

APPENDIX 3

Wirral Council

Policy and Procedure for the imposition of a Civil Penalty

Definitions

The Council –	Wirral Council
The Officer Group (1)	Consists of the Case Officer, a Housing Standards Officer not involved in the case and a Legal Officer
The Officer Group (2)	Consists of a Senior Officer / line manager, not involved in the Officer Group (1), Team Leader / Manager and a Legal Officer.
Landlord –	Includes the owner of the property, managing agent/letting agent, persons in control of or managing the property under section 263 of the Housing Act 2004
Civil Penalty –	Refers to a financial penalty imposed as an alternative to prosecution under S294A of the Housing Act 2004 as amended by Section 126 and Schedule 9 of the Housing and Planning Act 2016
Guidance –	Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities (ISBN: 978-1-4098-5037-3)
Council's Enforcement Policy –	Corporate enforcement policy dealing with non-compliance with legislation enforced by Licensing, Trading Standards, Environmental Health, Planning, Building Control, Housing Standards and Renewal, Waste and Environment
2004 Act –	The Housing Act 2004
2016 Act –	The Housing and Planning Act 2016
HMO –	House in Multiple Occupation
Harm -	An adverse physical or mental effect on the health of a person. It includes for example, physical injury, illness, condition or symptom whether physical or mental. It includes both permanent and temporary harm

1.0 Introduction

- 1.1 The Housing and Planning Act 2016 amends the Housing Act 2004 to allow financial penalties, referred to as '*civil penalties*', to be imposed as an alternative to prosecution for certain housing related offences (came into force on 6th April 2017). This amendment was one of a range of measures introduced to enable local authorities to clamp down on rogue landlords. Government Ministers have made it very clear that they expected local housing authorities to use their new powers robustly. The maximum penalty was increased to £30,000 in order to be significant enough to make landlords think twice about flouting the law.
- 1.2 This Policy provides guidance on how authorised officers appointed by Wirral Council will determine the level of civil penalty appropriate on individual cases following a decision to impose a civil penalty as the most appropriate course of action.
- 1.3 This policy should be read in conjunction with the Council's Enforcement Policy, the Housing Standards and Renewal Enforcement Policy Statement and the Policy for deciding whether to prosecute or apply a civil penalty.

2.0 Legal Reference

- 2.1 To impose civil penalties as an alternative to prosecution for the following housing offences under the 2004 Act:
 - (a) Section 30 (failure to comply with improvement notices)
 - (b) Section 72 (licensing of HMOs)
 - (c) Section 95 (Licensing of Houses under Part 3)
 - (d) Section 139 (7) (failure to comply with an overcrowding notice)
 - (e) Section 234 (management regulations in respect of HMOs)
- 2.2 Schedule 13A has also been inserted into the 2004 Act which prescribes the procedures that the Council must follow before imposing a civil penalty, imposing a civil penalty, the appeal process and the recovery of the civil penalty.

3.0 Government Guidance

- 3.1 Statutory guidance has been issued by the Department for Communities and Local Government (DCLG) (April 2017). The guidance recommends certain factors the Council should take into account when deciding on the level of civil financial penalty. In addition, the council is advised to develop and document its own policy on determining the appropriate level of financial penalty in individual cases. This policy takes into account the recommendations in the guidance.

4.0 Process for Determining the Level of Civil Penalty

- 4.1 Under Section 249A(4) of the 2004 Act Wirral Council has discretion to determine the amount of a civil penalty. The guidance recommends factors that should be taken into account when deciding the level of the civil penalty. This policy is based on the principles set out in the Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline. This sets out a range of fines which are linked to culpability of the offender and actual potential harm resulting from the offence.
- 4.2 The range of financial penalties in this policy use similar ratios to those that are used by the Sentencing Council, ensuring that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.
- 4.3 The Officer Group (1) will consider the information in each specific case and make a decision on the level of civil penalty to be imposed. A summary of the Officer Group (1) reasoning for arriving at a level of civil penalty will be kept on the record along with the date the decision was made and the officers present at the officer group meeting.

5.0 Part 1

5.1 Establish the offence category using the *culpability* and *harm* factors below:

5.2 Culpability

Category	Meaning
Very High	Where the offender intentionally breached, or flagrantly disregarded the law 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; Serious and or systematic failure by the person or organisation to comply with legal duties Provide serious market advantage over rivals
Medium	Offence committed through act or omission which a person exercising reasonable care would not commit; Systems were in place to manage risk or

	comply with legal duties but these were not sufficiently adhered to or implemented
Low	<p>Offence committed with little fault, for example because:</p> <p>Significant efforts were made to address the risk but were inadequate on this occasion</p> <p>There was no warning/circumstances indicating a risk</p> <p>Failings were minor and occurred as an isolated incident</p>

5.3 Harm

Category	Meaning
High	<p>Serious adverse effect on individual and/or having a widespread impact</p> <p>High risk of an adverse effect on individual</p> <p>Harm to a vulnerable individual</p>
Medium	<p>Adverse effect on individuals</p> <p>Medium risk of adverse harm on individual(s) or low risk of a serious adverse effect</p> <p>The Council's and/or legitimate landlords or agents substantially undermined by offenders activities</p> <p>The Councils work as a regulator to address risks to health is inhibited</p> <p>Consumer/tenant misled</p>
Low	<p>Low risk of an adverse effect on individual(s)</p>

5.4 Determining level of harm includes both likelihood of harm occurring and extent if it does occur.

5.5 Part 2

5.6 Using penalty '*starting point*', establish the penalty '*band range*' and adjust within this range if there are any relevant aggravating or mitigating reasons.

	<i>Starting Point</i>	<i>Band Range</i>	
		Minimum	Maximum
Low culpability			
Harm category 3	£1500	£750	£2250
Harm category 2	£3000	£2250	£3750
Harm category 1	£4500	£3750	£5250
Medium culpability			
Harm category 3	£4500	£3750	£5250
Harm category 2	£7500	£5250	£12000
Harm category 1	£12000	£9000	£15000
High culpability			
Harm category 3	£7500	£5250	£12000
Harm category 2	£12000	£9000	£15000
Harm category 1	£16500	£15000	£20000
Very High culpability			
Harm category 3	£12000	£9000	£15000
Harm category 2	£16500	£15000	£20000
Harm category 1	£25500	£20000	£30000

5.7 Examples of possible aggravating and mitigating factors

Aggravating factors	Mitigating factors
Relevant previous convictions having regard to (a) the nature of the offence to which the conviction relates and its relevance to this offence and (b) the time that has elapsed since the conviction	No previous convictions or no relevant/recent convictions
Relevant previous cautions within the last two years having regard to (a) the nature of the offence to which the caution relates and its relevance to this	No relevant cautions within the last two years

offence	
Relevant previous civil penalties within the last two years having regard to (a) the nature of the offence to which the caution relates and the relevance to this offence	No relevant civil penalties within the last two years
Evidence of harassment of tenant and/or illegal eviction (actual or attempted) in this case	Tenants behaviour a contributing factor to the offence
Offence committed whilst the landlord is on bail/on summons for other relevant proceedings at court	Mental disorder or learning disability, where directly linked to the commission of the offence
Established evidence of wider/community impact	Serious medical conditions requiring urgent, intensive or long term treatment
Record of poor management or not meeting legal requirements	Good record of maintaining property
Record of providing sub-standard accommodation	One off event, not commercially motivated
Obstruction of Justice, for example, failing to comply with a request for information or documents or behaviour amounting to an obstruction	High level of co-operation with the investigation beyond that which will always be expected
Motivated by financial gain	Steps taken voluntarily to remedy problem
Offending happened over a prolonged period of time	Self reporting, co-operation and acceptance of responsibility
Property management is/was their only or main business	Good character and or/exemplary conduct
Deliberate concealment of illegal nature of activity	Age or lack of maturity where it affects the responsibility of the offender
Refusal of free advice or training	Sole or primary carer for dependant relatives
	Member of an accreditation scheme

5.8 Part 3

5.9 Review the civil penalty amount

5.10 The Council will review the penalty amount calculated using the above process to ensure the penalty amount meets, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence. The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence, taking into account the financial information obtained

6.0 Procedure for the imposition of a Civil Penalty

6.1 Mandatory process is prescribed in Schedule 13A of the Housing Act 2004, as amended by the Housing and Planning Act 2016

6.2 Notice of Intent

6.3 Served on the Landlord before the end of 6 months from the date the Council has sufficient evidence of the conduct which civil penalty relates. Notice must set out:

- 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

6.4 *An offender may wish to disclose to the Council such information relevant to his/her financial position to enable the Council to assess what the offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information the Council will be entitled to draw reasonable inferences as to the offenders means from evidence it has received. This may include the inference that the offender can pay any proposed financial penalty. The ability to raise money against existing assets will form part of this consideration

6.5 Representations

6.6 Landlord has a right to make written representation within the 28 day 'Representation Period' starting on the date the notice was given. Representations to be considered by the Officer Group (2).

6.7 A written response will be provided to all representations made by the recipient of a Notice of Intent and a record kept of this response.

6.8 Final Notice

6.9 Following the expiration of the Representation Period the Council will decide whether to impose a civil penalty and, if so, the final amount of the penalty. This can be a lower amount but not a greater amount than that in the Notice of Intent. A Final

Notice imposing the penalty must be served and must contain the following information:

- the amount of civil penalty
- the reasons for imposing the penalty
- information about how to pay the penalty
- the period for payment of the penalty must be 28 days beginning with the day after the notice was given)
- the right of appeal to the First- Tier Tribunal (Property Chamber) and
- the consequences of failure to comply with the notice

6.10 Withdrawing or Amending the Notice

6.11 The Council may withdraw a Notice of Intent or Final Notice or amend the amount of civil penalty, at any time. This must be done in writing.

6.12 Payment of Penalty – Payment must be made within 28 days of the Final Notice, unless that notice is suspended due to an appeal. If an appeal is made and confirmed the Tribunal will specify the period in which the landlord should make the payment.

7.0 Enforcement of civil penalties

7.1 The Council will consider pursuing both the non- payment or part payment of a civil penalty through the County Court.

8.0 Income recovered from civil penalties

8.1 Any income derived by the council will be used to further its statutory functions in relation to enforcement activity covering the private rented sector

9.0 Governance

9.1 This policy is subject to change and will be reviewed periodically in line with changes in legislation, government statutory guidance and Council policy.

9.2 The Council reserves the right to publicise the Civil Penalty