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## Gateshead Private Sector Housing Team **Civil Penalties Enforcement Guidance**

Housing and  
Planning Act 2016



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# Section 1: Introduction & Overview

## 1.1 Introduction

This guidance document was created in accordance with Section 3.5 of the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' ("the DCLG Guidance"), published by the Department for Communities and Local Government. It is intended to work in accordance with the 'Communities & Environment Enforcement Policy' and the 'Housing and Planning Act 2016 Private Sector Housing Enforcement Policy', as published by Gateshead Council.

In this document, 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 ("the 2004 Act"). The term "the Council" will be used to refer to Gateshead Council in its capacity as a Local Housing Authority.

## 1.2 What is a civil penalty?

A civil penalty is a financial penalty of up to £30,000 which can be imposed on a landlord as an alternative to prosecution for specific offences under the 2004 Act. The amount of penalty is determined by the Council in each case; section 2 sets out how the Council will determine the appropriate level of civil penalty.

## 1.3 What offences can civil penalties be imposed for?

A civil penalty can be considered as an alternative to prosecution for any of the following offences under the 2004 Act:

**Table 1 - Relevant Offences**

<b>S.30</b>	Failure to comply with an Improvement Notice
<b>S.72</b>	Offence in relation to licensing of Houses in Multiple Occupation
<b>S.95</b>	Offences in relation to licensing of homes included in Selective Landlord Licensing areas
<b>S.139</b>	Failure to comply with an overcrowding notice
<b>S.234</b>	Failure to comply with management regulations in respect of Houses in Multiple Occupation

## 1.4 What is the legal basis for imposing a civil penalty?

Section 126 and Schedule 9 of the Housing and Planning Act 2016 ("the 2016 Act") enables the Council to impose a civil penalty as an alternative to prosecution for specific offences under the 2004 Act

### 1.5 What is the burden of proof for a civil penalty?

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. This means that before a civil penalty can be imposed, the Council must be satisfied beyond reasonable doubt that the landlord committed the offence(s) and that if the matter were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to Gateshead Council's 'Communities & Environment Enforcement Policy' and the Crown Prosecution Service Code for Crown Prosecutors, published by the Director of Public Prosecutions. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including whether the evidence is admissible, reliable and credible and the impact of any defence.

See appendix I and II for an excerpt from the Crown Prosecution Service Code for Crown Prosecutors on the Evidential Stage of the Full Code Test for criminal prosecutions.

### 1.6 What must be done before a Civil Penalty can be considered?

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be properly served by imposing a civil penalty. The following questions should be considered:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the Council?
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e. the offence is particularly serious, and the landlord has committed similar offences in the past and/or a banning order should be considered.

See appendix I and II for an excerpt from the Crown Prosecution Service Code for Crown Prosecutors on the Public Interest Stage of the Full Code Test for criminal prosecutions.

### 1.7 When will the Council consider civil penalties an enforcement option?

The Council will consider Civil Penalties for all landlords that are in breach of one or more of the sections of the 2004 Act listed in Table 1. Enforcement action will be considered on a case-by-case basis in line with Gateshead Council's Communities and Environment Enforcement Policy and any specific enforcement guidance made there under.

## Section 2: Determining the Civil Penalty Amount

### 2.1 Overview

The Council has the power to impose a civil penalty of up to £30,000; this section sets out how the Council will determine the appropriate level of civil penalty in each particular case. The actual amount levied in each case should reflect the severity of the offence and consider the landlord's income and track record.

The civil penalty will be made up of two distinct components. The first is the penalty calculation; this is where the severity of the offence, the landlord's culpability and track record and the landlord's income are considered. The second considers the amount of financial benefit, if any, which the landlord obtained from committing the offence. These two components are added together to determine the final penalty amount that will be imposed on the landlord.

**This process is broken down into five main stages:**

- Stage 1 determines the penalty band for the offence. Each penalty band has a starting amount and a maximum amount.
- Stage 2 determines how much will be added to the penalty amount as a result of the landlord's income and track record, including consideration of any relevant mitigating or aggravating factors. Aggravating factors will increase the amount from the starting point and any mitigating factors will cause the penalty to fall below the starting point.
- Stage 3 considers any financial benefit that the landlord may have obtained from committing the offence.
- Stage 4 is where the costs of investigating, determining and applying a financial penalty are calculated
- Stage 5 considers the results of stages 1-4 and provides the final financial penalty amount.

### Stage 1 Determining the Penalty Band

#### 2.2 Stage 1 Overview

This stage considers the landlord's culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property and the local community. A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations and/or their actions were deliberate. Landlords are running a business and are expected to be aware of their legal obligations. There are three steps to this process and each step is set out below.

### 2.3 Step 1: Culpability

Table 2 sets out the four levels of culpability that will be considered: each level has accompanying examples of the behaviours that could constitute that particular level. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

**Table 2 - Levels of Culpability**

Level	Description
<b>Low</b>	<p><b>Little or no fault of the landlord</b></p> <ul style="list-style-type: none"> <li>Offender did not fall far short of their legal duties; for example, because:               <ul style="list-style-type: none"> <li>significant efforts were made to address the risk, breaches or offences, although they were inadequate on this occasion;</li> <li>they have offered a reasonable defence for why they were unaware of the risk, breach or offence.</li> </ul> </li> <li>Failings were minor and occurred as an isolated incident</li> </ul>
<b>Negligent</b>	<p><b>Negligent behaviour or failure to take reasonable care</b></p> <ul style="list-style-type: none"> <li>Offender fell short of their legal duties in a manner that falls between descriptions in 'high' and 'low' culpability categories.</li> <li>Systems were in place to manage risk or comply with legal duties, but these were not sufficiently adhered to or implemented.</li> </ul>
<b>Reckless</b>	<p><b>Reckless behaviour - acting with foresight or wilful blindness</b></p> <ul style="list-style-type: none"> <li>Offender fell far short of their legal duties; for example, by:               <ul style="list-style-type: none"> <li>failing to put in place measures that are recognised legal requirements or regulations;</li> <li>ignoring warnings or requests raised by the local Council, tenants or others;</li> <li>failing to make appropriate changes after being made aware of risks, breaches or offences;</li> <li>allowing risks, breaches or offences to continue over a long period of time.</li> <li>Serious and/or systemic failure by the person or organisation to comply with legal duties.</li> </ul> </li> </ul>
<b>Deliberate</b>	<p><b>Deliberate breach of or flagrant disregard for the law, causing an intentional breach</b></p>

### 2.4 Assessing a landlord's culpability

When assessing culpability, consider any of the evidence gathered as part of the investigation into the offence and identify any factors which may be relevant to an assessment of culpability.

Using these factors, consider each category of culpability in table 2 and identify the one that the landlord's behaviour falls within; where a landlord's behaviour could meet more than one of the categories, choose the highest one of those met.

### 2.5 Step 2: Seriousness of Harm Risked by the Offence

Table 3 separates the seriousness of harm risked into four levels and each one has an accompanying description to illustrate what would constitute that level of harm risked.

The harm risked by the offence should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

When assessing the level of harm, the Council will take all the circumstances of the case into account, and will have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the offender has demonstrated hostility towards the victim based on those characteristics.

When using the table to determine the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred.

Harm can include: physical injury/damage to health (as set out by the Housing Health and Safety Rating System), psychological distress to any victims, harm to the community, economic loss and harm to public health, and damage to public feeling.

**Table 3 - Levels of Harm**

Level	Description
<b>Low</b>	HHSRS assessment likely to have identified deficiencies what (would) cause health effects such as occasional sever discomfort, broken finger, slight concussion, moderate cuts, significant bruising, regular serious coughs and colds, warrant medical attention. There may have been a low harm outcome from any other ASB/Nuisance/Criminality at the property or breach of any other requirement designed to protect the tenant/ensure property well managed (such as unlawful, eviction, tenant harassment, absence of gas safety record/smoke detection).
<b>Medium</b>	HHSRS assessment likely to have identified deficiencies what (would) cause health effects such as eye disorders, sleep disturbance, neuro psychological impairment, dermatitis, sever stress. Fractures, serious puncture wounds, sever strains, burns, migraine. There may have been a medium harm outcome from any other ASB/Nuisance/Criminality at the property or breach of any other requirement designed to protect the tenant/ensure property well managed (such as unlawful, eviction, tenant harassment, absence of gas safety record/smoke detection)
<b>High</b>	HHSRS assessment likely to have identified deficiencies what (would) cause health effects such as asthma, lead poisoning, legionnaires disease, chronic confusion, sever fever, serious fractures and burns, loss of a hand or foot. There may have been a high harm outcome from any other ASB/Nuisance/Criminality at the property or breach of any other requirement designed to protect the tenant/ensure property well managed (such as unlawful, eviction, tenant harassment, absence of gas safety record/smoke detection)
<b>Very high</b>	HHSRS assessment likely to have identified deficiencies what (would) cause health effects such as death, malignant tumours, paralysis, sever pneumonia, 80% burn injuries, and permanent loss of consciousness. There may have been a very high harm outcome from any other ASB/Nuisance/Criminality at the property or breach of any other requirement designed to protect the tenant/ensure property well managed (such as unlawful, eviction, tenant harassment, absence of gas safety record/smoke detection)

**2.6 Step 3: Penalty Band and Level**

Using the already determined level of culpability and the seriousness of harm risked, find the appropriate penalty banding and corresponding penalty level. The penalty banding determines both the starting amount and upper limit for the penalty calculation.

**Table 4 - Penalty Bands (£)**

Harm and Severity of Offence	Culpability			
	Low Little or no fault of landlord	Negligent Failure to take reasonable care	Reckless Foresight or wilful blindness	Deliberate Intentional breach
<b>Low (Range)</b>	0 - 3,000	2,000-4,000	3,000-5,000	4,000-6,000
Starting point	<b>2,000</b>	<b>3,000</b>	<b>4,000</b>	<b>5,000</b>
<b>Medium (Range)</b>	2,000-4,000	4,000-8,000	6,000-10,000	8,000-12,000
Starting point	<b>3,000</b>	<b>6,000</b>	<b>8,000</b>	<b>10,000</b>
<b>High (Range)</b>	2,000-6,000	6,000-10,000	10,000-14,000	16,000-20,000
Starting point	<b>4,000</b>	<b>8,000</b>	<b>12,000</b>	<b>18,000</b>
<b>Very High (Range)</b>	3,000-7,000	8,000-12,000	16,000-20,000	20,000-30,000
Starting point	<b>5,000</b>	<b>10,000</b>	<b>18,000</b>	<b>25,000</b>

**Table 5 - Penalty Levels**

Penalty Level	Severity of Offence	Band Width (£)
<b>1</b>	<b>Moderate</b>	<b>0 - 10,000</b>
<b>2</b>		
<b>3</b>	<b>Serious</b>	<b>8,000 - 20,000</b>
<b>4</b>		
<b>5</b>	<b>Severe</b>	<b>20,000 - 30,000</b>

## Stage 2 Considering the landlord's income and track record

### 2.7 Stage 2 Overview

There are two elements to consider in stage 2: the landlord's income and the landlord's track record. Each of these will affect the penalty calculation and further details are set out below.

### 2.8 The landlord's Finances

Although the Council is permitted to consider all of a landlord's income and assets when calculating a civil penalty, full financial investigations will normally only be considered for the more serious or severe offences.

For penalties that fall within level 4 and 5, a financial investigation of the landlord will be usually carried out and all sources of income received by the landlord can be considered as 'relevant income' for the purpose calculating the civil penalty. Specifically, the average weekly income of the landlord for the 12 months preceding the date of the offence will be used.

For penalties that fall within bands 1 to 3, the landlord's income will still be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where offence occurred and at the time the offence occurred.

For property agents, the relevant income will be any fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

**IMPORTANT:** although the Council will not normally consider carrying out a full financial investigation where the offence falls within penalty bands 1 to 3, the Council does reserve the right to do so where it considers it reasonable and proportionate to the circumstances.

### 2.9 How is the increase as a result of the landlord's income calculated?

This is a two-step process with step 1 determining what counts as relevant weekly income and step 2 determining what percentage of this relevant weekly income should be added to the penalty amount. These steps are set out in more detail below.

Table 6 - Defining relevant weekly income

Penalty Level	Relevant Weekly Income
1	Gross rental income or management fees for the property where the offence occurred.
2	
3	
4	All income for the offender (carry out a financial assessment)
5	

**Step 1:** Take the penalty level, as determined in Stage 1, and compare it to table 6. This will state what can be considered as relevant weekly income for the offence

Table 7 - Percentage of relevant weekly income

Penalty Level	Relevant Weekly Income
1	50%
2	100%
3	150%
4	250%
5	400%

**Step 2:** Take the penalty level, as determined in Stage 1, and compare it to table 7. This will state the percentage of the Landlord's relevant weekly income which will be added to the Civil Penalty.

### 2.11 What if tenancy agreements or management contracts are not available?

Tenancy agreements and property management contracts can be requested using the Council's existing powers and this should be done where copies are not already available. In cases where the landlord is not forthcoming with this information or documentation, an estimate of the average weekly income will be used instead, and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

Representations against estimated incomes will only be accepted where sufficient evidence of the landlord's income is provided to support these claims. Estimates of average weekly income will be calculated on a case by case basis but they will generally be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

**IMPORTANT:** the Council will not normally consider a landlord's assets but does reserve the right to consider assets in any cases where the Council considers it reasonable and proportionate to do so. Each of these cases will be dealt with on a case by case basis.

### 2.12 The Landlord's track record

Consideration of the landlord's track record will be used to move the amount of the financial penalty either up or down from the starting amount, inside the penalty band selected in Stage 1.

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; and a lower penalty for landlords that have not previously been subject to enforcement action or admitted guilt and taken steps to stop the offence continuing.

### 2.13 How is the Landlord's track record taken into consideration?

Below are questions that will be asked for each landlord that will receive a civil penalty. For companies the questions below will be considered in respect of each Company Director.

For each of the following 6 questions, a positive answer would result in the financial penalty being reduced below the Penalty Band starting amount, with each yes resulting in a proportionate reduction, and yes to all questions resulting in the financial penalty being the lowest amount possible for the Penalty Band.

- 1) Is this the first time the landlord has been subject to formal enforcement action by Gateshead's Private Sector Housing Team?
- 2) Has the landlord admitted guilt and taken steps to stop the offence from continuing?
- 3) Has the landlord expressed genuine remorse for committing the offence?
- 4) Is the victim/tenant culpable at all?
- 5) Does the landlord cite any personal circumstances at the time of committing the offence that could genuinely have had an impact on his committing the offence?
- 6) Does the landlord cite any personal mental or physical illness on his part that could have had an impact on his committing the offence?

The answers to these questions may differ in between the Notice of Intent and Final Notice e.g. if a landlord in between the service of the NOI and FN complies with an IN or submits a duly made licence application. Final calculation of the financial penalty will reflect this.

The following 10 questions would then be considered to determine whether there were aggravating factors that would cause the financial penalty to increase from the amount calculated above back towards the Penalty Band maximum amount. Each positive answer would result in a proportionate increase. In the absence of any positive responses to the questions asked in mitigation above, and positive responses to each of the aggravating factor below, the financial penalty would reflect the maximum possible financial penalty in the selected Penalty Band.

### During the previous five years;

- 1) Aside from this offence, has the PSH Team taken any other HA2004 Part 11 action in respect of any of the landlord's properties. If so, how many times have they been subject to such enforcement action in that timeframe?
- 2) Did the landlord fail to comply with any of this Part 1 action\*?
- 3) Has this landlord been prosecuted, cautioned or received a financial penalty as a result of the above?
- 4) Has the landlord had any relevant notices or cautions served upon them in relation to any housing, public health, environmental health, landlord and tenant legislation?
- 5) Did the landlord fail to comply with any of the above?
- 6) Has the landlord ever had 'Gateshead Priority Landlord' status?
- 7) Has the landlord ever breached a SLL/HMO licence condition?
- 8) Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced or revoked due to enforcement action or significant concerns?
- 9) Has this offence been committed whilst on bail for other offences, or during the period within which relevant convictions are unspent?\*\*\*
- 10) Is the Landlord registered on the Rogue Landlord Database or has the landlord been the subject of a banning order under the Housing and Planning Act 2016?

**IMPORTANT:** the penalty calculation at this stage will never be increased past the upper limit of the penalty band.

\* any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'.

\*\* any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

## Stage 3 Financial Benefit from Committing the Offence

### 2.14 Stage 3 Overview

A guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed should never be less than it would have reasonably cost the landlord to comply in the first place.

### 2.15 How is the financial benefit determined?

Calculating the amount of financial benefit obtained will need to be done on a case by case basis but the table below gives some examples of potential financial benefit for each of the offences.

**Table 8 – Examples of financial benefit**

Offence	Examples of potential financial benefit
<b>Failure to comply with an Improvement Notice (section 30)</b>	The cost of any works that were required to comply with the improvement notice.
<b>Offence in relation to licensing of HMO's (section 72)</b>	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
<b>Offences in relation to licensing of homes included in Selective Landlord Licensing areas (section 95)</b>	Rental income whilst the property was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
<b>Failure to comply with an overcrowding notice (section 139)</b>	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
<b>Failure to comply with management regulations in respect of HMO's (section 234)</b>	The cost of any works that are required to avoid breaching the regulations.

### 2.16 How is financial benefit added to the penalty amount?

The Council will include the financial benefit in the civil penalty calculation. Should the landlord be able to demonstrate that the financial benefit was not obtained then this will be taken into account in the calculation of the financial penalty set out in the Final Notice. The financial benefit obtained will be added to the penalty calculation amount from Stage 2.

In cases where there are multiple owners or individuals such as an agent in receipt of rental income, the appropriate rental amounts will be divided by the number of individuals in receipt e.g. a total rental income of £2000 during the period of the offence where there are two owners will be added as £1000 to each financial penalty amount. For the same amount where there is an agent and one owner the management fee will be regarded as the rental income for the agent and the remainder as the rental income for the owner.

**IMPORTANT:** where the landlord has obtained financial benefit in the form of rental income and this full amount has been added to the total penalty, it will be appropriate to take this into consideration when deciding whether or not to pursue a Rent Repayment Order.

## Stage 4 Adding costs of investigating, applying & implementing the financial penalty

### 2.17 Stage 4 Overview

When setting a civil financial penalty, the Council will also take into account the cost of investigating the offence(s) and preparing the case for formal action.

In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords or the local council tax payers), the costs associated with investigating, determining and applying a Financial Penalty will be reflected in the level of Financial Penalty that is imposed.

Cases that result in the Council issuing Financial Penalties entail investigative and preparation costs. These costs comprise resources and officer time and will be built into the final Financial Penalty amount at Stage 4.

### 2.18 Calculating the cost of investigating, applying & implementing the financial penalty

Investigative costs have been calculated for each of the offences that are covered by Financial penalties by determining the average number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs. The costs are then broken down into 3 levels: low, medium and high.

**Table 9 – Investigation Cost Bands**

Offence	Cost of investigation (£)		
	Low	Medium	High
Housing Act 2004 section 30: Failure to comply with an Improvement Notice	200	300	400
Housing Act 2004 section 139: Failure to comply with an Overcrowding Notice	300	450	600
<b>Licensing Offences</b>			
Housing Act 2004 section 72 and 95: Failure to licence a licensable property	200	300	400
Housing Act 2004 section 72 and 95: Failure to comply with licence conditions	300	450	600
<b>HMO Management Regulation Offences</b>			
Regulation 3: Information not available / displayed	300	450	600
Regulation 4: Duty to take safe measures	300	450	600
Regulation 5: Duty to maintain water supply and drainage	300	450	600
Regulation 6: Duty to supply and maintain gas and water	300	450	600
Regulation 7: Duty to maintain common parts	300	450	600
Regulation 8: Duty to maintain living accommodation	300	450	600
Regulation 9: Duty to provide waste disposal facilities	300	450	600
Regulation 10: Duty of occupiers	300	450	600

The investigative costs incurred in dealing with a landlord's failure to comply with an Improvement Notice are significantly lower (compared to other offences) because the Council will already have charged some preliminary costs when serving the Improvement Notice. The additional costs will cover the work involved in confirming that the remedial action required by the notice is not completed, obtaining tenants' statements, interviewing any suspects under caution and deciding if there is a case to answer.

The other costs and bands reflect the complexity of the investigation, the numbers of witnesses interviewed, the obtaining of warrants to enter properties, and the cost of specific services, such as a locksmith to gain full access to the premises under investigation.

If an investigation leads to more than one Financial Penalty being imposed, the initial fixed investigatory costs will be divided equally and added to each Financial Penalty. There will only be one set of investigatory charges for each investigation/operation undertaken by the Council.

#### Stage 4 Adding costs of investigating, applying & implementing the financial penalty

##### 2.18 Calculation

**Stage 1** determines the penalty band for the offence and sets out the starting amount and a maximum amount.

**Stage 2** determines how much will be added to or taken away from the starting amount as a result of the landlords track record and how much will be added as a result of the landlord's income. If the amount calculated is less than the upper limit for the penalty band, then this is the amount that will be used to continue in Stage 3. However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used for Stage 3.

**Stage 3** considers any financial benefit that the landlord may have obtained from committing the offence. If the amount calculated is less than the upper limit for the penalty band, then this is the amount that will be used to continue in Stage 4. However, if the amount calculated is greater than the upper limit for the penalty band, then the actual amount will be used in Stage 5 instead.

**Stage 4** considers the costs of investigating, determining and applying a financial penalty.

**Stage 5** considers and combines the results of stages 1-4 and provides the final financial penalty amount, to a maximum of £30,000.

## Section 3: Imposing a Civil Penalty

### 3.1 Where is the process for civil penalties set out?

Schedule 9 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a civil penalty.

### 3.2 Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a 'notice of intent' on the landlord in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty;
- The reasons for proposing to impose a civil penalty, and;
- Information about the Landlord's right to make representations to the Council.

### 3.3 Representations

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior colleague.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case by case basis and responded to where the Council considers it necessary.

### 3.4 Final Notice

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the notice of intent, but it cannot be a greater amount.

The imposing of a civil penalty involves serving a final notice and this notice must contain the following information:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal, and;
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

### 3.5 Withdrawing or Amending Notices

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case by case basis.

### 3.6 Appeals to the Tribunal

If a civil penalty is imposed on a landlord, that Landlord can appeal to the First-tier Tribunal ("the Tribunal") against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

### 3.7 Payment of a Civil Penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given ("the 28-day payment period"), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice. 3.8

### 3.8 Other consequences of having a Civil Penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12-month period, each for a banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

"Banning order offence" means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016.

### 3.9 Recovering an unpaid Civil Penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control for amounts up to £5000;
- A Third-Party Debt Order;
- A Charging Order, and;
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, and the amount of the order is over £1000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the Landlord and not just the property to which the offence relates.

Where the civil penalty was appealed, and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court.

### 3.10 Income from Civil Penalties

Any income from Civil Penalties is retained by the Local Housing Council which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument 367 (2017).

## Appendix I: Public Interest Stage of the Full Code Test

The following is an extract from pages 7-10 of The Code for Crown Prosecutors (January 2013, 7th Edition) issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985.

- 4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases, the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.
- 4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.
- 4.10 The explanatory text below each question in paragraphs 4.12 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.
- 4.11 It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.
- 4.12 Prosecutors should consider each of the following questions:

#### a) How serious is the offence committed?

The more serious the offence, the more likely it is that a prosecution is required. When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).

#### b) What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required. Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or Page 27 of 31.

Whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18). Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

### c) What are the circumstances of and the harm caused to the victim?

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim. A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public. Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family. Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views. However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

### d) Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

### e) What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

### f) Is prosecution a proportionate response?

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration: The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.) Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

### g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review. Page 29 of 31

## Appendix II: The Evidential Stage of the Full Code Test

The following is an extract from pages 6-7 of The Code for Crown Prosecutors (January 2013, 7th Edition) issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985.

4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

#### Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- a) the likelihood of that evidence being held as inadmissible by the court; and
- b) the importance of that evidence in relation to the evidence as a whole.

#### Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

#### Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.