

Appendix A

Private Sector Housing

Civil Penalty Policy

Version 1.0 – October 2017

Document Control:

Version No	Summary of changes	Date of Issue	Updated By	Dir EGDS & Cab Mem Approval
1.0	This is a new policy drafted in line with the Housing and Planning Act 2016			

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1.0 Introduction

- 1.1 Stockton on Tees Borough Council ('the Council') is committed to improving the housing conditions and management standards in privately rented and privately owned properties across the borough.
- 1.2 Although Stockton has some excellent landlords¹ there are a number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.
- 1.3 Since April 2017 Local Housing Authorities have had the power to impose Civil Penalties (financial penalties) of up to £30,000 on individuals and organisations, as an alternative to prosecution for certain offences under the Housing Act 2004.

2.0 Policy aim

- 2.1 This Civil Penalty Policy sets out the Council's approach to Civil Penalties, taking into account the statutory guidance set out by the Government under Schedule 9 of the Housing and Planning Act 2016 and should be read in conjunction with the Enforcement and Regulatory Policy for Private Sector Housing.

3.0 Housing offences covered by Civil Penalties

- 3.1 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.
- 3.2 Civil Penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:
 - Section 30 – Failure to comply with an Improvement Notice
 - Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMOs)
 - Section 95 – Offences in relation to licensing of housing 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 HMOs.

¹ In this policy the term landlord also refers to property agents, managing agents and letting agents

4.0 Principles of Civil Penalties

- 4.1 Stockton on Tees Borough Council will continue to take robust action against those landlords that flout the law, and will ensure that its use of Civil Penalties is consistent, appropriate, proportionate and fair.
- 4.2 Civil Penalties can only be used as an alternative to prosecution. This means that if a Civil Penalty has already been imposed an offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for a particular offence cannot be issued with a Civil Penalty for the same offence.
- 4.3 Although only one Civil Penalty can be issued (as an alternative to prosecution) for each of the first 4 offences listed in paragraph 3.2 above a Civil Penalty can be issued for each separate breach of the HMO Management Regulations.
- 4.4 Where the Council is in a position to prosecute a letting agent and landlord for failing to obtain a license for a licensable HMO, it has the option of imposing a Civil Penalty on the letting agent and the landlord as an alternative to prosecution.
- 4.5 The Council can impose a Civil Penalty on both letting agent and landlord where both have committed the same offence, as an alternative to prosecution. The level of Civil Penalty imposed on each offender may differ, depending on the circumstances.
- 4.6 Further information about the Private Sector Housing team's main functions to enforce and regulate relevant legislation can be found in the Enforcement and Regulatory Policy for Private Sector Housing.
- 4.7 The same criminal standard of proof is required for a Civil Penalty as for prosecution. This means that, before taking formal action, the Council needs to satisfy itself that, if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.
- 4.8 To achieve conviction in a Magistrates' Court the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed. The same principle applies in respect of Civil Penalties. Where a Civil Penalty is imposed and an appeal is subsequently made to the First Tier Tribunal, the Council will need to be able to demonstrate beyond reasonable doubt that the offence has been committed.

5.0 Deciding on an appropriate sanction

- 5.1 The Council will consider issuing a Civil Penalty if becomes aware that a person who is a landlord is in breach of any of the offences detailed in paragraph 3.2.
- 5.2 The Council will decide on a case by case basis on when to prosecute and when to issue a Civil Penalty. Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However this does not mean that Civil Penalties should not be used in cases where

serious offences have been committed.

- 5.3 A Civil Penalty of up to £30,000 can be imposed where a serious offence has been committed. A Civil Penalty will be issued where the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there are several breaches), rather than prosecution.
- 5.4 The use of Civil Penalties will not only prevent the business of criminal, rogue and irresponsible landlords from profiteering from illegal and dangerous practices, but it will also demonstrate the Council's commitment to ensuring that it is offenders (rather than good, responsible landlords or the local Council Tax payers) who pay for the cost of housing enforcement.

6.0 Determining the amount of a Civil Penalty

- 6.1 Maximum Civil Penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of offending.
- 6.2 In order to ensure that the Civil Penalty is set at an appropriate level, the Council will consider the following factors (as identified in statutory guidance):
- The severity of the offence
 - The culpability and track record of the offender
 - The harm caused to the tenant
 - The punishment of the offender
 - Whether it will deter the offender from repeating the offence
 - Whether it will deter others from committing the offence
 - Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence
- 6.3 After all other factors have been considered and applied, the Council will need to ensure that the Civil Penalty that is set removes the financial benefit that has been gained from committing the offence.

Financial means to pay a Civil Penalty

- 6.4 In setting an amount for a Civil Penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to demonstrate otherwise.
- 6.5 It is for the offender to disclose to the Council such data relevant to their financial position as will enable the Council to assess what he/she can reasonably afford to pay.
- 6.6 Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences to the offenders financial means from the evidence it holds from all of the circumstances of the case which may infer that the offender can afford to pay an amount imposed in respect of a Civil Penalty.

6.7 It is possible that offenders may own one or more properties in the Borough and may have assets that they can sell or borrow against. After taking into account any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a Civil 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.

7.0 Guidance

7.1 This policy has been developed with specific regard to:

- The Housing and Planning Act 2016
- Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities – Department for Communities and Local Government published April 2017
- Enforcement and Regulatory Policy for Private Sector Housing (updated 2017)

8.0 Review

8.1 The policy is subject to change and will be reviewed periodically, in line with changes in legislation, Government guidance and Council policy. Minor changes to this policy may be required from time to time, and will be undertaken with the authorisation of the Director of Economic Growth and Development.

9.0 Complaints and Redress

9.1 If you have any complaints about this policy we will investigate your complaint and will look carefully at the issue you have raised.

9.2 Please forward any complaints regarding this policy to the Private Sector Housing team via email privatesectorhousing@stockton.gov.uk or via telephone 01642 527797.

9.3 We will respond to a complaint as quickly as possible. Generally this will be within 10 workings days.

10.0 Contact details

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16 Church Road
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