Private Sector Housing Enforcement and Civil Penalty Policy

Draft Issue Date: 28 June 2021

Executive Summary

The aim of this Policy is to protect tenants against rogue landlords and the public from poor housing conditions. This is done by ensuring that all persons involved in the supply of private sector housing are aware of their responsibilities to maintain and manage properties to avoid nuisance and to keep the properties free from significant health and safety issues.

The objectives of this Policy are as follows:

- To ensure tenants and landlords are treated in a fair and proportionate manner to ensure tenants live in homes free of significant health and safety risks;
- To encourage the re-occupation of empty homes;
- To deal with statutory nuisance arising from act or default of owner or occupier of property;
- To meet our statutory duties as a local housing authority.

The policy supports the priorities in the 2020-2024 Our North Tyneside Plan to provide a clean, green, healthy, attractive, safe and sustainable environment and support people remaining healthy and well and is in line with National Housing guidance and legislation.

This policy is intended to provide guidance for officers, business and members of the public on the principle and processes which will apply when enforcement action is considered or taken to allow the Authority to achieve its objectives and aims.

Contents

1. INTRODUCTION

This policy is intended to provide guidance for officers, businesses and members of the public on the principle and processes which will apply when enforcement action is considered or taken due to poor housing conditions or nuisance impacting adversely on occupiers and neighbouring residents.

The aim of this Policy is to protect tenants against rogue landlords and the public from poor housing conditions. This is done by ensuring that all persons involved in the supply of private sector housing are aware of their responsibilities to maintain and manage properties to avoid nuisance and to keep the properties free from significant health and safety issues.

This Authority follows the principles laid down in the Regulators' Compliance Code and is incorporated into the North Tyneside's Statement of Enforcement Policy when investigating complaints, responding to service requests, carrying out inspections, reviewing and granting licences and completing proactive project work. It is also the policy of the Authority to promote awareness and understanding of our regulatory and licensing issues through education and working in partnership with other organisations.

Any departure from this enforcement policy will be exceptional, recorded and the circumstances and reasoning noted and will comply with all relevant laws.

Note 1 – In this Policy, the term "landlords" also includes "property agents", "managing agents" and "letting agents" unless otherwise specified

2. OUR OBJECTIVES

The objectives of this housing enforcement guidance and financial penalty policy are:

- To ensure tenants and landlords are treated in a fair and proportionate manner to ensure tenants live in homes free of significant health and safety risks;
- To encourage the re occupation of empty homes;
- To deal with statutory nuisance arising from act or default of owner of property;
- To meet our statutory duties as a local housing authority.

3. IMPLEMENTATION AND REVIEW

This Policy will take effect on XXXX.

The Authority will keep this Policy under review and will consult where appropriate on proposed revisions. A full review of the Policy will be conducted every five years from the date of effect above.

Upon implementation of this Policy, the Authority will implement the powers to charge for enforcement action and penalise landlords and agents for non-compliance in line with this Policy, North Tyneside's Statement of Enforcement Policy and any statutory guidance notes.

The Authority may make decisions to change the content of this Policy. The changes may have immediate effect or be expressed as coming into effect on a given date. Amended copies of the Policy will be available from Environmental Health Section and via the internet at www.northtyneside.gov.uk.

4. CONSULTATION

In preparing the Policy the Authority has consulted with and taken into account the views of amongst others:

- Residents
- Neighbouring Authorities
- Landlords and tenants
- Relevant tenancy support groups. Citizen Advice Group, Shelter.

The views of all these persons and bodies have been taken into account in determining this Policy.

5. AREA AND IMPACT

North Tyneside is one of the five metropolitan districts that comprise the county of Tyne and Wear. North Tyneside is bounded by Newcastle Upon Tyne to the west, the North Sea to the East, the River Tyne to the South and Northumberland to the North.

According to the 2011 Census there were a total of 94,528 dwellings in North Tyneside and a total of 91,295 households. The number of dwellings had risen to 95,750 in 2014. Over a third of these properties were built before 1945 (37.4%) whilst 40.5% were built between 1945 and 1984. The remainder (22%) was constructed more recently.

68.3% of properties in North Tyneside are houses, 21.7% are flats and maisonettes and 9.5% are bungalows. 10.5% of homes are 1 bed, 32.7% are 2 bed, 48.4% are 3 bed and 8.3% are four or more bed properties.

In general, North Tyneside has a well-balanced housing market which generally offers a good choice of properties across all tenure types. Owning your own home remains the most popular choice of tenure (66%). Council housing stock represents a further 16% of all properties ahead of the private rented sector (12%) and registered providers of Social Housing (6%).

North Tyneside has a diverse mix of areas. The council wards of St Mary's and Monkseaton North are among areas of prosperity, whereas Chirton, Riverside and Wallsend have been identified as being within the most deprived areas of the country. This Policy forms a key objective 'Great Places to Live' of the Housing strategy 2016 – 2021 'A Great Place To Live' by outlining North Tyneside's regulatory processes for tackling poor housing and rogue landlords.

6. DECISION MAKING

Enforcement action will be based on risk and we will also have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance.

Enforcement Officers are required to make informed judgements and will be suitably trained for this responsibility. They will decide on appropriate action after considering the criteria within this Policy and any relevant written procedures. A Senior Officer will give prior approval to all formal action falling outside the scope of this policy.

Where the investigating Enforcement Officer believes that legal action may be required, evidence will be collected, and the case will be reviewed by Senior Officers before it proceeds.

Any person subject to potential prosecution action will be invited to a formal interview or asked to send written representations to the Authority for consideration prior to any final decision being made.

7. PRINCIPLES OF GOOD ENFORCEMENT

When discharging its duties in relation to private sector housing, the Authority will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code;
- North Tyneside Statement of Enforcement Policy;
- The Police and Criminal Evidence Act 1984 (as amended);
- Criminal Procedures and Investigations Act 1996;
- Regulation of Investigatory Powers Act 2000;
- Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities;
- Rent Repayment Orders Under the Housing and Planning Act 2016- Guidance for Local Housing Authorities;

- Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities.

The guidance states that the Authority must develop its policy on determining when to apply a Rent Repayment Order or Civil Penalty. This Policy sets out when such actions will be taken.

8. PRINCIPLES UNDERPINNING ENFORCEMENT ACTION

Enforcement actions are determined by the statutory legislation and guidance provided for private sector housing and principles of good enforcement. Private sector housing enforcement activity will be:

Targeted at properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

Proportionate, reflecting the nature, scale and seriousness of any breach or non-compliance.

Fair and objective, based on the individual circumstances of the case, taking all available facts into account.

Transparent, communications will be easy to understand, with clear reasons being given for any enforcement action taken.

Consistent, undertaken by well-trained investigators to ensure consistency in the interpretation and enforcement of legislation. We will work with other regulatory agencies and share and develop good practice.

Accountable, undertaken in a responsible manner that has a clear purpose.

9. DEALING WITH COMPLAINTS

The Private Sector Housing Team will respond to complaints from tenants and other residents about private housing, prioritising the complaints based on an assessment of the risk and seriousness.

Unless the matter appears to present an imminent risk to health the tenant is expected to contact their landlord first about the problem. Tenants are expected to keep copies of all correspondence with their landlord and this should be given to the officers on request.

10. HOUSING, HEALTH AND SAFETY RATING SYSTEM (HHSRS) AND HOUSING ACT ENFORCEMENT

The HHSRS is set out in Part 1 of the Housing Act 2004 (the Act). It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- **Category 1 hazards** represent a serious danger to health and the Authority has a duty to take appropriate action to deal with these.
- **Category 2 hazards** represent a lesser danger and, although it has no duty to take action, the Authority will exercise its power to reduce category 2 hazards through appropriate action.

If the Officer considers formal inspection for disrepair is required, the Authority will provide notice of intended entry for inspection under section 239 of the Act on all interested parties unless the complaint is urgent. If it is not possible to gain entry, an application for warrant will be made to magistrate's court.

Enforcement action will be determined based upon the hazards on a case by case basis and the statutory national housing enforcement guidance. The cost for the determination and issuing of the enforcement action will incur a charge except for Hazard Awareness Notice upon the landlord or property management agent. The notices available are:

- Hazard Awareness Notice;
- Improvement Notice;
- Emergency Remedial action;
- Prohibition Order;
- Emergency Prohibition Order;
- Demolition Order.

The Authority may, at their discretion, waiver the charge for enforcement action, particularly when dealing with vulnerable persons.

11. CHARGING FOR HOUSING ACT 2004 ENFORCEMENT ACTION

Section 49 of the Act gives Authorities the right to make such reasonable charges, as they consider appropriate as a means of recovering certain administrative and other expenses incurred. The Authority will charge for the following enforcement actions:

- Serving an Improvement Notice;
- Making a Prohibition Order;
- Taking Emergency Remedial action;
- Making an Emergency Prohibition Order;

- Making a Demolition Order.

The fees for enforcement action are available on the Authority's website and cover reasonable administrative expenses to include:

- Determining the appropriate course of action;
- Identifying actions to be specified in a notice;
- Serving the notice;
- Reviewing suspended improvement notices and prohibition orders.

Section 50 of the Act relates to the recovery by the Authority of a charge made under section 49 of the Act. From the time that the demand becomes operative until it is recovered the demand will be submitted to the land registry as a local land charge on the property.

12. REGULATORY AND ENFORCEMENT OPTIONS

North Tyneside Council sets out its approach for regulatory action to ensure transparency and consistency. The Authority will take account of legislation, relevant statutory guidance and the general Enforcement Policy.

The options available for complaints will be considered on a case by case basis and can be:

- Use of informal action, written guidance and advice;
- Statutory notices or orders under part 1 of the Act and other relevant legislation;
- Works in default;
- Revoking or varying licences;
- Simple Cautions;
- Penalty Charge;
- Civil Penalty Notice;
- Prosecution;
- Interim or Final Management Orders;
- Banning Orders.
- By compulsory purchase or enforced sale.

One or more of the above actions may be taken depending upon circumstances. The Authority in deciding upon enforcement options will also have due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

ENFORCEMENT DECISION TABLE

The following table contains some examples of situations where different types of action may be taken. Decisions are made, however, on a case-by-case basis.

ACTION	GENERAL CIRCUMSTANCES
No Action	Where formal action may not be appropriate. In such cases, customers may be directed to other sources of advice and support.
Informal Action and Advice includes verbal advice and advisory letters	Where it may be appropriate to deal with the issues through informal action and advice. In such cases, the pre-formal stage of the HHSRS may be followed, with the Authority working collaboratively with responsible landlords to address and resolve any problems.
Service of Notice requiring repairs or specific legal requirements	• Where a person refuses or fails to carry out works through the pre-formal HHSRS process; • Where there is a lack of confidence or there is positive intelligence that the responsible individual or company will not respond to a pre-formal approach; • Where there is risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc); • Where standards are extremely poor and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; • Where the person has a history of non-compliance with the Authority and/or other relevant regulators; • Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management);

	• Where it is necessary to safeguard and protect the occupiers' future health and safety; and/or • Where it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate.
Powers to require information and/or documents	Where it is necessary for documents and information to be provided to enable officers to carry out their powers and duties.
Emergency Remedial Action / Emergency Prohibition Order	Where there is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises.
Works in Default for non-compliance with notice	The Authority may carry out works if they have not been complied with. The above may be taken in conjunction with, or followed by prosecution, issuing a Penalty Charge, issuing a Penalty Charge, issuing a Civil Penalty Charge or seeking a Rent Repayment Order.
Revocation of HMO Licenses and Approvals	Where the Manager is not a 'fit and proper person' and/or where there are serious breaches of the licensing conditions and/or serious management offences.
Simple Caution	Where an offence is less serious and the person who has committed the offence has admitted their guilt.
Penalty Charge	For failure to comply with a Remedial Notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
Civil Penalty Charge	As an alternative to prosecution where an individual or company has deliberately, negligently or persistently breached legal obligations under the Housing Act 2004 and as only non compliance option specified in the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
Rent Repayment Order	Where an individual or company has breached specific legal obligation under the Housing Act 2004, the Housing and

	Planning Act 2016, the Criminal Law Act 1977 or the Protection from Eviction Act 1977.
Prosecution	Where the authority consider that the offence is not suitable to be dealt with by way of a Civil Penalty or a Civil Penalty is not available for the type of offence.

13. INFORMAL ACTION

Informal action includes:

- Offering advice/education;
- Giving verbal and written warnings;
- Negotiating agreements between complainants and other residents or businesses;
- The negotiation of specific conditions with licences; and
- The use of informal notices.

It is generally considered appropriate to take informal action in one or more of the following circumstances:

- The act or omission is not serious enough to warrant formal action;
- From history of landlord or letting agent, it can be reasonably expected that informal action will achieve compliance with the law;
- The consequences of non-compliance will not pose a significant risk.

14. PENALTY CHARGE NOTICES

An authorised officer may issue fixed penalty charge notices, where there is reason to believe an offence has been committed for failure to comply with a Remedial Notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2004.

A penalty charge notice will be issued only where landlord has failed to comply with remedial notice and is unable to provide a satisfactory explanation or defence. The notice will be issued with written advice. The Statement of Principles for Penalty Charges for Smoke and Carbon Monoxide is attached in **Appendix 1**.

15. CIVIL PENALTY CHARGE

The issuing of civil penalty charge may be used as an alternative to prosecution for certain specified housing offences as set out in the Department for Communities and Local Government (DCLG) guidance 'Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities' set out by the government under schedule 9 of the Housing and Planning Act 2016.

The Electrical Standards in Private Rented Properties Regulations 2020 places a requirement on landlords to maintain safe electrical standards and gives the local authority the power to apply a Civil Penalty charge for punishing non-compliant landlords who fail to meet their duty to maintain electrical standards in private rented property. Civil penalty will be considered if demonstrated in balance of probabilities that the landlord failed in their duty. Civil Penalty charge will be considered particularly if landlord fails to comply with remedial notices. The civil penalty charge can be issued in addition to the Authority recharging if they decide to carry out works in default on expiry of remedial action notice.

Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Act and Regulations listed below:

- Section 30 – Failure to comply with an Improvement Notice;
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation;
- Section 95 – Offences in relation to licensing of houses under Part 3 of the Act;
- Section 139 – Offences of contravention of an overcrowding notice;
- Section 234 – Failure to comply with management regulations in respect of Houses in Multiple Occupation.
- Regulation 3 Failure of Landlords to comply with duties to maintain and test fixed electrical installations in a safe and satisfactory state under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Civil Penalties are intended to be used against a landlord either as an individual or company who has deliberately, negligently or persistently breached legal obligations under the Act or Regulations and can be fined up to £30,000.

Each decision on when to prosecute and when to impose a financial penalty will be determined on its own merits having regard to DCLG guidance 'Civil penalties under

the Housing and Planning Act 2016' and the 'Code for Crown Prosecutors' issued by the Director of Public Prosecutions.

The Factors determining the decision for prosecution or financial penalty are:

- Seriousness of the offence;
- Where the landlord has committed similar offences in the past;
- A financial penalty will be preferred option when it is the landlord's first offence, unless so serious that prosecution is most appropriate option.

The housing authority must be satisfied that the burden of proof for prosecution is met and the setting of charge is proportionate based on specific factors as follows:

- Severity of the offence;
- Culpability and track record of landlord;
- Harm caused to the tenant;
- Punishment of the offender;
- Deterring the landlord of repeating the offence;
- Deterring others of committing offences;
- Removing any financial benefit, the landlord may obtain as result of offence;

The level of financial penalty imposed is based on the factors above and are set out in the North Tyneside Council's Civil Penalties Guidance in **Appendix 2**.

In setting the Civil Penalty, the Authority may consider financial position of the offender to reasonably afford to pay. It is for the offender to provide reliable information on offender's financial means to the satisfaction of the Authority including other properties or assets that they can sell or borrow against.

16. MANAGEMENT ORDERS

A Management Order will be made in the following circumstances:

- Where it appears to Officers that there is no reasonable prospect of a House in Multiple Occupation (HMO) or a property in a selective licensing area being licensed in the near future and that it is necessary to protect the health and safety or welfare of persons occupying it or having an estate or interest in any premises in the vicinity;
- On expiry of the Interim Management Order where the house would be required to be licensed but Officers consider that they are unable to grant a licence a Final Management Order will be made.

17. STATUTORY NOTICES

The majority of statutory notices legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety. Only Officers specifically authorised are permitted to serve statutory notices.

Notices will normally be served where:

- informal action has not achieved the desired effect;
- there is a lack of confidence that the individual/company will respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of statutory requirements;
- the consequences of non-compliance could be potentially serious to the health and safety of the public.

Realistic time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served. In some circumstances, requests for extension of time can be made. These should be made in writing to the Officer issuing the notice, prior to the expiry date, explaining the reason for the request.

Statutory notices may also be served in conjunction with prosecutions and civil penalties. Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate and each notice will include Officer contact details.

Having regard to statutory powers, and where the law allows, a charge will apply to statutory notices. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the Authority's agreed charges having regard to a written record assessing costs reasonably incurred. In all cases the Authority will instigate debt recovery action.

Where a notice is not complied with by the expiry date, a prosecution may be considered appropriate. In these circumstances a report, in accordance with the Constitution, will be made to decide what further enforcement action is appropriate.

18. SIMPLE CAUTIONS

The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence, but the public interest does not require a prosecution.

It may be used for cases involving first time, low-level offences where a Simple Caution can meet the public interest. Decisions to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging.

Before a Simple Caution can be given, it is important to try to establish:

- The views of the victim about the offence;
- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances;
- Whether the offender has made any form of reparation or paid compensation.

A Simple Caution must be accepted in writing by the offender (or officer of a limited company which is the alleged offender), who is then served a copy of the caution. A second copy is held as the official record. Failure to accept a Simple Caution leaves the Authority with an option to instigate legal proceedings instead.

Simple Cautions are viewed as valuable enforcement tools because they can be cited in court if the same person or organisation, within three years of the original offence, commits similar offences and typically both save officer time and reduce the burden placed upon the court system.

19. WORK IN DEFAULT

In some circumstances, failure to comply with a notice may result in the Authority arranging for the necessary works to comply with the notice to be carried out (works in default). The cost to the owner will usually be more than if the owner carries out the works themselves as they will be charged for the full cost of the works plus a 15% administrative cost for officer time. We reserve the right not to complete works in default if considered excessive or difficulties in recovering costs.

Works in default may be carried out in conjunction with formal legal action such as prosecution, or civil penalties.

The Authority will actively pursue debts incurred. Enforced sale of empty properties may be considered where appropriate in line with The Law of Property Act 1925 where a debt has been incurred for example following works undertaken to an empty home in the default of work. All debts will be registered with the local Land Charges Registry as a financial charge and will accrue compound interest one month from registration.

20. PROSECUTIONS

Prosecution will be reserved where one or more of the following circumstances apply:

- It is warranted by virtue of the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender;
- There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence;
- There has been a reckless disregard for the safety and health of people, or where a contravention has caused serious public alarm;
- There has been failure to comply with a legal notice or a repetition of a breach that was subject to a Formal Caution, or failure to pay a Fixed Penalty Notice within the permitted payment period;
- There is a blatant disregard for the law;
- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- Officers have been intentionally obstructed in the lawful course of their duties. Where Inspectors are assaulted, we will seek prosecution of offenders.

In all cases, alleged offenders will be invited to send written comments or explanations for consideration.

21. RENT REPAYMENT ORDERS

A Rent Repayment Order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

The 2004 introduced Rent Repayment Orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of houses in multiple occupation (HMOs).

Rent Repayment Orders have now been extended through the Housing and Planning Act 2016 and cover the following offences set out below:

- Failure to comply with an Improvement Notice (section 30 of the Act);
- Failure to comply with a Prohibition Order (section 32 of the Act);
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property (section 6 of the Criminal Law Act 1977);

- Illegal eviction or harassment of the occupiers of a property (section 1 of the Protection from Eviction Act 1977).
- Having control of, or managing, an unlicensed property, under s.95 Housing Act 2004
- Having control of, or managing, an unlicensed house in multiple occupation, under s.72 Housing Act 2004.

Rent Repayment Orders can be granted to either the tenant or the Local Housing Authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the Local Housing Authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.

A Rent Repayment Order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty. An advice leaflet is available for tenants on Rent Repayment Orders.

The Authority must consider a Rent Repayment Order after a person is the subject of a successful civil penalty and the Authority may make an application for a Rent Repayment Order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

Section 48 of the Housing and Planning Act 2016 places an obligation on a Local Housing Authority to consider applying for a rent repayment order when it becomes aware of a landlord being convicted of a relevant offence.

A Local Housing Authority must have regard to the statutory guidance published by MHCLG “Rent repayment orders under the Housing and Planning Act 2016” in the exercise of their functions in respect of rent repayment orders. The First-tier Tribunal whilst not bound by the guidance will have regard to it.

Where a landlord has been convicted of an offence the First-Tier Tribunal must order the maximum amount of rent to be repaid, capped at 12 months.

Where a landlord has been convicted, the following factors should be considered when determining how much rent a Local Housing Authority should seek to recover:

- Punishment of the offender;
- Deter the offender from repeating the offence;
- Dissuade others from committing similar offences;

- Remove any financial benefit the offender may have obtained as a result of committing the offence.

The amount of a Rent Repayment Order that the First-tier Tribunal applies, will depend on the offence committed, the amount of rent paid from date of offence up to a 12-month period, and whether it is a tenant or Local Housing Authority that is applying for the order. The amount ordered to be paid must not exceed the amount of rent paid by the tenant or the amount of Housing Benefit or housing component of Universal Credit that the landlord received from the Local Authority in respect of rent. Note for offences involving unlawful eviction / violent entry, it is the 12 months preceding the offence that counts.

Tenants have a right to apply to the Tribunal for a Rent Repayment Order. The application for a Rent Repayment Order must be made within 12 months of the date that the offence has been committed.

This Authority has produced an advice leaflet for tenants advising on Rent Repayment Orders which is available at www.northtyneside.gov.uk.

The Authority if considering applying for Rent Repayment Order must provide notice of intended proceedings to inform the landlord of proposal, stating amount of rent seeking to recover, and inviting landlord to make representations within 28 days. The Authority must consider representations and may only apply to First-tier Tribunal on expiry for representation has passed. All parties must bear its own costs and the First-tier Tribunal may award costs if person acting unreasonably.

In determining the amount of rent to be repaid, the First-tier Tribunal must consider:

- The conduct of the landlord;
- The financial circumstances of the landlord; and
- Whether the landlord has committed a relevant offence.

A landlord can appeal against the decision of the First-tier Tribunal to the Upper Tribunal provided that they have permission to do so.

22. LICENSING

HOUSES IN MULTIPLE OCCUPATION (HMO)

A licence is required for a house which is occupied by 5 or more persons in two or more households with shared facilities. The application form and fees are available at www.northtyneside.gov.uk.

As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated. All HMOs are subject to the Management of Houses in Multiple Occupation Regulations 2006.

There are two types of HMO licences:

- Mandatory HMO Licensing; and
- Selective Licensing. The Authority does not currently impose selective licensing.

The licence given to a landlord for a mandatory licence will be for a 5 year period.

23. FEES AND CHARGES

The Local authority is permitted to recover costs for regulatory actions and for setting fees for licensing of houses in multiple occupation.

Under section 49 of the Housing Act, the Authority can recover costs for any formal enforcement action taken to remedy health and safety hazards identified from an inspection of a residential premises. The full details for the determination of enforcement action charges are set out in chapter 11,

The setting of fees for licencing issues and the management of houses in multiple occupation is permitted under section 63(2) and 63(7) of the Housing Act. The fee for licence is separated into two parts, the processing of the application and the regulatory effort for inspection and enforcement of HMO's over the period of the licence.

Section 126 of the Housing and Planning Act 2016 introduced financial civil penalties as an alternative to prosecution for non-compliance with housing related notices. The fines are up to £30,000. The methodology for setting the level of civil penalty charges is outlined in chapter 15 and **Appendix 2**.

Variation of Fees and Charges

The fees and enforcement action charges will be reviewed annually as part of the Authority's budgetary process and will be published on the North Tyneside website at www.northtyneside.gov.uk.

Any minor variations to the guidance for determining of civil penalty will be updated and available to view on the North Tyneside website.

Payments

Details of payments required will usually be issued via an invoice however payments by phone using credit or debit card or by cheque can be made.

Refunds

There is no refund of Licensing fees as there is staged process of fees to reimburse for officer time. Fees are charged as an application fee and as a maintenance fee.

Housing Act Enforcement Action Charges may only be reimbursed or varied if the enforcement action is subject to an appeal by the Housing Tribunal who consider it appropriate to reduce, quash or require repayment of a charge made in respect to the enforcement action. e.g. Notice or Order.

24. ENFORCED SALES

If a charge has been recorded in the Authority's Land Charges register, the Authority may opt to recover the charged debt by way of an enforced sale of the charged property.

The criteria for carrying out an enforced sale would be:

- It is a residential or commercial property or land;
- It has been empty for more than 6 months;
- The total debt on the property should normally exceed £1000;
- The debt has been owned to the Authority for more than 3 months and less than 12 years;
- The necessary enforcement notices and documents have been served.

If the criteria are met then a Compulsory Purchase or an Empty Dwelling Management Order may be considered.

Upon disposal of the property the Authority will recover all of its debts and costs from the sale proceeds. The balance will be held by the Authority until it is claimed by the owner.

25. EMPTY DWELLING MANAGEMENT ORDERS

The Authority will work with owners to encourage them to bring their empty properties up to an acceptable standard to allow re-occupancy. Details of the current schemes available can be viewed at www.northtyneside.gov.uk.

The Authority discourages empty homes and will charge higher council tax depending upon the period that the property is empty, introduced by the Rating

(Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. From 1st April 2020, a premium is applied for empty properties based on the period that the property has been empty. The council tax empty homes premium is set out below:

a) a 100% Council Tax premium for properties that have been empty for more than two years;

b) a 200% premium on those properties which have been empty for five years or more;

c) From 1 April 2021 charge a 300% premium on those properties which have been empty for ten years or more.

In line with Government recommendation, the Authority may exempt a property from the premium where the owners of properties can demonstrate that the property is actively being marketed for sale or rent at a reasonable level.

Where the Authority considers there is no reasonable prospect that an empty property will be returned to occupation and is not exempt then serving an Interim Empty Dwelling Management Order may be considered. If after serving the Interim Order the Authority considers that there are no steps it can appropriately take under the Order to ensure that the property becomes occupied, it will either make a Final Empty Property Management Order or revoke the Order without taking any further action.

26. BANNING ORDERS

The Authority may consider applying to the First Tier Tribunal for a Banning Order on a landlord who has been convicted of banning order offences as set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. The regulations include offences under the Act and Article 32 Regulatory Reform (Fire Safety) Order 2005 for fire safety offences.

A Banning Order is an order by the First Tier Tribunal that bans the landlord from letting houses in England, engaging in English letting agency work, engaging in property management work, or doing two or more of those things. The Banning Order prevents the landlord from holding a licence for an HMO.

The Local Housing Authority may consider applying to the First Tier Tribunal for a Banning Order on a landlord who has been convicted of banning order offences after the 6 April 2018. The Authority shall provide the reasons for the applying for the

Banning Order and recommend the appropriate length of the ban. This decision must be documented and have regard to the statutory MHCLG guidance 'Banning Order Offences under the Housing and Planning Act 2016'. This guidance requires the Authority to have a written Housing Policy. The Authority is expected to pursue a Banning Order for the most serious offenders.

The guidance indicates that the Authority should consider the following factors when determining to seek a Banning Order:

- The seriousness of the offence - seriousness will be based upon the severity of the sentence and offence. The greater the sentence the more appropriate to apply for a Banning Order and lengthen the recommended ban period;
- Previous Convictions - consideration would be given to whether the person has any previous Banning Order offence convictions;
- Rogue Landlord Database - the Rogue Landlord Database would be reviewed for other Banning Order offences or civil penalties;
- Likely effect of the banning order on the person and anyone else affected by the order - the most important factor is to consider the harm or potential harm to the tenant particularly with regard to health and safety of tenants. The length of ban should reflect the severity of the offence and pattern of offending. The Banning Order, like the Rent Repayment Order, should act to deter the offender from repeating the offence and to deter others.

The First Tier Tribunal in determining a Banning Order must have regard to the above factors above in accordance with section 16 of the Housing and Planning Act 2006.

A landlord can appeal against the decision of the First-Tier Tribunal to the Upper Tribunal provided that the landlord have permission to do so from the First-Tier Tribunal.

The Authority must, prior to applying to the First-tier tribunal for a Banning Order, give notice to the person of the intended proceedings:

- Informing the person that the Authority is proposing to apply for a Banning Order and explaining why;
- Stating the length of each proposed ban;
- Inviting the person to make representations within a period specified in the notice of not less than 28 days ('the notice period');
- The Authority must consider any representations made during the notice period;
- The Authority must wait until the notice period has ended before applying for a banning order;

- A Notice of Intended Proceedings must be issued within 6 months, beginning with the day on which the person was convicted of the offence to which the notice relates.

27. NATIONAL DATABASE OF ROGUE LANDLORDS AND PROPERTY AGENTS

A national database of rogue landlords and property agents has been created by the Secretary of State for Housing, Communities and Local Government.

The Authority under section 29 of the Housing and Planning Act 2016 (the Act) must include the person with a Banning Order and under section 30 of the Act has a discretional power to include a person who has at least two financial penalties for Banning Order offences committed within a 12 month period when the person was a residential landlord or letting agent and are not subject to an appeal period. The Banning Order offences are prescribed in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

The Authority must maintain the entries to the database and must consider the period the entry will be held on the database from a minimum of two years from date of entry.

An Authority must have regard to the statutory guidance published by the MHCLG entitled 'Database of rogue landlords and property agents under the Housing and Planning Act 2016'. This will allow for the maintenance of the register and entering of persons onto the database.

The Authority, prior to entering onto the database, must issue a decision notice to the person to advise that at the end of 21 day period an entry will be made. The person has the right to appeal to the First-Tier Tribunal and entry will occur on expiry of appeal period or appeal decision.

The Authority must have regard to the criteria set out in the MHCLG guidance and section 30 of the Housing and Planning Act 2016 for deciding on entries to the database as follows: -

- **Severity of the Offence:** This will consider if the landlord or letting agent has a history of offences and the seriousness of the offence**.**

- **Mitigating Factor:** The duration will be reduced if, for example, considered a genuine isolated mistake or if suffering ill-health or bereavement.

- **Culpability:** The duration will consider if the offender knew or ought to have known about the offence and if the offender has a record of offending**.**

- **Deterrent:** The Authority will consider entry to act as a deterrent to both the offender, and landlords and agents to not commit an offence**.**

28. COMPLAINTS PROCEDURE

The Authority will work with residents, landlords and agents to ensure properties do not cause a nuisance or put a person's health and safety at risk. The investigation of complaints will be on a risk-based approach and will follow the principles of enforcement.

At the end of the investigation all parties concerned will receive written confirmation of the result and action taken.

If any party is not satisfied as to the outcome or aggrieved by the enforcement of the legislation, they can register a complaint using the Authority's corporate complaints procedure via email cmlo@northtyneside.gov.uk, or by writing to:

Customer and Member Liaison Office
North Tyneside Council
Quadrant
The Silverlink North
Cobalt Business Park
North Tyneside
NE27 0BY

APPENDIX 1

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles for Penalty Charges

INTRODUCTION

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords to install at least one smoke alarm on each storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance such as a wood burning stove. The landlord must ensure the alarms are in working order on the first day of each new tenancy, commencing after 1st October 2015.

It is the duty of the Authority to serve remedial notices on any landlord that it believes to be in contravention of the regulations and to subsequently ensure that tenants are provided with the appropriate protection by carrying out any work necessary, with the consent of tenants, where a landlord has failed to act in bringing a property up to standard required by the regulations (referred to as 'work in default').

The regulations allow the Authority to issue landlords with penalty notices if they fail to comply with a Remedial Notice. In order to issue penalty notices, the local authority must publish a Statement of Principles which it will follow in determining the amount of a penalty charge.

The Statement of Principles aims to provide a clear and transparent method of charging including the levels of penalty charges based on the history of non compliance by the landlord. It details any possible mitigation that will be considered before a decision is made whether to issue an enforcement action against a landlord who has failed to comply with a Remedial Notice. The purpose of the enforcement regime is to encourage compliance.

ENFORCEMENT

Where local authority has reasonable grounds to believe that:

- There are no or insufficient number of smoke alarms or carbon monoxide detectors in the property as required by the regulations or;
- The smoke alarms or carbon monoxide detectors were not working at the start of a tenancy or licence

The Authority must serve on the landlord within 21 days of determination, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.

The landlord can within 28 days of service of Remedial Notice, request a written review of notice to an authorised officer.

If after 28 days the Authority is satisfied on the balance of probabilities that the landlord on whom it has served a Remedial Notice is in breach of his duty under the regulations, the Authority may serve the landlord with a penalty charge, the level of which will be determined by this Statement of Principles. The Authority will contact the tenant and the landlord to arrange to revisit the premises to determine if the Remedial Notice has been met. The penalty charge notice must be served within 6 weeks of the Authority deciding a landlord is in breach of their duty under the regulations. The Authority must carry out works in default within 28 days of breach of remedial notice with the consent of the occupiers. The regulations state the amount of the penalty charge cannot exceed £5000.

PRINCIPLES TO BE FOLLOWED IN ENFORCING THE REGULATIONS

Before imposing a requirement on a landlord to pay a penalty charge, the Authority must have completed a number of procedural steps. This process includes opportunities for the landlord to request reviews of decisions. The liability of the landlord may depend on written evidence produced by the landlord in mitigation of any non-compliance which may include the inability to access a property. If the landlord can demonstrate all reasonable steps were taken, other than legal proceedings, to become compliant, they will be exempt from liability. It is expected that a landlord will write to tenants explaining the legal requirement to install the alarms for the tenant's safety.

There are a number of stages in the enforcement process, including opportunities for the landlord to ask for a review of any decision to issue a Remedial Notice and/or serve a Penalty Charge Notice. This ensures the process is fair and proportionate and gives the landlord the opportunity to act. The process is summarised in the table below.

PROCESS SUMMARY

Issue of a Remedial Notice: The Authority will, within 21 days of deciding it is reasonable to do so, issue a Remedial Notice on the landlord at the last known address of the landlord.
Right of Review of Remedial Notice: The landlord has the right to request a review of the decision to issue the Remedial Notice. Any request must be in writing and made within the 28 days the landlord has for compliance. This request must state the grounds the landlord believes require reconsideration. Grounds for consideration would include that the alarms were in fact fitted at the time of issue of the Remedial Notice and checks were made at, or immediately prior to, a new tenancy starting or that the occupier has refused entry.

Review of Remedial Notice: An authorised officer will review the decision to issue the Remedial Notice. Such review will be completed within a reasonable period of time and no longer than 35 days from the issue of the Remedial Notice.
Non- compliance with Remedial Notice: No earlier than 28 days and no longer than 35 days from the service of the Remedial Notice, having received no request for a review or having completed any review and upheld the Remedial Notice, an authorised officer will visit the property to determine compliance with the Remedial Notice. If works have not been undertaken to rectify any breach of the regulations or, on the balance of probabilities considering the circumstances and any representations made by the landlord, it is likely that these works have not been undertaken; the authorised officer will refer the matter to the Environmental Health Group Leader.
Referral for Action: The Environmental Health Group Leader will ensure that the Remedial Action specified in the Notice is carried out within 28 days of the referral.
Penalty Charge Decision: The Environmental Health Group Leader will consider whether it is appropriate to issue a Penalty Charge Notice. They will consider the circumstances of the matter; whether the regulations have been adhered to; whether there are any mitigating circumstances which have prevented the landlord from complying with the Remedial Notice. The decision to serve a Penalty Notice or not will be made with 28 days of any referral and if a penalty is to be issued, it will be served within 4 days of the decision.
Penalty Charge Notice: Where the Environmental Health Group Leader decides that it is reasonable to issue a Penalty Charge Notice, consideration will be given to the past behaviour of the landlord in relation to Remedial Notices and previous Penalty Charges, in determining the level of the Penalty Charge. A Penalty Charge Notice in accordance with the regulations will then be served on the landlord at the last known address of the landlord.
Review of a Penalty Charge Notice: The landlord has the right to request, in writing, a review of a Penalty Charge Notice within 28 days of the issue date. The Environmental Health Group Leader must serve a decision notice on the landlord to confirm, vary or withdraw any notice as soon as reasonably practical after any request is received. Such notice must contain information on how the landlord can appeal the decision to the First-Tier Tribunal.
Payment of Penalty Charge: The landlord has 28 days to pay the amount of the Penalty Charge. If payment is made within 14 days, the amount of the Penalty Charge maybe reduced by an amount determined by the Authority in accordance with the **Statement of Principles.**
Right of Appeal: The landlord has the right to appeal the issue of the Penalty Charge Notice in writing to the First-Tier Tribunal on the grounds that the decision is unreasonable or wrong in law of that the charge is unreasonable. A Penalty Charge Notice is suspended until the appeal is decided.
Enforcement: The Authority can apply to a County Court for a court order to enforce a Penalty Charge Notice where the landlord has not paid within 28 days of the service of the charge notice and: • The landlord has not made an appeal to First-Tier Tribunal; or • Has made an appeal which has since been determined in the Authority's favour. Any application to the court to enforce a Penalty Charge must be supported by a certificate for the Chief Finance Officer that the penalty remains unpaid.

THE PENALTY CHARGE

The penalty charge allows a charge to be imposed on landlords who fail to comply with the regulations and the level of charge is dependent on level of non-compliance.

The Authority considers that a lesser penalty will be merited on a first failure to comply with a Remedial Notice and that prompt payment of the penalty within 14 days of service on that first occasion should attract a reduced penalty in recognition of admission of liability and savings in administration costs.

Repeated failures will attract progressively higher penalty in view of continuing disregard for legal requirements and tenant safety. If, following the service of a first penalty charge notice, further failures are identified but action to enforce was initiated prior to the service of the first penalty charge, these separate failures will be treated as first failures and attract the lowest penalty charge if the landlord complies with the requirements. The penalty charge for a failure will increase for every previous failure by the landlord up to a maximum of £5000.

PURPOSE OF IMPOSING A FINANCIAL PENALTY

The Primary purpose of the Authority in exercising its regulatory power is to protect the interests of the public.

The aims of the financial penalties are:

- To eliminate any financial gain or benefit from landlord's non-compliance with the regulations; and
- To deter future non-compliance.

LEVEL OF PENALTY CHARGE

The Penalty Charge shall be set at £1,000 for the first failure to comply with a Remedial Notice but this will be reduced to £750 if paid within a 14-day period.

Should the landlord not comply with the future Remedial Notices then the fine shall be set according to the table below:

Offence	**Fine**	**Offence**	**Fine**
Second	£2000	Fourth	£4000
Third	£3000	Fifth or More	£5000

No discount will be given for prompt payment on fines arising from repeat failures.

APPEALS IN RELATION TO A PENALTY CHARGE NOTICE

The Authority may recover the penalty charge on the order of a court.

Recovery proceedings may not be started before the end of the period during which a landlord may give written notice to review the penalty charge or, where an appeal has been made, before any appeal to the First-Tier Tribunal against the Authority's decision has been finally determined or withdrawn.

The Authority may revise this Statement of Principles at any time it considers it reasonable to do so but where it does so it will publish the revised statement.

Any person subject to the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will be directed to consider these regulations in full which will be available at www.northtyneside.gov.uk.

APPENDIX 2

Civil Penalties Guidance

1.1 Introduction

This guidance document supplements the Private Sector Housing Enforcement and Civil Penalty Policy and DCLG guidance 'Civil Penalties under the Housing and Planning Act 2016'.

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 Act).

The Government guidance advises that the maximum civil penalty of £30,000 is to be 'reserved for the very worst offenders'.

Civil Penalty was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

The use of civil penalties will prevent criminal, rogue and irresponsible landlords from profiteering from illegal and dangerous practices and demonstrate the Authority's commitment to ensuring that it is offenders who pay for the cost of housing enforcement.

The income raised from civil penalties must be retained and used for housing enforcement activity in relation to the private rented sector. Further details can be found at http://www.legislation.gov.uk/uksi/2017/367/made.

1.2 What Is A Civil Penalty?

A civil penalty is a financial penalty of up to £30,000 which can be imposed upon a landlord as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for an offence cannot be issued with a civil penalty for the same offence.

Although only one civil penalty can be issued for each of the five offences listed in 1.3 appendix 2, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

Where the letting / managing agent and landlord have committed the same offence, the Authority can impose a civil penalty on both parties. The level of the civil penalty imposed on each offender may differ, depending on the circumstances of the case.

The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

- The severity of the offence;
- The more serious the offence, the higher the civil penalty should be;
- The 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.

1.3 What Offences Can Civil Penalties Be Imposed For?

A civil penalty can be considered as an alternative to prosecution for any of the following offences under the Act:

- Failure to comply with an Improvement Notice (Section 30);
- Offences in relation to licensing of HMOs (Section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Contravention of an overcrowding Notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234).

1.4 What Is the Burden Of Proof For A Civil Penalty?

The Authority must be satisfied to the same criminal standard of proof that an offence is committed as for a criminal prosecution. This means that before a civil penalty can be imposed it is satisfied that the landlord committed the offence, there is sufficient evidence to prove beyond reasonable doubt that an offence was committed which would lead to a realistic prospect of conviction if prosecuted and it is in the public interest.

The Code for Crown Prosecutors published by the Crown Prosecution Service should be considered by officers as to whether it is reasonable and proportionate to impose a financial penalty as an alternative to prosecution.

Prior to issuing of Civil Penalty the evidence shall be reviewed by the Authority's legal team.

1.5 Determining the Civil Penalty Amount

The Authority will determine the appropriate level of civil penalty by initially considering culpability of the offender and the severity of the offence as well as the

landlord's income and track record. The Civil Penalty will be made up of two distinct components. The first is the penalty calculation which considers the severity of the offence, the landlord's track record and the landlord's income are considered. The second considers the amount of financial benefit, if any, which the landlord obtained from committing the offence. These two components are added together to determine the final penalty amount that will be imposed on the landlord.

This process is broken down into four main stages:

Stage 1 determines the penalty band for the offence. Each penalty band has a starting minimum amount and a maximum amount.

Stage 2 determines how much will be added to the penalty amount as a result of the landlord's income and track record.

Stage 3 is where the figures from stage 2 are added to the penalty band from stage 1. The total amount at this stage cannot go above the maximum amount for that penalty band. If calculated charge goes above the penalty band the default will be to charge only up to the maximum amount for that specific penalty band.

Stage 4 considers any financial benefit that the landlord may have obtained from committing the offence. This amount will be added to the figure from stage 3. This charge will be limited to the maximum penalty band.

Stage 1: Culpability and Seriousness of Harm Risked

This considers the landlord's Culpability and Seriousness of Harm risked to the tenants or visitors to the property.

The penalty will be higher for those landlords with a history of failing to comply with their obligations and /or their actions were deliberate. There are four steps to this process and each step is set out below.

Stage 1 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 level of culpability of the landlord is determined on behaviour and actions of landlord. The officers will determine culpability on a case by case basis at their discretion.

Table 1: Culpability of Offender

Culpability	Factors

Very High	Deliberate Breach of or flagrant disregard for the law
High	Failure to put in place measures that are recognised legal requirements. Ignoring warnings raised by the council, tenant or others. Failure to act after being made aware of risks, breaches or offences. The landlord has been aware of the failure for a long period of time and allowed risk, breach or offence to continue.
Medium	Landlord failed to meet legal duties in a manner that falls between high and low culpability categories, but some mitigating circumstances considered to justify reduced culpability. Systems in place to manage risk or comply with legal duties but poor management or supervision to ensure adhered to or implemented.
Low	Mitigating circumstances to failure because significant efforts were made to address the risk, breach or offences, although they were inadequate. Failings were minor and occurred as an isolated incident.

The landlord's culpability will be considered against the evidence of the offence, the mitigating or aggravating factors and landlords track record. Consideration will be given to past enforcement action against the landlord.

Stage 1 Step 2: Seriousness of Harm Risked

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be perceived), the higher the amount should be when the local housing authority imposes a civil penalty.

The circumstances of the victim, including their vulnerability are highly relevant. Consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the offender 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. This will be determined on a case by case basis.

Harm can include:

- Physical injury, damage to health and psychological distress to individual victims. The nature of the harm will depend on the personal characteristics and circumstances of the victim;
- Harm to the community, including economic loss and harm to public health;
- Some types of harm are difficult to define but can reference public feeling about damage by behaviour to both individuals and society.

The seriousness of harm will be based on the Housing Health and Safety Rating system operating guidance and will be graded according to table 2.

Table 2- Seriousness of Harm

Level	Seriousness of Harm
Level A	Harm would meet the guidance for Class I and II harm outcomes determined via the housing Health and Safety Rating System Operating Guidance and Housing Act 2004.
Level B	Harm would meet the guidance for Class III and Class IV outcomes determined via the Housing Health and Safety Rating System Operating Guidance and Housing Act 2004.
Level C	All other cases not falling within Level A or Level B (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).

Stage 1 Step 3: Penalty Levels

The penalty level as shown in table 3 is determined by comparison of the culpability and the seriousness of harm risked derived from step 1 and step 2 respectively.

Table 3- Penalty Level

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

Stage 1 Step 4- Penalty Band for Culpability and the Seriousness of Harm

The Penalty Band is determined from the penalty level obtained from table 3 above. The penalty band determines the starting minimum and upper limit for the penalty calculation. The total civil penalty may not exceed the upper limit when corrected for landlord's income and track record.

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

Stage 2: Landlord's Income and Track Record

The offender must not gain from the offence and therefore the landlord's income will be considered when calculating a civil penalty.

The landlord's relevant income will be limited to the income received in relation to the property where the offence occurred in most cases.

For property owners this will be the average weekly rental income over a maximum 12 month period 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.

Consideration may be given for bands 5 and 5+ to consider all sources of income to determine weekly income as 'relevant income' received by the landlord where it considers it reasonable and proportionate. This however would require the additional cost of a financial investigator.

Stage 2 Step 1: Landlord's Income Calculation

Additional financial charge will be applied to the minimum penalty band charge to avoid landlord gaining from the offence. The amount of financial charge will be taken as an increasing percentage of the relevant weekly income with rise in penalty level as set out in table.

Table 5: Percentage of Relevant Weekly Income compared to penalty level derived from Stage 1

Penalty Level	Percentage of Relevant Weekly Income
1	50%
2	100%
3	150%
4	250%

5	400%
5+	600%

The relevant weekly income is taken as the gross rental income or management fees for the property where the offence occurred.

If details of tenancy agreements or property management are not able to be obtained an estimate of income will be used. It will be for the landlord to make representations against this estimated figure.

If this related to an unlicensed HMO only the additional persons' rental income should be considered that lead to the statutory requirement.

Stage 2: Step 2: Landlord's Track Record

A higher penalty will be added based on the landlord's history. The history of the landlord will be assessed from a number of questions and will be weighted depending on the severity of the offence. The overall score will be used to determine the additional charge as percentage of the minimum level of the penalty band. Table 6 gives the weighting score for severity of the contravention while Table 7 gives weighting to questions.

Table 6 Weighting with Severity

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

Table 7 Track Record Questions and Weightings

Questions	Weighting	Multiply by Number of Occasions?
Has the landlord had any relevant[1] notices under Part 1 of the Housing Act 2004 over the last 2 years?	1	yes
Has the landlord had any civil penalties imposed on them over 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 breached any relevant[2] notices which resulted in works in default 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[3] 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 2 years	20	no
1- Any action under Part 1 of Housing Act 2004 other than a hazard awareness notice. 2- Any notices served under any legislation relating to Housing Community Protection and Environmental Health. 3- Any unspent convictions relating to housing, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement against the offender.		

The total score from questions is then used to determine the percentage increase to apply to the penalty band starting level. Table 8 gives percentage increase for penalty band starting level by total score.

Table 8 Percentage Increase of Penalty Band Starting Level by Landlords Track Record Total Score

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

This additional charge calculated for landlord's track record is then added to the civil charge. The final total civil charge will not exceed the maximum level of the Penalty Band.

Stage 3: Adding Income and Track Records Amounts to the Penalty Band

The total amount from stage 2 for income and landlord's track record should be added to the starting point for the penalty band identified in stage 1. The final civil penalty will be the total sum of stage 1 and 2 or the maximum penalty limit if the sum is greater than the penalty band.

1.6 Principles of Civil Penalties

Although the maximum civil penalty that can be imposed for an offence is £30,000, it is for the Authority to determine the level of civil penalty.

This Authority will continue to take robust action against those landlords that flout the law, and it will ensure that its use of civil penalties is consistent, appropriate, proportionate and fair.

Civil penalties can only be used as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted cannot be issued with a civil penalty for the same offence.

Although only one civil penalty can be issued for each of the first 4 offences listed above, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

Where the letting / managing agent and landlord have committed the same offence, the Authority can impose a civil penalty on both. The level of the civil penalty imposed on each offender may differ, depending on the circumstances of the case.

1.7 The 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.

1.8 Whether It Will Deter the Offender from Repeating the Offence

The issuing of Civil Penalty will deter any further offending and help ensure that the landlord fully complies with all 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.

1.9 Whether It Will Deter Others from Committing the Offence

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.

2.0 Whether It Will 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, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

2.1 Imposing A Civil Penalty and Right of Appeal

Schedule 9 of the Housing and Planning Act 2016 sets out the process for imposing a civil penalty.

2.1.1 Notice of Intent

A Notice of Intent must be served on a landlord before imposing a civil penalty. The Notice must be served within 6 months of the offence occurring is noted by the Authority. The 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 Authority.

2.1.2 Representations

Any landlord has the right to make representations against the Notice of Intent within 28 days of receipt. Representations will be considered by Environmental Health Group Leader.

The landlord will need to provide documentary evidence with the representation to challenge the proposed penalty amount to allow it to be considered.

A written response will be provided to the representative.

2.1.3 Final Notice

On ending of the 28 day period from Notice of Intent, or the conclusion of the representation, the Authority will decide, taking into consideration any representations, whether to impose a civil penalty and the final amount of the civil penalty.

The final Notice imposing a civil penalty 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, unless that Notice is suspended due to an appeal.

2.1.4 Appeals to the Tribunal

A person who has been issued with a civil penalty has a right of appeal to the First-Tier Tribunal and this will involve a re-hearing of the Authority's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Authority has issued.

The First-Tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or it has no reasonable prospect of success.

The Authority intends to defend its decision to issue civil penalties rigorously and this will involve not only Officer time and resources but also specialist legal support.

The Authority will seek to recover its legal costs if required to defend its decision at a Tribunal.

2.2 Recovering Unpaid Civil Penalty

The Authority will consider all legal options for the collection of unpaid civil penalties and to pursue unpaid penalties through the county courts 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 Authority 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 due.

Where a Charging Order has been made, and the amount of the order is over £1000, the Authority 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 the Authority 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 Authority has a tribunal decision confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, 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.

2.2 Financial Means to Pay A Civil Penalty

In setting a financial penalty, the Authority may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

It is for the offender to disclose to the Authority such data relevant to his financial position as will enable the Authority to assess what s/he can reasonably afford to pay.

Where the Authority is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.

As some offenders will own one or more properties in North Tyneside, it is likely that they will have assets that they can sell or borrow against. After considering any mortgages on the property, the Authority will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.