

APPENDIX 2

Wirral Council

Policy for deciding whether to Prosecute or apply a Civil Penalty

1.0 *Officer Group* to convene and

- (a) consider evidence gathered and determine if the burden of proof is sufficient to secure a conviction (full prosecution file to be prepared). If the burden of proof is deemed to be sufficient, decide to either:
- (b) proceed to prosecution in cases where there is no option to charge a civil penalty; or
- (c) decide whether to pursue a prosecution or a civil penalty (using the criteria in 2 below).

1.1 The *Officer Group* to consist of:

- (a) the case officer,
- (b) the case officer's line manager and/or senior officer,
- (c) appropriate representative from Legal Services

1.2 In advance of the *Officer Group* meeting, the *Case Officer* will complete and circulate an 'evidence sheet' to all group members, at least 7 days before the meeting. This sheet to include background information on the case being considered and the *Case Officer's* recommendation to the *Officer Group*, including the reasoning used to make recommendation.

1.3 At the *Officer Group* meeting the *Case Officer* will present the contents of the 'evidence sheet'.

2.0 Class of landlord in terms of scale of operation

2.1 The *Officer Group* will consider at least the following:

2.2 Is the landlord considered to be a 'professional' landlord, having a portfolio of at least 3 properties for rent. This class of landlord is more likely to derive a reasonable income from his/her properties and be operating as business

2.3 A landlord having only 1 or 2 dwellings is less likely to be operating as a business and may well have a main income from employment elsewhere. This class of landlord includes those that have inherited rented property and not necessarily actively pursued a 'career' of becoming a portfolio landlord.

2.4 Larger scale professional landlords strengthens case for prosecution

2.5 Small scale landlords strengthens case for civil penalty

3.0 Previous history and dealings with the Council

3.1 Has the landlord had previous dealings with the Council in terms of the legislation applicable to the potential civil penalty?

(a) If yes, was the landlords deemed to be cooperative?

Has the Council taken previous enforcement action against the landlord?

(a) If yes, was the landlord compliant?

(b) Are there any unspent convictions outstanding?

(c) Is this a first offence?

(d) No history or a record of previous co-operation – strengthens case for a Civil Penalty

(e) History of previous enforcement action, poor co-operation, prosecution and/or unspent conviction – strengthens case for prosecution

4.0 Severity/Impact of offence

4.1 Offences deemed highly likely to result in harm to the health to an occupying tenant or visitors due to conditions and or management arrangements strengthen the case for prosecution.

4.2 Civil penalties likely to be more appropriate in relation to offences deemed to have less severe outcomes in terms of harm to health. However, the existence of a previous civil penalty for a similar offence would suggest this action has not been effective and officers may wish to consider prosecution as an alternative.

4.3 The *Officer Group* can consider other matters deemed to be relevant to the case being discussed and these will be added to the evidence sheet following the meeting.

4.4 Upon considering the above, the *Officer Group* will decide the most appropriate and effective (likely to deter the landlord from acting in a similar way again) action regarding whether to prosecute or pursue a civil penalty. This decision will be recorded on the *evidence sheet* submitted by the *Case Officer*, along with a record to show that all matters previously mentioned have been considered. The completed *evidence sheet* to be signed by the group members and a copy kept against the property record (relevant worksheet on M3 Public Protection or alternative system being used at the time of the decision) for reference. A copy of the completed evidence sheet will form part of the evidence to support the action taken.