of appeal to the first-tier tribunal.
9. The proposed framework to be used to calculate the civil penalty charge is shown at Appendix 2. This is a model which has been adopted by other local, regional and national housing enforcement authorities. By following this model charging scheme it ensures consistency amongst enforcement authorities, especially as many landlords own properties in more than one local authority area and other persons may be involved in the management or control of properties in multiple areas.
10. The recovery of unpaid penalties is recovery of the debt through the County Court and the Council would consider the most appropriate means of recovery , such as to seek;
  - A Warrant of Control for amounts below £5000
  - A Third Party Debt Order
  - A Charging Order
  - Bankruptcy or insolvency
11. The Housing (Management Orders and Financial Penalties) (Amounts Recovered) (England) Regulations 2018 provides for the enforcing authority to retain income from financial penalty charges to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. Any part of any financial penalty recovered which is not used to meet the costs and expenses incurred must be paid to the Secretary of State.

### **What decision(s) are being recommended?**

That Executive approves the framework for calculating the civil penalty charges in relation to housing offences.

### **Rationale for the recommended decision(s)**

12. The Housing and Planning Act 2016 provides Local Authorities an alternative to prosecution for certain housing offences. The civil fixed penalty charge can be up to

£30,000, enabling the local authority to determine the level of penalty rather than the courts. The process is designed to ensure transparency, consistency and fairness, and will allow the council to deal with unlawful acts by persons with duties under the Housing Act 2004. If a landlord or other person receives a civil penalty this may influence whether they may be deemed to be a fit and proper person to be the holder of a licence for the operation of a House in Multiple Occupation (HMO) or for a property in a selective licensing area. If a person receives two or more civil penalties over a 12 month period, the council can apply to include that person of a national 'rogue landlord's' database, which can be viewed by other local authorities.

13. The benefit of using a civil penalty charge as opposed to prosecution is to deal more effectively with breaches of housing law, drive up standards in private rented accommodation and deter poor management of dwellings. The use of civil penalties will not remove the Council's ability to take legal action and for the most serious breaches this option will be considered first. Any enforcement decision will be made in accordance with the Regulatory Services Enforcement Policy.

### **Other potential decision(s) and why these have not been recommended**

14. Do not introduce civil penalty charges. If they are not introduced there would be no change to current enforcement practices in that prosecution action would be taken for offences, where appropriate. This is time consuming process for officers and Legal Services, it can take many months or years to achieve an outcome and does not always achieve the desired results in terms of level of penalty or a deterrent.
15. The use of civil penalties offers a reduced cost enforcement option that will act as an immediate and more effective deterrent. This enforcement tool will address the poor management of properties in the private rented sector and drive up standards and levels of compliance. The framework for calculating the level of charge will provide transparency and consistency in this approach.

### **Impact(s) of the recommended decision(s)**

#### ***Legal***

16. Section 129 and schedule 9 of the Housing and Planning Act 2016 introduce the use of civil fixed penalties as an alternative to prosecution for certain offences contained in the Housing Act 2004. The introduction of civil fixed penalties will reduce time and costs associated with the prosecution of offenders and will act as a deterrent to non-compliance with housing laws.
17. Where a civil penalty is issued, the recipient may appeal the issue of the penalty or the level of penalty imposed to the First Tier Tribunal.

#### ***Strategic priorities and risks***

18. The use of fixed penalty notices are an additional regulatory tool which will help to improve compliance with housing standards legislation and provide access to high quality, safer homes. There would be no impact on the policy framework.
19. Non-payment of a civil penalty may be enforced through the County or High Court by an Order of that Court. There is a right of Appeal against the Civil Penalty in the First Tier

Property Tribunal which has the power to confirm, vary, increase or reduce the size of the penalty or cancel the civil penalty.

### ***Human Rights, Equality and Data Protection***

20. An Equality Impact Assessment has been completed and is attached to this report (Appendix 1). There will be no negative, differential impact on diverse groups and communities associated with this report.

### ***Financial***

21. Local Authorities are able to retain income from civil penalties to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. Any part of any financial penalty recovered which is in excess of the amounts associated with delivery of enforcement functions must be paid to the Secretary of State. There will be minimal costs associated with setting up the scheme. The council will seek to recover any legal costs in the event that it is required to defend its decision at a tribunal.

### **Actions to be taken to implement the recommended decision(s)**

Action	Responsible Officer	Deadline
The civil penalty scheme will be implemented upon approval and will become part of the enforcement options available to the Council when dealing with breaches under housing laws. The use of civil penalties will become part of the enforcement policy.	Judith Hedgley, Head of Public Protection	It will be implemented within 28 days of the Executive member's decision

### **Appendices**

1	Equality Impact Assessment Screening
2	Civil Penalty Charging Calculation
3	

### **Background papers**

Body	Report title	Date

Contact: Judith Hedgley, Head of Public Protection  
Email: [Judith\\_hedgley@middlesbrough.gov.uk](mailto:Judith_hedgley@middlesbrough.gov.uk)



## Appendix 1: Equality Impact Assessment Level 1: Initial screening assessment

<b>Subject of assessment:</b>	Approval of the framework for calculating the level of civil penalty charge for breaches of duties under private sector housing laws			
<b>Coverage:</b>	All properties in the private rented sector in Middlesbrough			
<b>This is a decision relating to:</b>	<input type="checkbox"/> <b>Strategy</b>	<input checked="" type="checkbox"/> <b>Policy</b>	<input type="checkbox"/> <b>Service</b>	<input type="checkbox"/> <b>Function</b>
	<input checked="" type="checkbox"/> <b>Process/procedure</b>	<input type="checkbox"/> <b>Programme</b>	<input type="checkbox"/> <b>Project</b>	<input type="checkbox"/> <b>Review</b>
	<input type="checkbox"/> <b>Organisational change</b>	<input type="checkbox"/> <b>Other (please state)</b>		
<b>It is a:</b>	<b>New approach:</b>	<input checked="" type="checkbox"/>	<b>Revision of an existing approach:</b>	<input type="checkbox"/>
<b>It is driven by:</b>	<b>Legislation:</b>	<input checked="" type="checkbox"/>	<b>Local or corporate requirements:</b>	<input type="checkbox"/>
<b>Description:</b>	Seek approval for the penalty charges associated with enforcement of the Regulations.			
<b>Live date:</b>	Date of approval			
<b>Lifespan:</b>	Ongoing			
<b>Date of next review:</b>	12-18 months following implementation to ensure that the procedure is adequate.			

Screening questions	Response			Evidence
	No	Yes	Uncertain	
<b>Human Rights</b> Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?	√	<input type="checkbox"/>	<input type="checkbox"/>	It is considered that the implementation of the policy will not have an unjustified or disproportionate adverse impact upon any of the groups affected by the enforcement.
<b>Equality</b> Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?	√	<input type="checkbox"/>	<input type="checkbox"/>	It is considered that the implementation of the policy will not have an adverse differential impact on groups or individuals with characteristics protected in UK equality law, or other commonly disadvantaged groups
<b>Community cohesion</b> Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?	√	<input type="checkbox"/>	<input type="checkbox"/>	It is considered that implementation of the policy will not have a negative impact upon the community.
<b>Next steps:</b> ➡ If the answer to all of the above screening questions is No then the process is completed. ➡ If the answer of any of the questions is Yes or Uncertain, then a Level 2 Full Impact Assessment must be completed.				

\* Consult the Impact Assessment further guidance appendix for details on the issues covered by each of these broad questions prior to completion.

## **Appendix 2: Civil penalties charging procedure**

The Housing and Planning Act 2016 section 126 and Schedule 9 amended the Housing Act 2004 and introduced the ability for Local Housing Authorities to allow civil penalty notices (CPNs) to be imposed as an alternative to prosecution for relevant offences under the Housing Act 2004, namely:

- failure to comply with an Improvement Notice (Section 30)
- offences in relation to Licensing of Houses in Multiple Occupation (Section 72)
- offences in relation to Licensing of houses under Housing Act 2004 Part 3 (Section 95)
- offences of contravention of an Overcrowding Notice (Section 139(7))
- failure to comply with management regulations in respect of HMOs (Section 234)

The Council will seek to impose Civil Penalties in accordance with this Enforcement Policy for the Regulation of Housing Standards and the Licensing of Houses in Multiple Occupation.

The decision to issue a civil penalty comprises two stages: The first stage is to determine whether a civil penalty is an appropriate sanction, and, if appropriate, to determine the level of the proposed civil penalty.

Statutory guidance issued by the Ministry of Housing Communities and Local Government in April 2017 sets out the factors which must be taken into account when deciding on the appropriate level of penalty:

### **Sections in this procedure**

- 1 Decision to impose a CPN
- 2 Authority to serve a CPN
- 3 Format of the CPN
- 4 How to decide the level of penalty amount
- 5 Recovery of penalty

## **Appendices**

Appendix A : Summary of CPN calculation

## 1 Decision to impose a CPN

A CPN is a financial penalty imposed as an alternative to prosecution for a relevant offence(s). The maximum penalty that can be imposed per offence is £30,000.

Many facts are to be considered when determining to impose a CPN, including - the benefits of taking such action to the tenant(s), the community and the local authority. All enforcement options will be considered where a breach of law is found and will include the carrying out of works in default to protect the health, safety or wellbeing of those affected by the breach, and/or prosecution of those responsible for the breach or the issuing of a civil penalty.

The following are to be taken into consideration when determining the most appropriate course of action;

**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.

**c) The harm caused to the tenant.** The greater the harm or the potential for harm the higher amount of civil penalty.

**d) Punishment of the offender.** A civil penalty is not 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.

**e) Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help achieve compliance with legal responsibilities. 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.** Although issuing a civil penalty is not a matter of public record it is possible that landlords and other persons involved in the letting of rented accommodation will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that the Council is proactive in levying civil penalties where the need to do so exists and that the level of civil penalty will be set high enough to both punish the offender and deter offending.

**g) Remove any financial benefit the offender may have obtained as a result of committing the offence.** The offender must not benefit as a result of committing an offence, for example, it should not be cheaper to offend than to ensure a property is well maintained and properly managed.



## **2 Authority to serve a CPN**

The Council has adopted the powers provided to it under sections 23 and 126 and schedule 9 of the Housing and Planning Act 2016. Only officers who are deemed competent and duly authorised may carry out inspection and enforcement activities under housing law. Decisions in regard to prosecution or the issuing of a CPN will be taken in accordance with the Council's Scheme of Delegation, Enforcement Policy and relevant statutory and non-statutory guidelines.

## **3 Format of the CPN**

A notice of intent must be served prior to the CPN which sets out (a) the amount of the fixed penalty; (b) the reasons for the penalty, and (c) information about the recipients right to make representations.

The notice of intent must be served no later than six months after the offence occurred and gives the recipient 28 days to make representation to the Council. Any representations are to be considered by the Head of Service or their authorised deputy. Where a person in receipt of a penalty charge has challenged the amount of the penalty they must provide documentary evidence as to why the amount is wrong. It is important, therefore that the notice of intent gives detail as to how the penalty has been calculated.

Responses to the representations must be made in writing.

Following the representation period and after the Council has considered any representations, the final notice can be served. After consideration of representations the value of the penalty can be reduced but it cannot be increased.

The Final Notice must contain:

- The amount of the financial penalty,
- The reasons for the penalty,
- Information on how to pay,
- Period of payment which must be 28 days starting the day after the date of the notice,
- Information about the rights of appeal,
- The consequences of failure to comply with the notice.

The recipient has the right to appeal to the First Tier Tribunal. During the appeal period the requirement to pay the penalty is suspended until the appeal has been determined or withdrawn.

## 4 Calculation of the penalty amount

There are four stages to determining the amount of the civil penalty to be imposed.

### Stage 1: Determine the penalty band for the offence

The penalty band is based upon the offenders culpability for the offence and the severity of harm.

#### Culpability

When assessing culpability the evidence gathered as part of the investigation together with any aggravating or mitigating factors will be carefully considered. This will include the findings of inspections, housing standards assessments and any interviews with offenders and tenant(s). The offender's history of compliance and any previous warnings or enforcement actions will be included in the culpability assessment.

There are four levels of culpability (shown in the table below). Each offence will be considered separately and culpability determined for each offence.

Level of culpability	Examples of offences applicable
Very high	Deliberate breach or a flagrant disregard of the law, including repeat offending.
High	Offender fell far short of their legal duties or there is serious and systemic failure to comply with their legal duties, for example: <ul style="list-style-type: none"><li>• Failure to put in place measures or carry out works that are recognised legal requirements or compliance with regulations such as fire safety requirements and effective maintenance of gas or electrical installations.</li><li>• Allowing risks to continue over a long period of time</li><li>• Ignoring legal notices requiring action to be taken to protect tenants and others from serious detriment or risk of serious injury.</li></ul>
Medium	Systems are in place to manage risk but have not been adhered to or implemented sufficiently
Low	Offender fell short of their legal responsibility, for example: <ul style="list-style-type: none"><li>• Significant effort was made to address the risks, breaches or offences but measures taken were inadequate</li><li>• They have offered a reasonable defence as to why they were unaware of the failure, for example: out of the country, in hospital etc.</li><li>• Failings were minor and occurred as an isolated incident</li></ul>

#### Severity of harm

The risks can be separated into three levels of severity and this will be done for each offence:

Level	Seriousness of harm risked
Level A	Meeting the guidance for Class I and Class II harm outcomes of the Housing Health and Safety Rating system
Level B	Meeting the guidance for Class III and IV harm of the Housing Health and Safety Rating System

<b>Level C</b>	All other cases not falling within Level A or B above (eg. Where an offence occurred but the level of harm does not meet the descriptions above)
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Once the level of culpability and severity of harm outcomes the appropriate penalty levels can be identified:

	<b>Very high culpability</b>	<b>High Culpability</b>	<b>Medium Culpability</b>	<b>Low Culpability</b>
<b>Level A</b>	5+	5	4	3
<b>Level B</b>	5	4	3	2
<b>Level C</b>	4	3	2	1

Penalty Bands – If the penalty band 5/5+ further consideration will be given to determine if prosecution is a more appropriate course of action. If such action is not considered necessary then the Penalty Level will apply.

<b>Penalty Level</b>	<b>Penalty Band</b>
1	£600 - £1200
2	£1200 - £3000
3	£3000 - £6000
4	£6000 - £15,000
5/5+	£15,000 - £30,000

## **Stage 2 Offenders income and track record**

A full review of all of the offenders income will only be considered reasonable and proportionate for very serious offences, namely those at penalty band level 5/5+. For other penalty bands their income will be considered but will normally be limited to the income received in relation to the property where the offence occurred.

For property owners the income will be the weekly rental income and for property agents the income will be any fees received for the management of the property. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

## **Calculation**

To determine what percentage of the income should be added to the penalty amount, the penalty level (1-5/5+) will be used and the corresponding % increase to the weekly income applied.

<b>Penalty level</b>	<b>% of relevant weekly income</b>
1	50%
2	100%
3	150%
4	250%
5	400%
5+	600%

In cases where the offender is not forthcoming with this information or documentation, an estimate of the average weekly income will be used, and it will be for the offender to make representations against this estimated figure if they deem it to be too high. Estimates of average weekly income will be calculated on a case by case basis but will generally be

based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

### Stage 3: Track Record

The track record of the landlord or other person subject to a penalty charge is an important factor in determining the final amount of the CPN. A higher penalty will be appropriate where there is a history of non-compliance.

The following questions are to be used to determine any extra amounts to the penalty. The response to each question will be placed into one of four categories and a weighting added. When the answer to a question is 'No' a zero weighting will be given. For questions where the number of occasions is relevant, the total weighting for a 'yes' answer will be the question multiplied by the number of occasions. E.g. if a question has a weighting of 5 and the offender has committed the offence 3 times, this will give a total score of 15 for the question.

### Questions and Weighting

Questions	Weighting* for a Yes answer	Multiply by the number of occasions
Has the person had any relevant notices service in the last two years under Part 1 of the Housing Act 2004, how often and were they complied with or was enforcement action taken?	1	yes
Has the person had any Civil penalties imposed on them in the last two years and how many?	5	yes
Has the person accepted any cautions for relevant offences over the last two years? How many and when.	10	yes
Has the person been sent any letters in the last two years informing them that they are now subject to "straight to enforcement action"?	10	yes
Has the person owned or managed a property where the term of an existing license, under the Housing Act 2004, was reduced due to enforcement action or significant concerns in the last two years.	5	no
Has the person breached relevant notices which resulted in works in default being carried out in the last two years and how many times?	10	yes
Has the person owned or managed a property where a license has been revoked, during the last two years, due to enforcement action or significant concerns.	10	no
Has the person been prosecuted for any relevant offences in the last two years, how many times?	20	yes
Has the person owned or managed a property which has been subject to an interim or final management order under the Housing Act 2004 in the last two years?	20	no
Has the person been subject to a Banning Order under the Housing and Planning Act 2016 in the last two years?	20	No

### \*Weightings

Category	Weighting
Least serious	1
Moderately serious	5
Very serious	10
Most serious	20

Once all the questions have been answered, the weighting for each is totaled and compared to the % increase table below.

Score	0	1	3	5	7	9	11	13	15	17	21	23	25	27	29	31	33	34	37	39+
%	0	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	100

### Adding income and track record amounts to the Penalty Band

Stage 1 gives the penalty band and the starting point for the calculation. Stage 2 gives the amount that should be added to the identified starting amount as a result of an assessment of the offenders track record and income.

To finalise the amount of the penalty the two figures from stage 2 should be added to the starting point of the penalty band.

If the final amount is less than the upper level for the penalty band then this is the Penalty. If the amount comes to higher than the top of the band then the top of the band is used as the penalty.

A summary of the CPN calculation form is attached as Appendix B

### Stage 4 Calculating financial benefit from the offence(s)

The guiding principle of Civil Penalties is that they should remove any financial benefit that has been gained by the offender. This means that the penalty should never be less than it would have reasonably cost the offender to comply in the first instance. There must be clear proof that financial benefit was obtained but where it can be proven, in monetary terms, the amount of benefit will be added to the final penalty amount. If works in default have been carried out the cost of these will be taken into account as a financial benefit for the offence.

### Recovery of Penalty

The Council will consider all legal options for the collection of unpaid civil penalties and to pursue unpaid penalties through the county courts, such as to seek;

- A Warrant of Control for amounts below £5000
- A Third Party Debt Order
- A Charging Order
- Bankruptcy or insolvency

The courts will accept a certificate signed by the Director of Finance stating that the amount due has not been received by the required date as conclusive evidence of the outstanding debt.

The Housing and Planning Act 2016 is supplemented by The Housing (Management Orders and Financial Penalties) (Amounts Recovered) (England) Regulations 2018 which enables the enforcing authority to retain income from penalty charges to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. Any income in excess of this is to be paid into the Secretary of State ('the consolidated fund')

## Appendix A – Summary of CPN calculation

Starting amount	B1	Enter starting amount determined in Stage 1 eg if category 1 the starting amount is £600
Increase due to income	B2	Enter the amount to be added as determined in Stage 2
Increase due to track record	B3	Enter the amount to be added as determined in Stage 3
Upper limit	B4	Enter the upper limit for the penalty category in stage 1
Sum of B1, B2 and B3	B5	
Is the amount in B5 higher than B4 – If Yes enter the amount in B4 in B7. If the amount in B5 is lower than in B4 enter this amount in B7	B7	
Was there financial benefit from the offence? If Yes enter the amount in B8. If No enter 0 (zero) in B8	B8	
Add the amount in B8 to B7 and enter in B9	B9	
If the amount in B9 is higher than £30,000 enter £30,000 in B10. If the amount in B9 is lower than £30,000 enter the value in B9 in B10.	B10	This is the amount of Civil Penalty which is to be written in the Notice of Intent to Impose a Financial Penalty.

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