



Sefton Council
Housing Standards
Civil Penalties Policy

Table of Contents

Glossary	3
1. Introduction	4
2. The Government’s Intentions and Expectations	5
3. Government Guidance	6
4. Housing Offences Covered by Civil Penalties	6
5. Purpose of Civil Penalties Policy	7
6. Principles of Civil Penalties	8
General Considerations	8
Principles Underpinning Civil Penalty Action	9
Factors to be taken into Account when Deciding the Level of Civil Penalty	9
7. Process for Determining the Level of Civil Penalty	11
STEP ONE- Determining the offence category	12
STEP TWO- The penalty starting point and range	15
Aggravating Factors	16
Mitigating Factors	16
STEP THREE- Review the civil penalty amount	19
General principles to follow when setting the financial penalty	19
Review of the civil penalty	19
STEP FOUR- Reduction for early admission of guilt	20
STEP FIVE- Additional actions	20
STEP SIX- Totality principle	20
STEP SEVEN- Recording the decision	21
An offender’s ability to pay	22
8. Procedure for the Imposition of a Civil Penalty	22
Notice of Intent	22
Representations	23
Final Notice	23
Withdrawing or Amending the Notice	24
Payment of a Civil Penalty	24
Other Consequences of Having a Civil Penalty Imposed	25
9. Appeals and the Role of the First-Tier Tribunal (Property) Chamber	25
10. Enforcement of Civil Penalties	26

11. Income Recovered from Civil Penalties	26
12. Rent Repayment Orders	26
13. Guidance	27
14. Governance	27
15. Appendices	28
Appendix 1- Non Exhaustive List of Vulnerable Persons	28
Appendix 2- Non exhaustive list of relevant offences	29

Glossary

<p>THE COUNCIL</p>	<p>The term 'the Council' refers specifically to Sefton Council.</p>
<p>LANDLORD</p>	<p>The term 'Landlord' also includes the owner, property managing agent / letting agent, persons in control of or persons managing the property under section 263 of the Housing Act 2004.</p>
<p>CIVIL PENALTY</p>	<p>The term 'Civil Penalty' refers to a financial penalty imposed as an alternative to prosecution under section 249A of the Housing Act 2004, as inserted by section 126 and schedule 9 of the Housing and Planning Act 2016.</p>

1. Introduction

The Council is committed to improving standards in private sector housing, with the aim of ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable.

Whilst the Council acknowledges that compliant landlords do operate their business responsibly in Sefton, there are a significant number of irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard, or unsafe.

The Council shares the Government's desire to support good landlords who provide decent well-maintained homes, and to crack down on those unscrupulous landlords who are flouting the law and seeking to profit from their non-compliance.

The Council's approach to housing enforcement is based on the principle that no-one who breaks the law should gain a financial advantage over someone who does not.

This approach will be incorporated into the Council's Housing Standards Enforcement Policy. Sefton Council Housing Standards Enforcement Policy is currently being revised.

The Council welcomes the action that the Government is taking to crack down on irresponsible landlords – including the measures introduced under the Housing and Planning Act 2016 – and it is committed to making full use of its new powers to improve standards in Sefton's private rented sector.

Since 6 April 2017, local housing authorities have had the power to impose civil penalties of up to £30,000 on individuals and organisations, as an alternative to prosecution, for certain offences under the Housing Act 2004. Rent repayment orders have also been extended to cover a wider range of offences.

Sefton's intelligence-led, targeted approach to housing enforcement, means that the Council is well placed to competently detect and investigate possible offences and, where appropriate, to impose a civil penalty as an alternative to prosecution.

This policy contains information about civil penalties and rent repayment orders and how the Council is planning to 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 Council's Housing Standards Enforcement Policy.

2. The Government's Intentions and Expectations

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

However, it has also pledged to crack down on rogue landlords who flout the law and knowingly rent out unsafe and substandard accommodation, with the aim of disrupting their business model.

The Housing and Planning Act 2016 introduced a range of measures to help local authorities deal more robustly with rogue and irresponsible landlords:

- 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 (came into force on 6 April 2018).
- Banning orders for the most serious and prolific offenders (came into force on 6 April 2018).

When introducing civil penalties through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly as a way of clamping down on rogue landlords.

In the House of Commons, Marcus Jones Member of Parliament (Parliamentary Under Secretary of State at the Department for Communities and Local Government) 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”. [Housing Act 2004 \(legislation.gov.uk\)](https://legislation.gov.uk)

“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”. [Civil penalties under the Housing and Planning Act 2016 Guidance for Local Authorities.](#)

Although the Government states (in its guidance) 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. Government Guidance

The Government’s Department for Communities and Local Government (DCLG) have published the following document: “Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities”. This is statutory guidance which local housing authorities must have regard to. This statutory guidance recommends certain factors a local housing authority should take into account when deciding on the level of civil penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of civil penalty in a particular case.

This policy has been published in line with the DCLG’s recommendation that the Council should have a policy on determining the appropriate level of civil penalty in a particular case.

4. Housing Offences Covered by Civil Penalties

The Power 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. This inserted section 249A into the Housing Act 2004. Section 249A establishes the legal basis for the imposing of civil penalties as an alternative to prosecution for specific housing offences under the Housing Act 2004.

Civil Penalties can be imposed by the Council as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30).
- Offences in relation to licensing of Houses in Multiple Occupation (section 72).
- Offences in relation to licensing of houses under Part 3 of the Act (section 95).
- Offences of contravention of an overcrowding notice (section 139).
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).
- Offences subject to Banning Orders (subject to implementation).

5. Purpose of Civil Penalties Policy

Local housing authorities have the power to impose civil penalties for up to £30,000 on individuals and companies (for certain specified offences under the Housing Act 2004) as an alternative to prosecution.

In accordance with section 249A of the 2004 Act, the amount of the financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding the level of penalty, it does not go into any level of detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of civil penalty in a particular case and seeks to set out further guidance in this policy of how it will do so.

The Council has decided to largely base this policy on the principles set out in the Sentencing Council Health and Safety Offences and Food Safety and Hygiene Offences Definitive Guidelines, which the Council considers to be the most relevant sentencing guidance issued by the Sentencing Council.

This policy will complement the Housing Standards Enforcement Policy to ensure that a level playing field is created for all landlords by dealing robustly with irresponsible landlords who fail to comply with their legal obligations.

6. Principles of Civil Penalties

General Considerations

As the provisions of the Housing and Planning Act 2016 have only recently been introduced there is no legal precedent in relation to the use and level of civil penalties.

A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and prosecute for the same offence. This means that if a person has been convicted or is currently being prosecuted, the Council cannot impose a civil penalty in respect of the same offence. The same applies if a civil penalty has been imposed, a person cannot then be convicted of the same conduct.

A civil penalty can be issued as an alternative to prosecution for each separate offence which falls within the specified housing offences listed in Section 4 above. This means that a civil penalty can be imposed for each separate breach of [The Management of Houses in Multiple Occupation \(England\) Regulations 2006 \(legislation.gov.uk\)](#) and [The Licensing and Management of Houses in Multiple Occupation \(Additional Provisions\) \(England\) Regulations 2007 \(legislation.gov.uk\)](#). Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation, therefore each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

Where the Council is in a position to prosecute a landlord and a letting agent for an offence, then a civil penalty can be imposed as an alternative to prosecution on either or both. The amount of the civil penalty may differ for both depending on individual circumstances.

Although only one civil penalty can be imposed for a single offence, if a landlord fails to comply with an Improvement Notice and subsequently receives a civil penalty as a result, a further Improvement Notice could then be issued if the work still hasn't been carried out.

Principles Underpinning Civil Penalty Action

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

- Targeted - We aim to prioritise our resources in areas where they will be most effective. To ensure this we will use an intelligence and risk-based approach, focusing on properties and persons who pose the greatest risk. This will include those landlords who fail to licence licensable properties as well as properties which put tenant's health and safety at risk along with evidence of poor property management, often evidenced by complaints of anti-social behaviour at the property.
- Proportionate - Enforcement action will be proportionate to the offence taking into account the scale, seriousness and nature of any breach/non-compliance.
- Fair and Objective - Enforcement action will be based on the individual circumstances of a case, taking all available information and evidence into account. Officers will carry out investigations in a fair and open minded manner.
- Transparent - Enforcement action taken will be in accordance with policies and procedures which are in the public domain. Communications will be easy to understand, with clear reasons being given for any enforcement action taken.
- Consistent - Enforcement action will be taken by competent investigators and the Private Sector Housing Team will ensure consistency in the interpretation and enforcement of legislation and will work with other regulatory agencies to share and develop good practice.
- Accountable - Enforcement action will be taken in a responsible manner that has a clear purpose.

Factors to be Taken into Account when Deciding the Level of Civil Penalty

The Government has stated in its statutory guidance that generally they expect the maximum amount for a civil penalty (£30,000) to be reserved for the 'very worst offenders' and it recommends that the actual amount imposed in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending.

The Government has set out factors which a Local Housing Authority should take into account when setting a civil penalty to ensure that it is set at an appropriate level:

- a) Severity of the offence. The more serious the offence, the higher the penalty should be.
- b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and therefore are expected to be aware of their legal obligations.
- c) 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 imposing a civil penalty.
- d) Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending and help to ensure that the landlord fully complies with all of their legal responsibilities in future. The level of penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) Deter others from committing similar offences. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of the deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

- g) Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing the offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

7. Process for Determining the Level of Civil Penalty

Generally, the maximum civil penalty amounts imposed by the Council will be reserved for the very worst offenders however, in line with the Government's statutory guidance, the actual amount imposed in any particular case will reflect the severity of the offence, as well as taking account of the landlord's previous record of offending.

In order to ensure that a civil penalty is set at the appropriate level, the Council will consider the following factors (described in more detail above) that the Government has identified in its statutory guidance as being pertinent:

- Severity of the offence.
- Culpability and track record of the offender.
- The harm caused to the tenant.
- Punishment of the offender.
- Deter the offender from repeating the offence.
- Deter other from committing similar offences.
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

The final factor is an overreaching one and after all other factors have been considered and applied, the Council will need to consider whether the civil penalty set removes any financial benefit that has been gained by the commission of the offence.

STEP ONE- Determining the offence category

The Council 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.

Table 1 below breaks down the landlord's culpability for the offence into four categories and each category has an accompanying description of what would constitute that level of culpability. The behaviour of the landlord should be compared to the 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 1 - Culpability

Very high	Where the offender intentionally breached, or flagrantly disregarded, the law.
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.
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	Offence committed with little fault, for example because: <ul style="list-style-type: none"> • Significant efforts were made to address the risk but were inadequate on this occasion. • There was no or little warning of risk/circumstances of offence. • Failings were minor and occurred as an isolated incident.

Once the Council has determined the level of culpability (using Table 1 above) in relation to an offence, then the level of harm will need to be determined. The Council will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm'. [Housing Health and Safety Rating System Operating Guidance](#). (paragraph 2.09 and 2.10)

Table 2 below separates the seriousness of harm risked into three categories and each category has an accompanying description of 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 and this exercise will be repeated for each offence that is being considered as the seriousness of harm risked may vary between offences.

When using Table 2 to determine the appropriate level of harm, consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the specific offence that is being considered. 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. The vulnerability of the tenant or any visitors to a property will be taken into account when determining the seriousness of the harm risked. This will be determined on a case by case basis.

Table 2 – Seriousness of Harm Risked

<p>High</p>	<ul style="list-style-type: none"> • Serious adverse effect on individual(s) and/or a widespread impact. • High risk of serious adverse effect on. • Provides a serious market advantage over rivals. • Harm to a vulnerable individual. A wide definition of vulnerability will be used. For a non-exhaustive list please see Appendix 1. • Serious level of overcrowding.
<p>Medium</p>	<ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to High Harm) Medium risk of adverse harm to an individual or low risk of a serious adverse effect. • The Council’s work as a regulator is undermined by the offender’s behaviour. • Consumer/tenant mislead.
<p>Low</p>	<ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s).

When determining the seriousness of harm risked in relation to an offence, consideration may be given to the guidance in relation to Class I, II, III and IV harm outcomes in the ‘Housing Health and Safety Rating System - Operating Guidance’.

STEP TWO- The penalty starting point and range

Once the offence category has been determined (using culpability and harm), the Council should then refer to the starting points to reach an appropriate level of civil penalty within the range for that category of offence. The Council should then consider further adjustment within the category range for aggravating and mitigating features.

Table 4 – Penalty Bands

Low Culpability	Starting Point	Penalty Band Range	Band
Low Harm	£1,500	£750-£2,250	1
Medium Harm	£3,000	£2,250-£3,750	2
High Harm	£4,500	£3,750-£5,250	3
Medium Culpability	Starting Point	Penalty Band Range	Band
Low Harm	£4,500	£3,750-£5,250	3
Medium Harm	£7,500	£5,250-£12,000	4
High Harm	£12,000	£9,000-£15,000	5
High Culpability	Starting Point	Penalty Band Range	Band
Low Harm	£7,500	£5,250-£12,000	4
Medium Harm	£12,000	£9,000-£15,000	5
High Harm	£16,500	£15,000-£20,000	6

Very High Culpability	Starting Point	Penalty Band Range	Band
Low Harm	£12,000	£9,000-£15,000	5
Medium Harm	£16,500	£15,000-£20,000	6
High Harm	£25,500	£20,000-£30,000	7

Table 5 below contains a non-exhaustive list of factual elements providing the context of the offence and factors relating to the landlord. The Council will identify whether any combination of these, or other relevant factors should result in an upward or downward adjustment from the starting point. In particular relevant (please see Appendix 2 for relevant previous convictions) recent previous convictions, recent cautions and/or civil penalties 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.

Aggravating Factors

The penalty may be increased by £250 in Bands 1-3, £500 in Bands 4-6 and £1,000 in Band 7 for each aggravating factor up to the maximum of the band level determined in Table 4.

Mitigating Factors

The penalty may be decreased by £250 in Bands 1-3, £500 in Bands 4-6 and £1,000 in Band 7 for each mitigating factor up to the maximum of the band level determined in Table 4.

Table 5 – Aggravating and mitigating factors

Aggravating Factors	Mitigating Factors
<p>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.</p>	<p>No relevant unspent previous convictions/good character.</p>
<p>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 offence.</p>	<p>No relevant cautions within the last two years.</p>
<p>Relevant previous civil penalties includes civil penalties imposed for offences under the Housing Act 2004, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 or The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014. Also includes civil penalties imposed by other regulatory agencies and Council's) within the last two years having regard to (a) the nature of the offence to which the caution relates and its relevance to this offence.</p>	<p>No relevant civil penalties within the last two years.</p>
<p>The offence has been committed whilst the landlord is on bail/on summons for other relevant proceedings at court.</p>	<p>Mental disorder or learning disability, where directly linked to the commission of the offence.</p>

Aggravating Factors	Mitigating Factors
Established evidence of wider/community impact.	Serious medical conditions requiring urgent, intensive or long term treatment.
Record of providing substandard accommodation.	One off event, not commercially motivated.
Record of poor management or not meeting legal requirements.	Good record of maintaining property.
Evidence of harassment of tenant and/or illegal eviction (actual or attempted) in this case.	Tenants behaviour a contributing factor to the offence.
Motivated by financial gain.	Steps taken voluntarily to remedy problem.
Obstruction of justice, for example failing to comply with a request for information or documents, including requests for information under S16 Local Government (Miscellaneous Provisions) Act 1976 or request for documents under S235 Housing Act 2004 or other behaviour amounting to an obstruction.	High level of co-operation with the investigation, beyond that which will always be expected.
Offending happened over a prolonged period of time.	
Property management is/was their only or main business.	

STEP THREE- Review the civil penalty amount

Once the civil penalty has been calculated, the Council should review the penalty amount to determine whether the civil penalty amount meets the objectives of civil penalties as set out in the statutory guidance.

General principles to follow when setting the financial penalty

The Council should finalise the appropriate level of penalty so that it reflects the seriousness of the offence, and the Council must take into account the financial circumstances of the offender (as far as they are known).

The level of civil penalty should reflect the extent to which the offender fell below the required standard. The civil 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; it should not be cheaper to offend than to comply with the law.

Review of the civil penalty

The Council should review the civil penalty and, if necessary, adjust the initial amount arrived at in step two to ensure that it fulfils the general principles set out above.

The penalty amount as calculated at step 2, should be considered against any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings. If the economic benefit is in excess of the penalty amount as calculated at step 2, then the penalty amount should be adjusted to ensure that the penalty is set at an amount which removes the financial benefit (as a minimum) The Council may draw on information from enforcing authorities and others about the general costs of operating within the law, if this information is not available. Whether the penalty will have the effect of putting the offender out of business will be relevant, but in some cases, this might be an acceptable outcome.

In finalising the penalty amount, the Council will have regard to the following factors relating to the wider impact of the civil penalty on innocent third parties, such as (but not limited to):

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

STEP FOUR- Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt.

The following factors will be considered in setting the level of reduction:

- 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 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 is overwhelming or there is a pattern of behaviour.

Any reduction should not result in a civil penalty which is less than the amount of gain from the commission of the offence itself.

STEP FIVE- Additional actions

In all cases the Council will consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The Council cannot however prosecute for the same conduct which has led to the civil penalty being imposed.

STEP SIX- Totality principle

If issuing a civil penalty for more than one offence, or where the offender has already been issued with a civil penalty (within the previous 28 days), the Council will consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one civil penalty, the Council should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality.

“The total financial penalty is inevitably cumulative.

The court should 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 appear, to the court.

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

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate financial penalty. 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 where 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 penalty for each of the offences. The court 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 court should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.*

Where separate financial penalties are passed, the court must be careful to ensure that there is no double-counting.

Ultimately the civil penalty imposed must remove any financial gain the landlord has obtained by the commission of the offence.

STEP SEVEN- Recording the decision

The officer making a decision about a civil penalty will record their decision giving reasons for coming to the amount of civil penalty to be imposed.

An offender's ability to pay

In setting a civil penalty, the Council may conclude that an offender is able to pay any civil penalty imposed unless the offender has supplied sufficient financial information or evidence to the contrary.

It is for the offender to disclose to the Council such data relevant to his or her financial position as this will enable the Council to assess and determine what they 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 offender's means from the evidence it has obtained and from all the circumstances of the case, including accessing information via appropriate credit referencing agencies. This may include the inference that the offender can pay the civil penalty.

As many landlords will own one or more properties, it is likely that they will be able to sell or borrow against these assets to pay a civil penalty. After taking into account any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If the landlord claims they are unable to pay a civil penalty and show that they have a low income, consideration will be given to whether any of the properties can be sold or refinanced when assessing their ability to pay.

8. Procedure for the Imposition of a Civil Penalty

Schedule 13A of the Housing Act 2004, as amended by the Housing and Planning Act 2016, sets out the process that must be followed when imposing a civil penalty.

Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a 'Notice of Intent' on the landlord who has committed the offence. The notice must be given before the end of the period of 6 months, beginning with the first day on which the Council has sufficient evidence of the conduct to which the civil penalty relates. In the case of conduct, which is continuing, the notice can be given at any stage if the conduct is continuing or within 6 months beginning with the day on which the conduct ends. The notice of intent 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.

Representations

Any landlord who is in receipt of a 'Notice of Intent' has the right to make written representations about the proposal to impose a civil penalty within 28 days beginning with the day after the date on which the notice was given ('Representation Period'). Representations can be against any part of the proposed course of action, for example the imposition of the civil penalty in its entirety or the amount of the civil penalty. All representations from landlords will be considered by an appropriate senior colleague and never by the colleague who served the 'Notice of Intent'.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements, bank statements, mortgage account statements, business accounts, etc.) to show that the penalty amount should be reviewed. Where no such supporting evidence is provided, the representation against the amount will be likely to carry less weight.

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.

Final Notice

Once the 'Representation Period' has ended, the Council must decide whether to impose a civil penalty and if so, the final amount of the civil penalty. Consideration will be given to any representations made during the 'representation period' if applicable. The final amount of a financial penalty can be a lower amount than was proposed in the 'Notice of Intent' but it cannot be a greater amount.

If the Council decides to impose a civil penalty on a landlord, then the landlord must be given a notice imposing that penalty ('Final Notice'). The notice must contain the following information:

- The amount of the Civil 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 to the First-Tier Tribunal (Property Chamber), 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.

Withdrawing or Amending the Notice

At any time, the Council may withdraw a 'Notice of Intent' or a 'Final Notice' or reduce the amount of a civil penalty as stated in the 'Notice of Intent' or 'Final Notice'. This is done by giving notice in writing to the person on whom the notice was served. The amount of the civil penalty in the 'Notice of Intent' or 'Final Notice' cannot be increased.

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. Civil penalties are an alternative to prosecution however, and as such, if a civil penalty has been imposed and not withdrawn, the Council cannot initiate a prosecution for the same offence.

Payment of a Civil Penalty

Where a civil penalty has been properly imposed, in accordance with the provisions of the Housing Act 2004 and this policy, it 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.

Where a civil penalty has been appealed to the First-Tier Tribunal (Property Chamber) and ultimately confirmed, it will be for the Tribunal to specify the period in which the landlord should make payment of the penalty.

Other Consequences of Having a Civil Penalty Imposed

Where a civil penalty has been imposed on a landlord, this will form a part of the Council's 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 the Council 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 to determine whether they are fit and proper to hold such a licence and/or be involved in the management of the property. The same considerations will apply to the potential revocation of property licences.

Further amendment of this policy will be needed when Chapter 3 of the Housing and Planning Act 2016 comes into force and the relevant statutory guidance is issued by the Government. This chapter relates to the Database of Rogue Landlords and Property Agents and when local housing authorities must and may input a landlord's details onto the database. These provisions will come into force in April 2018.

9. Appeals and the Role of the First-Tier Tribunal (Property) Chamber

If a civil penalty is imposed on a landlord, the landlord can appeal to the First-Tier Tribunal (Property Chamber) against the decision. The appeal is a re-hearing of the Council's decision but can have regard to matters that the Council was unaware of at the time the decision was made. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn. On appeal the First-Tier Tribunal (Property Chamber) may confirm, vary (increase or decrease) or cancel the civil penalty.

The First-Tier Tribunal (Property Chamber) can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success. The Council will make applications for such dismissal to the First Tier Tribunal (Property Chamber) when appropriate to do so.

A civil penalty will only be imposed where the Council is satisfied there is sufficient evidence to prove beyond reasonable doubt that the offence occurred, and the penalty amount is determined in line with this policy and the relevant statutory guidance.

Generally, in appeals to the First-Tier Tribunal (Property Chamber) each party bears their own costs. However, the Tribunal may award costs when one party has acted unreasonably in bringing, defending or conducting proceedings. The Council will be likely to apply for costs in such cases.

10. Enforcement of Civil Penalties

Where a landlord fails to pay the whole or part of a civil penalty, it is the policy of the Council to consider all legal options available, including pursuing the unpaid amount through the County Courts. The Council may recover the civil penalty or part of it, on application to the County Court as if it was an order of that Court.

Where appropriate, the Court will seek to recover the costs incurred in taking this action from the person to which the civil penalty relates.

11. Income Recovered from Civil Penalties

Any income from civil penalties is retained by the Local Housing Authority which imposed the penalty. The Council must use any income from civil penalties to further its statutory functions in relation to enforcement activity covering the private rented sector.

12. Rent Repayment Orders

A Rent Repayment Order is an Order made by the First-Tier Tribunal (Property Chamber) requiring a landlord to repay a specified amount of rent.

A Rent Repayment Order can be applied for in cases where a civil penalty has also been imposed (in relation to certain offences).

The Housing Act 2004 introduced Rent Repayment Orders to cover situations where a landlord was in control of or managing property which required a licence under Part 2 or 3 of the Act, but did not have such a licence.

The Housing and Planning Act 2016 has now extended the scope of Rent Repayment Orders to cover a much wider range of offences:

- Violence to secure entry.
- Eviction or harassment of occupiers.
- Failure to comply with an Improvement Notice.

- Failure to comply with a Prohibition Order.
- Breach of Banning Order.

Further details in relation to Rent Repayment Orders and when the Council will apply for these will be found in the Council's Housing Standards Enforcement Policy.

13. Guidance

This policy has been developed with specific regard to:

- The Housing and Planning Act 2016 and the Housing Act 2004.
- Civil Penalties under the Housing and Planning Act 2016 Guidance issued for Local Housing Authorities- Department for Communities and Local Government published April 2017.
- Sentencing Council Health and Safety Offences and Food Safety and Hygiene Offences Definitive Guidelines.
- Housing Standards Enforcement Policy - Sefton Council.

14. Governance

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

15. Appendices

Appendix 1- Non Exhaustive List of Vulnerable Persons

Children (under 18 years)

Persons on a very low income

Disabled persons

Persons with a drug or alcohol addiction

Victims of domestic abuse

Looked after children

People with complex health needs

People exploited where English is not their first language

Victims of trafficking or sexual exploitation

Refugees

Asylum Seekers

People at risk of harassment or eviction

People at risk of homelessness

Appendix 2- Non exhaustive list of relevant offences

Housing law or Landlord and Tenant Offences under:

The Public Health Acts 1936 and 1961

The Building Act 1984

The Environmental Protection Act 1990

The Town and Country Planning Act 1990

The Prevention of Damage by Pests Act 1949

The Protection from Eviction Act 1977

The Local Government (Miscellaneous Provisions) Act 1976 and 1982

The Local Government and Housing Act 1989

The Housing Act 2004

The Housing and Planning Act 2016

Other regulatory offences are included.

