

## Appendix 5

### Application of Civil Penalties under section 126 Housing and Planning Act 2016

#### Statement of principles

The level of civil penalty to be applied will be determined with reference to the culpability of the offender, and the harm, or potential harm, caused to occupiers as a result of the breach. The principles that the Council will take into account when applying a civil penalty are:

1. The more serious the offence, the higher the penalty should be.
2. 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.
3. 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 (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
4. 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.
5. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
6. 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 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.
7. 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 an offence; it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

These principles will be applied using the Culpability / Harm matrix set out below to arrive at an appropriate penalty.

#### Culpability

**Very High:** The offender intentionally breached or flagrantly disregarded the law. This may be evidenced by numerous previous failures to comply with enforcement action.

**High:** Actual foresight of, or wilful blindness to risk of offending, but risk nevertheless taken. This may be evidenced by some previous enforcement activity.

**Medium:** Offence committed through act or omission which a person exercising reasonable care would not commit.

**Low:** Little fault because, for example, efforts were made to address the risk, albeit they were inadequate on this occasion, or failings were minor and occurred as an isolated incident.

**Harm:**

**Level 1:** Multiple serious failings giving rise to a number of Category 1 Hazards that posed a substantial risk to occupiers, or very serious breach of HMO management regulations.

**Level 2:** Significant risk arising from, for example a single Category 1 Hazard, a number of Category 2 Hazards. Significant breach of HMO management regulations.

**Level 3:** Lower risk arising from one or two Category 2 Hazards only, or from a minor breach of HMO management regulations.

The level of the civil penalty will be calculated with reference to the table below. A history of previous non-compliance and/or evidence of substantial financial gain from the failure to comply will result in a higher penalty within the range being imposed. Previous good character, less financial gain and evidence of efforts to remedy the situation will result in a lower penalty within the range being imposed.

	<b>Starting Point</b>	<b>Range</b>
<b>Very High Culpability</b>		
Harm Level 1	£20,000	£10,000 - £30,000
Harm Level 2	£10,000	£5000 - £15,000
Harm Level 3	£5000	£2500 - £7500
<b>High Culpability</b>		
Harm Level 1	£10,000	£5000 - £15,000
Harm Level 2	£7500	£3750 - £11,250
Harm Level 3	£3000	£1500 - £4500
<b>Medium Culpability</b>		
Harm Level 1	£5000	£2500 - £7500
Harm Level 2	£3500	£1750 - £5250
Harm Level 3	£2000	£1000 - £3000
<b>Low Culpability</b>		
Harm Level 1	£3000	£1500 - £4500

Harm Level 2	£2000	£1000 - £3000
Harm Level 3	£1000	£500 - £1500