

Allerdale
borough council

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Private Sector Housing Civil Penalties Policy

April 2018

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Section 1 – Introduction & Overview

1.1 Introduction

Allerdale Borough Council is committed to improving standards in private sector housing and ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable.

This Private Sector Housing Civil Penalties Policy contains information about civil penalties and how the Council is planning to use them. It is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed. This Policy was created in accordance with statutory guidance and should be read in conjunction with the Council's Private Sector Housing Enforcement Policy.

In this document, the term "landlord" will be used to refer to the "owner", "person having control", "person managing" or "licence holder", as defined under the Housing Act 2004.

The Housing and Planning Act 2016 introduced a number of amendments to the Housing Act 2004. Since 6 April 2017, local housing authorities have had the power to impose civil penalties of up to £30,000, as an alternative to prosecution for certain offences under the Housing Act 2004.

These offences are:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to the licensing of HMOs (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 HMOs (section 234).

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

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

impact of any defence. The Council must also be satisfied that the public interest will be properly served by imposing a civil penalty.

1.2 When will the Council consider a civil penalty as an enforcement option?

The Council will consider Civil Penalties for all landlords that are in breach of one or more of the sections of the Housing Act 2004 listed above. Enforcement action will be considered on a case-by-case basis in line with the Private Sector Housing Enforcement Policy.

If the Council believes that it has a reasonable prospect of a conviction in a particular case, it will always consider a civil penalty in the first instance. The use of civil penalties will not only prevent the unscrupulous and irresponsible landlords from profiting from letting unsafe properties, but it will also demonstrate the Council's commitment to ensuring that it is offenders (rather than responsible landlords or the local council tax payers) who pay for the cost of housing enforcement.

As the Council is allowed to retain the income it receives from civil penalties, this course of action will also provide the Council with the opportunity to increase its housing enforcement activity in the borough.

Prosecution may however be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. Prosecution for an offence will be taken where there have been two or more previous offences by the same landlord or letting agent within 3 years or the landlord has been listed on the national Rogue Landlords database.

Section 2

Determining the Civil Penalty Amount

2.1 Overview

The Council has the power to impose a civil penalty of up to £30,000; this section sets out how the Council will determine the appropriate level of civil penalty in each particular case.

In developing a methodology for setting the level of civil penalty, the Council have had regard to the statutory guidance published by The Department of Communities and Local Government (DCLG). This identifies a range of factors that should be taken into consideration. These are:

- Severity of the offence – The more serious the offence, the higher the penalty should be.

- 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 should be expected to be aware of their legal obligations.
- The level of harm caused to the tenant – The greater the harm, or the potential for harm, the higher the civil penalty should be.
- Punishment of the offender – A civil penalty should not be regarded as an easy or lesser option when compared to prosecution. While the penalty should be proportionate, 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.
- Deterring the offender from repeating the offence – The goal is to prevent any further offending and help ensure that the landlord fully complies with their legal responsibilities in the future. The level of penalty should therefore be set at a high enough level that it is likely to deter the offender from repeating the offence.
- Deterring others from committing similar offences – Other landlords in the local area may become aware when someone has received a civil penalty and be deterred from committing a similar offence.
- Remove any financial benefit the offender may have obtained because of committing the offence – The offender should not benefit as a result of committing an offence. It should not be cheaper to offend than to ensure that a property is well maintained and properly managed.

The civil penalty will consist of two components. The first is the penalty calculation; this considers the severity of the offence, the landlord's track record and the landlord's income. The second takes into account any financial benefit which the landlord has obtained from committing the offence. These components are then added together to determine the final penalty amount that will be imposed on the landlord.

Stage 1 - Determining the Penalty Band

2.2 Overview

This first stage considers the landlord's culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property.

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations and/or their actions were deliberate. Landlords are running a business and are expected to be aware of their legal obligations. There are four steps to this process and each step is set out below.

2.3 Step 1: Culpability

Table 1 sets out the four levels of culpability that will be considered: each level has accompanying examples of the behaviours that could constitute that particular level. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

Table 1 – Levels of Culpability

Very High	<ul style="list-style-type: none"> • Deliberate breach of or flagrant disregard for the law.
High	<ul style="list-style-type: none"> • Offender fell far short of their legal duties; for example by: <ul style="list-style-type: none"> - Failing to put in place measures that are recognised legal requirements or regulations; - Ignoring warnings raised by the local Council, tenants or others; - Failing to make appropriate changes after being made aware of risks, breaches or offences; - Allowing risks, breaches or offences to continue over a long period of time. • Serious and/or systematic failure by the person or organisation to comply with legal duties.
Medium	<ul style="list-style-type: none"> • Offender fell far short of their legal duties in a manner that falls between descriptions in the 'high' and 'low' culpability categories. • Systems were in place to manage risk or comply with legal duties but these were not sufficiently adhered to

	or implemented.
Low	<ul style="list-style-type: none"> • Offender did not fall far short of their legal duties; for example, because: <ul style="list-style-type: none"> - Significant efforts were made to address the risk, breaches or offences, although they were inadequate on this occasion; - They have offered a reasonable defence for why they were unaware of the risk, breach or offence. • Failings were minor and occurred as an isolated incident.

2.4 Assessing a landlord’s culpability

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

Using these factors, consider each category of culpability in table 1 and identify the one that the landlord’s behaviour falls within; where a landlord’s behaviour could meet more than one of the categories, choose the highest one of those met.

Any assessment of culpability should include a consideration of any past enforcement action against the landlord. Details of what is appropriate to consider can be found in section 2.12.

2.5 Step 2: Seriousness of Harm Risked

Table 2 separates the seriousness of harm risked into three levels. The harm risked by the offence should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

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

Table 2 – Seriousness of Harm Risked

Level A	The seriousness of harm risked would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System.
Level B	The seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes in the Housing Health and Safety Rating System.
Level C	All other cases not falling within Level A or Level B (e.g. where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B).

Further information about the classes of harm under the Housing Health and Safety Rating System can be found in appendix I.

2.6 Step 3: Penalty Levels

Using the already determined level of culpability and the seriousness of harm risked, find the appropriate penalty level (1-5+) in Table 3.

Table 3 – Penalty Levels

Seriousness of Harm Risked				
	Very High	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

2.7 Step 4: Penalty Bands

Table 4 – Penalty Bands

Penalty Level	Penalty Band
1	£600-£1200
2	£1200-£3000
3	£3000-£6000
4	£6000-£15,000
5/5+	£15,000-£30,000

Compare the penalty level from Step 3 to table 4 and this will give the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation.

Stage 2

Considering the landlord's income and track record.

2.8 Stage 2 Overview

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

2.9 The landlord's Finances

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

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

For penalties that fall within bands 1 to 4, the landlord's income will still be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

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

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

IMPORTANT: although the Council will not normally consider carrying out a full financial investigation where the offence falls within penalty bands 1 to 4, the Council does reserve the right to do so where it considers it reasonable and proportionate to the circumstances.

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

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

Table 5 – Defining relevant weekly income

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

Step 1 – take the penalty band as determined in Stage 1, and compare it to Table 5: this will state what can be considered as relevant weekly income for the offence.

Table 6 - % of relevant weekly income

Penalty Level	% of Relevant Weekly Income
1	50% of relevant weekly income
2	100% of relevant weekly income
3	150% of relevant weekly income
4	250% of relevant weekly income
5	400% of relevant weekly income
5+	600% of relevant weekly income

Step 2 – take the penalty band, as determined in Stage 1 and compare it to Table 6. This will give the percentage of the landlord’s relevant weekly income will be added to the civil penalty.

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

Tenancy agreements and property management contracts can be requested using the Council's existing powers and this should be done where copies are not already available.

In cases where the landlord is not forthcoming with this information or documentation, an estimate of the average weekly income will be used instead and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

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

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

2.12 The Landlord's track record

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; as such, the track record of the landlord will be an important factor in determining the final amount of the civil penalty that is imposed. Below are questions that must be asked for each landlord that will receive a civil penalty.

- 1) Has the landlord had any relevant notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years? If so, how many times have they been subject to such enforcement action in that timeframe?
- 2) Has the landlord had any civil penalties imposed on them in the last 2 years? If so, how many civil penalties have been imposed on them in that timeframe?
- 3) Has the landlord accepted any cautions for relevant offences in the last 2 years? If so, how many cautions for relevant offences have they accepted in that timeframe?
- 4) Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?
- 5) Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?

- 6) Has the landlord breached any relevant notices, which resulted in works in default being carried out, in the last 2 years? If so, how many times have works in default been carried out under such circumstances in that timeframe?
- 7) Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?
- 8) Has the landlord been prosecuted for any relevant offences in the last 2 years? If so, how many times have such prosecutions taken place in that timeframe?
- 9) Has the landlord owned or managed a property which was subject to an interim management or final management order under the Housing Act 2004 in the last 2 years?
- 10) Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?

IMPORTANT – question 1 refers to all relevant notices served during the two years; this means that where the offence is failure to comply with an improvement notice, that notice should also be included in the answer to the question.

2.13 How is the increase as a result of the Landlord’s track record calculated?

Table 7 – Weightings

Category	Weighting
Category 1 (Least serious)	1
Category 2 (Moderately Serious)	5
Category 3 (Very Serious)	10
Category 4 (Most Serious)	20

Each of the questions will be placed into one of four categories, based on the seriousness of the offence or enforcement action to which the question refers. Each category of question is given a weighting that increases with the seriousness of the category. Table 7 shows the four categories and the weighting which is applied to each one.

Any questions where the answer is ‘no’ will have a weighting of zero but ‘yes’ answers will accrue the weighting for that particular question. E.g. the weighting for a question is 10 and the answer to that question is ‘yes’ so the score for that particular question will be 10.

For those questions where the number of occasions is relevant, the total weighting for a ‘yes’ answer will be the weighting for that question multiplied by the number of

occasions. E.g. if a question has a weighting of 5 and the landlord has committed the offence 3 times, this will give a total score of 15 for the question. Table 8 shows the category which each of the questions falls within and the subsequent weighting that is applied as a result.

Table 8 – Questions & Weightings

Questions	Weighting for a 'Yes' answer	Multiplied by the number of occasions?
Has the landlord had any relevant notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years?	1	Yes
Has the landlord had any civil penalties imposed on them in the last 2 years?	5	Yes
Has the landlord accepted any cautions for relevant offences in the last 2 years?	10	Yes
Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?	5	No
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5	No
Has the landlord breached any relevant notices which resulted in works in default being carried out, in the last 2 years?	10	Yes
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10	No
Has the landlord been prosecuted for any relevant offences in the last 2 years?	20	Yes
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20	No

Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2years?	20	No
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Table 9 – % Increase

Score	%	Score	%
0	0%	21	55%
1	5%	23	60%
3	10%	25	65%
5	15%	27	70%
7	20%	29	75%
9	25%	31	80%
11	30%	33	85%
13	35%	35	90%
15	40%	37	95%
17	45%	39+	100%

Once all the questions have been answered, the weighting for each is totalled and compared to Table 9: this gives the percentage increase that will be applied to the penalty amount. The increase will be a percentage of the starting amount for the penalty band that the offence falls within. E.g. the total score for the questions is 23 and so the corresponding percentage increase in Table 9 will be 60%.

IMPORTANT – the penalty calculation will never be increased past the upper limit of the penalty band: however, where the landlord has a history of non-compliance, it is appropriate to factor this into your assessment of their overall culpability. This could affect your initial assessment of the appropriate penalty level and lead to a higher penalty band being used as the starting point.

Stage 3

Adding Income and Track Records Amounts to the Penalty Band

2.14 Stage 3 Overview

Stage 1 gives the penalty band for the offence and this determines the starting amount and the upper limit for the penalty calculation. Stage 2 gives the amount that should be added as a result of the landlord’s income and the amount that should be added as a result of the landlord’s track record.

2.15 How are the figures from stage 1 and stage 2 combined?

To get the amount of the penalty calculation, the two figures from Stage 2 should be added to the starting amount for the penalty band. E.g. if the increase for income is £500 and the increase due to the landlord's track record is £1000, these two figures are added to the starting amount for the penalty to get the penalty calculation amount.

If the amount is calculated, by adding the figures for the landlord's income and track record, is less than the upper limit for the penalty band, then this is the amount that will be used. However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used instead.

Stage 4

Financial benefit obtained from committing the offence

2.16 Stage 4 Overview

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

2.17 How is the financial benefit determined?

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

Offence	Examples of potential financial benefit
Failure to comply with an Improvement Notice (section 30)	The cost of any works that were required to comply with the improvement notice but which have not been removed by works in default.
Offences in relation to licensing of HMOs (section 72)	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offences in relation to licensing of houses under Part 3 of the Act (section 95)	Rental income whilst the property was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence, the

	cost of the application fee.
Offences of contravention of an overcrowding notice (section 139)	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMOs (section 234)	The cost of any works that are required to avoid breaching the regulations.

2.18 How is financial benefit added to the penalty amount?

The Council will need to be able to prove that financial benefit was obtained before it can be included in the civil penalty calculation. However, where it can be proven, the amount obtained should be added to the penalty calculation amount from Stage 3 and this will give the final civil penalty amount that will be imposed on the landlord.

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

Section 3

Imposing a Civil Penalty

3.1 Where is the process for civil penalties set out?

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

3.2 Notice of Intent

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

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

3.3 Representations

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

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

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

3.4 Final Notice

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

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

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

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

3.5 Withdrawing or Amending Notices

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

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

3.6 Appeals to the Tribunal

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

3.7 Payment of a Civil Penalty

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

3.8 Other consequences of having a Civil Penalty imposed

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

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

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

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

3.9 Recovering an unpaid Civil Penalty

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

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

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

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

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

Inclusion on this register may make it more difficult for the Landlord to get financial credit.

3.10 Income from Civil Penalties

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

Section 4

Worked Examples

4.1 Worked Example 1

Landlord A owns and manages a single family dwelling. During an inspection, 3 category 1 hazards (Excess Cold, Falls on Stairs and Fire) and 7 category 2 hazards were identified at the property. Initially a Hazard Awareness Notice was served on Landlord A but only some of the works to reduce the hazards were carried out. Consequently an Improvement Notice was served on Landlord A for the remaining works. This was not complied with. Works in default were carried out at the property with a cost of £5,500. The Council has taken no previous enforcement action against Landlord A. A financial investigation into Landlord A found that they have received an annual income of £40,000.

Offence: Failing to comply with an Improvement Notice.

Culpability: High

Justification: Landlord A was fully aware of the need to comply with the notice and the consequences of not doing so.

Seriousness of harm risked: 'Level A'

Justification: The condition of the main staircase alone created a Category 1 hazard and if someone were to trip or fall on the stairs, they could reasonably end up with harm outcomes that meet the descriptions of Class 1 and Class 2 harm outcomes under the Housing Health & Safety Rating System. This means that the seriousness of harm risked meets the description of 'Level A'.

Penalty band: 5 (£15,000 - £30,000)

Increase due to the landlord's track record: None

Justification: There is no previous history of enforcement action against Landlord A.

Increase due to the landlord's income: £3076.92 (400% of the Landlord's average weekly income).

Justification: The penalty band is 5 and therefore a financial investigation was carried out to identify all of Landlord A's income. The investigation found that they received a total annual income of £40,000 and 400% of their weekly income will be added to the penalty amount. In this case, the average weekly income is £769.23 so 400% of this (£3076.92) will be added.

Penalty calculation amount: £18076.92 (£15,000 + £3076.92).

Financial benefit obtained from committing the offence: None

Justification: Works in default have been undertaken at the property and the cost of these plus an administration fee, were charged to Landlord A. As such, it cannot be said that Landlord A obtained financial benefit from committing the offence.

Final amount of the civil penalty: £18076.92 (£15,000 + £3076.92).

4.2 Worked Example 2

Landlord B owns and manages a Section 257 HMO which consists of 3 self-contained flats. During a scheduled inspection of the property, it was found that the landlord had neglected to display the manager's details anywhere in the property. They were warned about this during the previous inspection but stated that this was missed due to an oversight. The landlord has not been subject to any enforcement action over the last 2 years. The property was otherwise in satisfactory condition.

Offence: Failing to comply with management regulations in respect of Houses in Multiple Occupation.

Culpability: Low

Justification: Landlord B does not have a history of non-compliance and the breach was fairly minor and easily rectified.

Seriousness of harm risked: 'Level C'

Justification: The seriousness of harm risked to the tenants was low and so it would not meet the descriptions of harm found in 'Level A' or 'Level B'.

Penalty band: 1 (£600 to £1200)

Increase due to the landlord's track record: None

Justification: There is no previous history of enforcement action against Landlord B.

Increase due to the landlord's income: £131.25 (50% of the Landlord's average weekly rental income from the property where the offence occurred.)

Justification: The penalty band is 1 and therefore the relevant income for consideration is the weekly rental income received from the property where the offence occurred. In this case, the average weekly income is £262.50 so 50% of this (£131.25) will be added.

Penalty calculation amount: £731.25 (£600 + £131.25).

Financial benefit obtained from committing the offence: None

Justification: The cost of displaying Landlord B's management details is negligible and so it would not be reasonable to claim any financial benefit from the offence.

Final amount of the civil penalty: £731.25 (£600 + £131.25).



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PSH Civil Penalties Policy

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