



Private Sector Housing Civil Penalties Policy

for the Regulation of Housing Standards

August 2018

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1. Introduction

1.1 Gedling Borough Council (the authority) is committed to improving standards in private sector housing and ensuring that all private rented accommodation is properly maintained, well managed, safe and habitable.

1.2 Although the authority has some excellent landlords, there is also a significant number on a spectrum ranging from those that are ignorant of their responsibilities, to others that knowingly rent out accommodation that is, substandard and unsafe.

1.3 The authority is aware of the Government's desire to support good landlords who provide decent well-maintained homes. The authority is prepared to take more robust actions on those unscrupulous landlords who are flouting the law and seeking to profit from their non-compliance.

1.4 The authority's approach to housing enforcement will be governed by, among other things on proportionality, fairness and objectivity. The authority regulatory activities will also take into account the risks in the decision making process when determining the appropriate enforcement option.

1.5 The authority welcomes the direction that the Government is taking against landlords deemed to be falling below the level of their legal obligations expected of them. The authority is committed to the measures introduced under the Housing and Planning Act 2016 to improve standards in the private rented sector.

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

1.7 This policy on Private Sector Housing Civil Penalties contains information about civil penalties, and how the authority will use them. It takes into account the statutory guidance that has been issued by the Government under Schedule 9 of the Housing and Planning Act 2016, and should be read in conjunction with the authority's Private Sector Housing Enforcement Policy.

2. Purpose of the Civil Penalties Policy

2.1 The Private Sector Civil Penalties Policy is intended to ensure transparency, consistency and fairness in how and when civil penalties are enforced. This policy also complements the Private Sector Housing Enforcement Policy when dealing with landlords where civil penalties will be a consideration, after taking into account all relevant factors in accordance with this policy.

2.2 The purpose of this Private Sector Housing Civil Penalties Policy is to outline how the authority will use its new powers, how the authority will decide when to prosecute and when to impose a civil penalty, and how the authority will determine the size of each civil penalty.

3. The Government's intentions and expectations

3.1 The Government has said that it wants to support good landlords who provide decent, well-maintained homes, and avoid unnecessary regulation which increases costs for landlords and pushes up rents for tenants.

3.2 The Housing and Planning Act 2016 introduces a number of measures to help local authorities deal robustly with those landlords likely to be the subject of this policy. These include:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017);
- Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (scheduled to come into force on 1 October 2017);
- Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).

3.3 When introducing civil penalties through the Housing and Planning Act 2016, the government wanted local housing authorities to use their new powers robustly as a way to improve standards and to deter those landlords that put tenants at risk by flouting the law.

3.4 In the House of Commons, Marcus Jones MP (Parliamentary Under-Secretary of State at the DCLG) explained why the maximum penalty is £30,000:

“[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000”.

“It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”.

3.5 The statutory guidance issued by the Government states that, generally, it would expect the maximum civil penalty of £30,000 to be “reserved for the very worst offenders”, it recommends that the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord’s previous record of offending.

3.6 The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level local housing authorities should consider the following factors:

- The severity of the offence
- The more serious the offence, the higher the civil penalty should be
- The culpability and track record of the offender
- A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.

The harm caused to the tenant

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm, the higher the amount should be when authority imposes a civil penalty.

The punishment of the offender

The authority will not regard civil penalty as an easy or lesser option but will recognise it as an alternative to prosecution. While the penalty will be proportionate it will reflect both the severity of the offence and whether there is a pattern of previous offending. Where the implementation of civil penalty is deemed appropriate, it will also be necessary to be set at a level to ensure that there is an economic impact on the offender.

Whether it will deter the offender from repeating the offence

The level of the penalty will reflect and consider an amount that is likely to be sufficient to deter the offender from repeating the offence. The general aim is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future.

Whether it will deter others from committing the offence

The authority will want to ensure that as far as reasonably practicable that landlords having properties within the authorities jurisdiction are aware that the authority will be proactive in levying civil penalties where the need to do so exists.

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

The authority will seek to ensure that the offender does not benefit as a result of committing an offence where such offence is proven. In determining the level of civil penalty appropriate there will also be a general principle that it will not be cheaper to breach the statutory requirements than the level of fines for which the civil penalty has been determined.

4. General considerations on Civil Penalties

4.1 Although the maximum civil penalty that can be imposed for an offence is £30,000, it is for the Council to determine the level of civil penalty.

4.2 Civil penalties can only be used as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for a particular offence cannot be issued with a civil penalty for the same offence.

4.3 Although only one civil penalty can be issued (as an alternative to prosecution) for each of the first 4 offences listed in Paragraph 5.2 below, for each separate breach of the HMO Management Regulations a separate civil penalty can be issued.

4.4 Where the authority is in a position to prosecute a letting agent and landlord for failing to obtain a licence for a licensable HMO, it has the option of imposing a civil penalty on both the letting agent and the landlord instead, as an alternative to prosecution.

Principles underpinning the civil penalty policy

4.5 All of the Private Sector Housing Team's enforcement activity will be:

- Targeted – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.
- Proportionate – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
- Fair and objective – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
- Transparent – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
- Consistent – Enforcement action will be undertaken by well-trained investigators, and the Private Sector Housing Team will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and share and develop good practice.
- Accountable – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Private Sector Housing Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

5. Housing offences covered by civil penalties

5.1 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

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

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)
 - 72(1) Failure to license a licensable HMO
 - 72(2) Overcrowding in a Licensed HMO
 - 72(3) Failure to comply with HMO licence condition
- Section 95 – Offences in relation to licensing of houses under Part 3 of the Act
 - 95(1) Failure to License a licensable house or flat
 - 95(2) Failure to comply with licence condition
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of Houses in Multiple Occupation

The Management of Houses in Multiple Occupation (England) Regulations 2006

- Regulation 3 Information not displayed
- Regulation 4 Duty to take safety measures
- Regulation 5 Duty to maintain water supply and drainage
- Regulation 6 Duty to maintain gas and water
- Regulation 7 Duty to maintain common parts
- Regulation 8 Duty to maintain living accommodation

Determining appropriate sanction

5.3 The standard of proof required for a civil penalty is the same as will be required for a prosecution. The authority will therefore seek to satisfy itself just as if the case were to be prosecuted in the magistrates' court that there would be a realistic prospect of conviction.

5.4 To achieve a conviction in the magistrates' court, the authority must be able to demonstrate beyond reasonable doubt that the offence has been committed. The same principle applies in respect of civil penalties. The authority will ensure that in every circumstances where it has imposed a civil penalty, it is confident that should an appeal be made to First-tier Tribunal, it will be able to demonstrate to the required threshold that the offence had been committed.

5.5 Prosecution in some cases will be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. Nevertheless, it does not follow that in all such cases that the authority will automatically consider prosecution and as such civil penalties could be an option depending on the circumstances even where serious offences have been committed.

5.6 If the authority is confident that it has a reasonable prospect of a conviction in a particular case, it will always consider a civil penalty in the first instance and only by exception will it seek alternative measures such as prosecution or formal cautions.

6. Regulation of Private Sector Housing

Dealing with complaints

6.1 The Private Sector Housing Team will respond to complaints from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.

Housing, Health and Safety Rating System (HHSRS)

6.2 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- Category 1 hazards represent a serious danger to health and the authority has a duty to take appropriate action to deal with these.
- Category 2 hazards represent a lesser danger and, although it has no duty to take action, the authority will exercise its power to reduce category 2 hazards through appropriate action.

6.3 In most cases, the authority will follow a pre-formal process in which it will seek to work with landlords to reduce hazards. The authority will seek to provide clear guidance and advice to the landlord and agents that it regulates.

6.4 Charges will be made for any formal enforcement notices served under the Housing Act 2004. The charge which is set on a cost recovery basis is currently set at £350 per notice.

Houses in multiple Occupation (HMOs)

6.5 As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated. Some HMOs are subject to licensing:

- Mandatory HMO Licensing – An HMO licence is required for HMOs that have 3 or more storeys and are occupied by 5 or more persons who are sharing facilities and comprise 2 or more households.
- Additional HMO Licensing – An HMO licence is required for HMOs that are situated in the Additional HMO area where there are occupied by at least 3 persons forming 2 households and sharing amenities.

6.6 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder/manager and the potential management arrangements of the premises.

6.7 It is a criminal offence if a person controlling or managing an HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The authority will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.

6.8 The authority will vigorously pursue anyone who is controlling or managing a licensable HMO without a licence and, where appropriate, it will impose civil penalties on them or pursue their prosecution.

6.9 Where a non-licensable HMO is being badly managed and/or is in a poor state of repair, the Private Sector Housing Team will prioritise it for action, based on an assessment of risk.

Overcrowding

6.10 Overcrowding is a difficult issue to deal with because, unlike other hazards, there is often very little that the landlord can do to resolve the problem unless the tenant has moved other people into the accommodation since the start of the tenancy.

6.11 In cases of severe overcrowding, the authority will explore the housing options available to the tenant, including a move to alternative accommodation.

6.12 Where informal action has failed to resolve the situation the council can use improvement notices or prohibition orders to enforce overcrowding and where a landlord fails to comply with such notice the council could seek to prosecute or issue a civil penalty for non-compliance with the notice.

7. Financial Matrices for Civil Penalties

Factors taken into account when deciding the level of civil penalty

7.1 Generally, the maximum civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of offending.

7.2 In order to ensure that the civil penalty is set at an appropriate level, the authority will consider the following factors (described in more detail in Paragraph 3.6 above) that the Government has identified, in its statutory guidance, as being pertinent these include:

- The severity of the offence
- The culpability and track record of the offender
- The harm caused to the tenant
- The punishment history of the offender
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

7.3 The final factor is an overarching one and, after all the other factors have been considered and applied, the authority will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence.

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

The costs of investigating, determining and applying civil penalties

7.5 In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (as oppose to responsible landlords or the local council tax payers), the costs associated with investigating, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed.

7.6 Cases that result in the authority issuing civil penalties will involve investigative and preparation costs. These costs, comprising resources and officer time, will be built into the civil penalty charge.

7.7 The final civil penalty amount is made up of two main financial elements – the investigative charge and the punitive charge.

Investigative charges

7.8 Investigative costs have been calculated for each of the offences that are covered by civil 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 bands: low, medium and high. The factors deciding these bands are set out at 7.10 below.

Investigative Charges – Improvement Notice

Offence		Cost of investigation		
Housing Act 2004 section 30	Failure to comply with improvement Notice	Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
		£200	£300	£400

Investigative Charges –Overcrowding Notice

Offence		Cost of investigation		
Housing Act 2004 section 139	Failure to comply with Overcrowding Notice	Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
		£200	£300	£400

Investigative Charges –HMO Licensing and Selective Licensing

Offence		Cost of investigation		
		Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
Housing Act 2004 section 72(1)	Failure to license a licensable HMO	£500	£750	£1000
Housing Act 2004 section 72(2)	Overcrowding in a Licensed HMO	£300	£450	£600
Housing Act 2004 section 72 (3)	Failure to comply with HMO Licence condition	£300	£450	£600
Housing Act 2004 section 95 (1)	Failure to license a licensable house/flat	£400	£600	£800
Housing Act 2004 section 95 (2)	Failure to comply with Licence condition	£200	£300	£400

Investigative Charges – HMO Management Regulations

Offence		Cost of investigation		
		Band 1 (Low)	Band 2 (Medium)	Band 3 (High)
Regulation 3	Information not displayed	£50	£75	£100
Regulation 4	Duty to take safety measures	£150	£350	£550
Regulation 5	Duty to maintain water supply and drainage	£150*	£350*	£550*
Regulation 6	Duty to maintain gas and water	£150*	£350*	£550*
Regulation 7	Duty to maintain common parts	£150	£350	£550
Regulation 8	Duty to maintain living accommodation	£150	£350	£550
Regulation 9	Duty to provide waste disposal facilities	£75	£125	£175

* The authority will not pursue enforcement where it is proven it was a fault of the utility company or a sewer blockage that results in a dysfunction of the immediate drain(s) serving the property. This will also apply to circumstances where services are not available as a result of failure to pay fees to the utility company by the tenant.

7.9 The investigative costs incurred in dealing with a landlord's failure to comply Improvement Notices are significantly lower (compared to other offences) because the authority will already have charged some preliminary costs (currently £350) when serving the Improvement Notice. The additional costs will cover the work involved in confirming that the improvements are not completed, obtaining tenants' statements, interviewing any suspects under caution and deciding if there is a case to answer.

7.10 The other preliminary 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.

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

Punitive charges

7.12 The authority has created a table of punitive charges (based on Culpability and Harm) that officers will use as a starting point for determining, on a case by case basis, the level of civil penalty that should be imposed.

7.13 In order to ensure that the punitive charge is set at an appropriate level, the authority will complete its investigation and consider all of its findings against the factors (described in detail in paragraph 3.6 above) identified in the statutory guidance.

7.14 Aggravating factors in the case will increase the initial amount and, equally, any mitigating factors will reduce the initial amount.

8.0 Process for determining the level of penalty

Note on public interest: The authority will always give consideration to the public interest test before proposing and ultimately deciding that a civil penalty notice must be served on landlords and/or agents. The approach will always be to take into account the factors of each case whilst giving due weightings were required for the benefit of the public interest. This will ensure that in cases where the evidential burden is satisfied, the authority will not necessarily be obligated to serve a civil penalty. It may, depending on the circumstances, mean that where an offence is not serious, there is no victim, no identifiable harm, no foreseeable harm, no premeditation, no impact on the wider community and no indication that it is likely to continue, in those circumstances it is unlikely that the authority will determine that a civil penalty will be in the public interest.

STEP ONE – Determining the offence category

The authority will determine the offence category using only the *culpability* and *harm* factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

Very high

Where the offender intentionally breached, or flagrantly disregarded, the law or
Who has a high public profile and knew their actions were unlawful

High

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless
taken

Medium

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

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The offender's activities have substantially the authority and/or legitimate landlords or agents.
- The authority's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

Category 3- Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

STEP TWO - Starting point and category range

Having determined the **category**, the authority will refer to the following **starting points** to reach an appropriate level of civil penalty within the category range. The authority will consider further adjustment within the category range for aggravating and mitigating features.

CULPABILITY

	Range				
Starting Point	Min	Lower mid-point	Higher mid-point	Max	
Low culpability					
Harm category 3	£50	£25	£75	£135	£175
Harm category 2	£125	£50	£175	£265	£350
Harm category 1	£300	£125	£425	£525	£625
Medium culpability					
Harm category 3	£350	£175	£525	£625	£750
Harm category 2	£850	£350	£1,200	£1500	£2000
Harm category 1	£2,500	£750	£3,250	£3875	£4,500
High culpability					
Harm category 3	£1,000	£500	£1,500	£1900	£2,250
Harm category 2	£3,000	£1,000	£4,000	£4,570	£5,500
Harm category 1	£6,250	£2,500	£8,750	£10,625	£12,500
Very High culpability					
Harm category 3	£2,500	£750	£3,250	£3,875	£4,500
Harm category 2	£6,250	£1,750	£8,000	£10,250	£12,500
Harm category 1	£10,000	£6,250	£16,200	£23,100	£30,000

Framework

Below is a non-exhaustive list of factual elements that provide the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. ***In particular, relevant recent convictions are likely to result in a substantial upward adjustment.*** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to:
 - a) The nature of the offence to which the conviction relates and its relevance to the current offence; and
 - b) The time that has elapsed since the conviction
- Other aggravating factors include:
 - Motivated by financial gain
 - Deliberate concealment of illegal nature of activity
 - Established evidence of wider/community impact
 - Obstruction of justice

- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements
- Refusal of free advice or training
- Member of Accreditation scheme

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

STEP THREE - Review any financial element of the penalty

At this stage a check will be made to determine whether the proposed level of financial penalty is proportionate to the overall offence. The authority may increase or reduce the proposed fine reached at step two, if necessary, depending on other mitigating or aggravating factors. However the authority will take into account the financial circumstances of the offender. Full regard should be given to the totality principle at step six where multiple offences are involved.

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the authority may conclude that the offender is able to pay the financial penalty imposed. However, the offender may supply information to the contrary that s/he deemed necessary in their respective representation. As a result the authority will be expected to assess what an offender can reasonably afford to pay. Where the authority is not satisfied that it has been given sufficient reliable information, the authority will be entitled to draw reasonable inferences as to the offender's means from evidence it has received. The circumstances of the case may include the inference drawn by that the authority that the offender can pay the financial penalty.

The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence. The general principle is that it should not be cheaper to offend than to take the appropriate precautions. The level of financial penalty should reflect the extent to which the offender fell below the required standard.

Review of the penalty

The authority will review the penalty and, if necessary adjust the initial amount reached at step two to ensure that it fulfils the general principles set out above.

STEP FOUR - Reductions

All factors which indicate a reduction in the penalty will be considered and in doing so the authority will have regard, but not limited to, the following factors relating to the wider impacts of the financial penalty on innocent third parties. These include:

- impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- impact of the financial penalty on employment of staff, service users, customers and local economy.

STEP FIVE – Reduction for early admission of guilt

The authority will consider taking into account a potential reduction in penalty for an admission of guilt.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

STEP SIX - Totality principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consideration will be given to whether the total penalties are just and proportionate to the offending behaviour.

The authority is likely to determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or how they appear to the authority.

The authority will add up the financial penalties for each offence and consider if they are just and proportionate.

After determining the aggregate total of a penalty, if in the opinion of the authority it is not just and proportionate, the authority will consider how to reach a just and proportionate financial penalty by application of the general principle that it should not be cheaper to offend than to take the appropriate precautions. There are a number of ways in which this can be achieved. For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending. This can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The authority should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the authority should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be looked at when coming to a decision.

STEP SEVEN – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed. The administration associated with Civil Penalties will be administered in accordance with Appendix 1 to this policy.

Appeals

9.1 A person who has been issued with a civil penalty has a right of appeal to the First-Tier Tribunal and this will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued.

9.2 The First-tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or it has no reasonable prospect of success.

9.3 The Council intends to defend its decision to issue civil penalties rigorously and this will involve not only Officer time and resources but also specialist legal support.

9.4 The Council will seek to recover its legal costs in the event that it is required to defend its decision at a Tribunal.

Guidance

10.1 This Policy has been developed with specific regard to:

- The Housing and Planning Act 2016
- Civil penalties under the Housing and Planning Act 2016
- Guidance for Local Housing Authorities - Department for Communities and Local Government published April 2017
- Private Sector Housing Enforcement Policy
- Housing Act 2004 as amended

Appendix 1

Notice of intent

- 1 Before imposing a financial penalty on a person under section 249A of the Housing Act 2004 the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").
- 2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
 - (a) at any time when the conduct is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the conduct occurs.
(3) For the purposes of this paragraph a person's conduct includes a failure to act.
- 3 The notice of intent must set out—
 - (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the financial penalty, and
 - (c) information about the right to make representations under paragraph 4.

Right to make representations

- 4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

Final notice

- 5 After the end of the period for representations the local housing authority must—
 - (a) decide whether to impose a financial penalty on the person, and
 - (b) if it decides to impose a financial penalty, decide the amount of the penalty.
- 6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.
- 7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.
- 8 The final notice must set out—
 - (a) the amount of the financial penalty,

- (b) the reasons for imposing the penalty,
- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

9(1) A local housing authority may at any time—

- (a) withdraw a notice of intent or final notice, or
- (b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

10(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

- (a) the decision to impose the penalty, or
- (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

- (a) is to be a re-hearing of the local housing authority's decision, but
- (b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Recovery of financial penalty

11 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

- (3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—
- (a) signed by the chief finance officer of the local housing authority which imposed the penalty, and
 - (b) states that the amount due has not been received by a date specified in the certificate, is conclusive evidence of that fact.
- (4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

- 12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.