Appendix 1a

Private Sector Housing Civil Penalties Guidance and Statement of Principles

Introduction

This policy has been created in accordance with the ‘Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities’ (“the DCLG Guidance”), published by the Department of levelling up, housing and communities and The Civil penalties under the Renters' Rights Act 2025 and other housing legislation produced by the Ministry of Housing, Communities & Local Government (MHCLG)

The Council has regard to this guidance in the exercise of their functions in respect of civil penalties.

This policy is a supplementary annex to the Cumberland Private Sector Housing Enforcement Policy and should be read alongside the Association of Chief Environmental Health Officers, Civil penalties under the Renters' Rights Act 2025 and other housing legislation which is referenced as Appendix 1b.

Housing Offences Covered by Civil Penalties

Renters Rights Act updates 2025

The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016 and latterly the Renters Rights Act 2025.

The following breaches are subject to a civil penalty with a statutory maximum of £7,000.

- Failure to give a written statement of terms and any other prescribed information under section 16D of the Housing Act 1988.
- Attempting to let a property for a fixed term under section 16E of the Housing Act 1988.
- Attempting to end a tenancy by service of a notice to quit under section 16E of the Housing Act 1988.
- Attempting to end a tenancy orally or requiring that it is ended orally under section 16E of the Housing Act 1988.
- Serving an eviction notice that attempts to end a tenancy outside the prescribed section 8 process under section 16E of the Housing Act 1988.
- Relying on a ground where the landlord does not reasonably believe that the landlord is/will be able to obtain possession under section 16E of the Housing Act 1988.
- Failing to provide a tenant with prior notice that a ground which requires it may be used under section 16E of the Housing Act 1988.
- Failure to give an existing tenant prescribed information about changes made by the Renters’ Rights Act 2025 in the prescribed form and timeframe under paragraph 7(2) of schedule 6 to the Renters’ Rights Act 2025.
- Discrimination relating to children in the lettings process under section 33 of the Renters’ Rights Act 2025.
- Discrimination relating to benefits in the lettings process under section 34 of the Renters’ Rights Act 2025.

- Failure to specify proposed rent within a written advertisement or offer under section 56 of the Renters' Rights Act 2025.
- Inviting, encouraging or accepting any offer of rent greater than the stated rate under section 56 of the Renters' Rights Act 2025.

The following breaches are subject to a civil penalty with a statutory maximum of £40,000:

- Breach of duty under Regulation 3, 3B, 3C, and 3D of The Electrical Safety Standards in the Private Rented Sector and Social Rented Sector (England) Regulations 2020.

The following offences are subject to a civil penalty with a statutory maximum of £40,000:

- Unlawful eviction and harassment of occupier under section 1 of the Protection from Eviction Act 1977.
- Continuation of conduct subject to a relevant penalty (under s.16I or s.16K Housing Act 1988) after the 28-day period (or, if appealed, after conclusion of the appeal) where the final notice has not been withdrawn under section 16J of the Housing Act 1988
- Conduct giving rise to liability under s.16I, where within the preceding five years the landlord has either (i) had a relevant penalty (under s.16I or s.16K Housing Act 1988) imposed for different conduct and the final notice has not been withdrawn, or (ii) been convicted under s.16J for different conduct under section 16(J) of the Housing Act 1988.
- Relying on a ground knowing the landlord would not be able to obtain possession or being reckless as to whether they would under section 16J of the Housing Act 1988.
- Breach of restrictions relating to reletting (s16(E)(2) Housing Act 1988) or remarketing (s16(E)(3) Housing Act 1988) a property within restricted period after using Grounds 1 or 1A of Schedule 2 Housing Act 1988 under section 16J of the Housing Act 1988.
- Breach of a banning order under section 21 of the Housing and Planning Act 2016.
- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004.
- Contravention of an overcrowding notice under section 139 of the Housing Act 2004.
- Failure to obtain a selective licence under section 95 of the Housing Act 2004.
- Failure to obtain an HMO licence under section 72 of the Housing Act 2004.
- Knowingly permitting over-occupation of an HMO under section 72 of the Housing Act 2004.
- Failure to comply with management regulations in respect of HMOs under section 234 of the Housing Act 2004.
- Failure to comply with HMO licence conditions under section 72 of the Housing Act 2004.
- Failure to comply with selective licence conditions under section 95 of the Housing Act 2004.

In addition to the above civil penalties offences this guidance will also apply to the following legislation, which will also be referenced within the policy in determining the level of fine. This will also be set within the parameters of the individual legislation if applicable.

- Smoke and Carbon Monoxide Alarm (England) Regulations 2015, updated 2022.
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- The Tenants Fees Act 2019

The penalty policy will also be adopted for any future civil penalty structures brought in under any subsequent legislation and approval will be done by means of an approval from the Director of Service.

Civil Penalties in Relation to Category 1 Hazards (Section 6A Housing Act 2004)

The Council may impose a civil financial penalty under Section 6A Housing Act 2004 in connection with hazards identified under the Housing Health and Safety Rating System (HHSRS). Section 6A provides that, where the Council is required to take appropriate enforcement action under Section 5 Housing Act 2004 in respect of a Category 1 hazard, or a failure to meet a Type 1 requirement, on qualifying residential premises, it may impose a civil financial penalty at the point of first enforcement action where it considers, on the balance of probabilities, that it would have been reasonably practicable for the responsible person to secure the removal of the hazard or the meeting of the requirement.

This power applies only to qualifying residential premises and does not apply to the common parts of a building containing one or more flats, it may be used alongside the initial enforcement action (e.g. Improvement Notice or Emergency Remedial Action) and provides a proportionate alternative to prosecution, particularly where early intervention is appropriate.

In deciding whether to impose a penalty under Section 6A, the Council will consider, how long the hazard has existed, whether the responsible person was aware, or ought reasonably to have been aware, of the hazard whether reasonable steps could have been taken to remedy the hazard, any actions already taken to mitigate or remove the risk and any barriers to compliance (e.g. access issues), and whether these were reasonably addressed.

Determining the Civil Penalty Amount

The Council has the power to impose a civil penalty of up to £40,000 as set out within the legislation. The Council approach to determining the appropriate level of civil penalty and the guidance that will be used is set out within the Council published Policy, for Offences in relation to the Renter's Rights Act the civil penalties matrix will be used from the Association of Chief Environmental Health Officers (**Appendix 1b**), for all other matters the civil penalties set out below will apply.

Smoke and Carbon Monoxide Alarm (England) Regulations 2015, updated 2022.

Section 13 of the Regulations requires the Council to prepare and publish a statement of principles which they propose to follow in determining the amount of a penalty charge under the regulations. The power to charge a penalty arises from Regulation 8 of the Regulations. Failure to comply with each remedial notice can lead to a fine of up to £5,000. Fines will be applied per breach, rather than per landlord or property.

When determining the amount of the penalty charge, regard will be had to:

- whether this is a first breach under the Regulations.
- The minimum amount of a penalty charge for a first breach of the Regulations will be £2500.
- The starting level of a penalty charge for a first breach of the Regulations will be £3000.
- The penalty charge amount will then be varied depending on aggravating and mitigating factors.

Aggravating factors include, but are not limited to:

- The number of alarms not working or missing (the Regulations state there should be one per storey)
- Other fire safety concerns/defects in the property which increase the risk posed to the occupants.
- The length of time the offence is believed to have been on-going.
- The frequency of complaints by the occupiers to the landlord about the non-working or missing alarms
- The costs of any remedial work the Council have carried out in response to the breach.
- Whether the property is let as an HMO (which increases the overall risk)
- The number of occupants living in the property.
- Presence of vulnerable occupiers such as elderly, children or disabled people
- Any history of previous enforcement or non-compliance of the landlord
- Attempts to obstruct the investigation.

Mitigating factors include, but are not limited to:

- The property being small and low-risk (for example a one-bedroom ground floor flat with a large number of fire escapes including large windows)
- A single occupant living in the property.
- Evidence that all required alarms were checked and in working order at the start of the tenancy.
- Written evidence that some efforts to gain access and comply with the remedial notice were made and access was prevented by the occupant.

Determining the amount of the penalty charge for a subsequent breach.

- The penalty for subsequent breaches by the same landlord will be £5000.

Early Repayment

If the landlord complies with the requirement to pay the penalty charge within 14 days beginning with the day on which the penalty charge notice is served, the penalty charge will be reduced by 20 per cent.

Energy Efficiency Regulations

Specific penalty structure (s) also exists with the legislation for some regulations, **The Energy Efficiency (Private Rented Property) (England and Wales) Regulations** set out caps on penalty levels which are set out below:

- up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.
- up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.
- up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register
- up to £2,000 and/or publication for failure to comply with a compliance notice.

The maximum amount an individual can be fined per property is £5,000 in total.

Property Redress Scheme

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, sets out that The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined. In the first instance all penalties will be issued at £5000.00 and only in exceptional circumstances will it be reduced as detailed within the regulations.

Tenant Fees Act 2019

The Tenants Fees Act sets out that penalties maybe imposed of up to £5,000 and for a second or subsequent breaches within five years, the civil penalty can rise by up to £30,000 as an alternative to prosecution. When determining a civil penalty, the Council will have regard to, the nature and seriousness of the breach, including the type of prohibited payment involved, the amount charged or retained, whether the breach was isolated or part of a wider pattern and the duration of the breach and the potential harm caused. Culpability around the breach and if this was deliberate or reckless behaviour, a failure to take reasonable care or poor knowledge of legal responsibilities where compliance should reasonably be expected. The Council will also review the compliance history, including previous breaches of the Tenant Fees Act within five years, previous housing or consumer enforcement action and evidence of general compliance or non-compliance. The Council will ensure the penalty, is proportionate to the breach, removes any financial gain and acts as a suitable deterrent to future non-compliance. Mitigating and aggravating factors will also be taken into account.

Aggravating factors may include:

- Failure to refund prohibited payments promptly.
- Obstruction or non-cooperation.
- Repeated or systematic breaches.

Mitigating factors may include:

- Early admission of the breach.
- Prompt repayment and remedial action.
- Cooperation with the Council.
- Steps taken to prevent recurrence.

Imposing the Financial Penalties (applies to all)

The means of imposing financial penalties is set out within legislation, the principles of which are set out within the different housing civil penalties regulations and guidance, overall, the approach is similar in process and Officers should follow this according to the relevant legislation.

The process of making the decision to issue financial penalty must be done within 6 months of the Council becoming aware of the offence or the date on which the offence occurred if the offence is ongoing.

This will be actioned by service of a Notice of Intent, instructing the landlord of the Councils intention to issue a penalty. The content of this notice must contain the following information or as set out in the relevant guidance:

• The amount of the proposed civil penalty.

• The reasons for proposing to impose a civil penalty, and.

• Information about the Landlord’s right to make representations to the Council.

Representations

Any landlord who is in receipt of a notice of intent has the right to make 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 an appropriate senior Officer, but not the serving Officer.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide full representation which should include any documentary evidence they wish to rely upon in terms of mitigation. If sufficient evidence is not submitted, then no adjustment will be made. 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.

Written responses will be provided to all representations made by the recipients of a notice of intent. This will be undertaken with 20 working days were reasonably practicable. Information will be provided if there is to be any delays associated with the review.

Where no such representations are made the final penalty will be issued as intended.

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.

Final Notice

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.

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

Withdrawing or Amending 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.

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.

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.

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.

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. If a civil penalty is not paid after 28 days, then it will be reviewed by the senior Officer. A referral can then be considered to refer the debt for collection by mean of issuing an invoice for payment. If after issuing an invoice for collection, the debt still remains outstanding the matter can either be referred for debt collection through a suitable appointed recovery agent or the Council have the option to make an order through the county courts. The options are as follows:

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

A formal decision notice will be required, signed by the Chief Finance Officer for the Council stating that the amount due has not been received by the date required, this will then 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 £1,000, the Council can consider applying for an Order for Sale against the property or asset in question in line with the enforced sales policy.

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 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.

Discount for prompt payment

Where a civil penalty imposed by a final notice is paid in full within the period specified in that notice (normally 28 days beginning with the day after the final notice is given), the Council will apply a discount of 15% to the amount of the civil penalty. The availability of the discount is conditional upon full payment being received within the specified period. The discount period will not be extended or suspended by the bringing of an appeal. A landlord who chooses to appeal may still benefit from the discount by paying the civil penalty in full within the specified period, however, where payment is not made within that period, the discount will not apply.

Income from Civil Penalties

Any income from Civil Penalties is retained by the 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.