



Stockton-on-Tees
BOROUGH COUNCIL

Regulatory Services Enforcement Policy

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1. INTRODUCTION

- 1.1 Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Stockton-on-Tees. Even in a small case a decision about enforcement action can have serious implications for all involved, the general public, businesses, victims, witnesses and offenders.
- 1.2 This Enforcement Policy is designed to make sure that everyone knows the principles that Stockton-on-Tees Borough Council (SBC) Regulatory Services will apply when carrying out enforcement work. By applying the same principles, everyone involved in the process is helping to treat stakeholders fairly, consistently and effectively.

1. SCOPE

- 2.1 This Policy applies to enforcement activities taken under the legislation enforced by the Regulatory Services of SBC. The primary aim of these enforcement activities is to achieve regulatory compliance in order to protect the general public, legitimate businesses, the environment and groups such as consumers and workers.
- 2.2 Enforcement, in the context of this Policy, includes action aimed at ensuring that individuals or businesses comply with the law, carried out in the exercise of, or against the background of, delegated statutory powers. This is not limited to formal enforcement action such as prosecution, but includes, for example, the provision of advice to aid compliance.

3. HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

- 3.1 This [Policy](#) is available on the SBC website.

If you would like to make a comment on the Policy, please contact us by:-

Telephoning: 01642 526560
E-mailing: trading_standards@stockton.gov.uk
Writing to: Stockton-on-Tees Borough Council, Trading Standards Service,
PO Box 232, 16 Church Road, Stockton-on-Tees TS18 1XD.

4. GENERAL PRINCIPLES

- 4.1 Each case is unique and must be considered on its own merits. However, this Policy lays down the general principles that apply in the way each case will be approached.
- 4.2 This Policy commits SBC Regulatory Services to good enforcement practice with effective procedures and clear policies which support the principles of the Regulators' Code issued under the Legislative and Regulatory Reform Act 2006. In those cases where the Code does not apply, the Enforcement Concordat's Principles for Good Enforcement and Good Practice Guide for England and Wales will be applied.
- 4.3 There are six principles laid down in the Regulators' Code which SBC must have regard to when setting policies and procedures that guide regulatory activities:-
- Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
 - Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
 - Regulators should base their regulatory activities on risk.
 - Regulators should share information about compliance and risk.

- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
 - Regulators should ensure that their approach to their regulatory activities is transparent.
- 4.4 This Policy also takes account of the relevant parts of the Code for Crown Prosecutors.
- 4.5 Enforcement activities will be targeted only at situations where action is needed and will be carried out in a way that is transparent, accountable, proportionate and consistent. SBC will work constructively with individuals or businesses that are honestly trying to comply with the law and help them towards compliance.
- 4.6 SBC recognises that prevention is better than cure, but where it is necessary to take formal enforcement action against a business or member of the public, it will do so. In some cases enforcement action will be taken after compliance has been achieved, if it is in the public interest to do so.
- 4.7 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 4.8 SBC is a public authority for the purposes of the Human Rights Act 1998 and will apply the principles of the European Convention on Human Rights with particular regard to the right for a fair trial and the right to respect for private and family life, home and correspondence.
- 4.9 SBC enforcement activities will always be conducted in accordance with the relevant legislation, including, but not limited to, the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000, the Criminal Justice and Police Act 2001, the Regulatory Enforcement and Sanctions Act 2008 and the Investigatory Powers Act 2016. This includes compliance with any formal procedures and codes of practice made under such legislation in so far as they relate to SBC enforcement powers and responsibilities. Further details can be obtained from the address shown in paragraph 3.1 above.
- 4.10 SBC's approach to the sanctions and penalties available will aim to:-
- Change the behaviour of the offender.
 - Change attitudes in society to offences which may not be serious in themselves, but which are widespread.
 - Eliminate any financial gain or benefit from non-compliance.
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction.
 - Be proportionate to the nature of the offence and the harm caused.
 - Restore the harm caused by regulatory non-compliance, where appropriate.
 - Deter future non-compliance.
- 4.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Code. However, in certain circumstances SBC may conclude that a provision in the Policy is either not relevant or is outweighed by another provision. If this is the case, any decision to depart from the Policy will be properly reasoned, based on material evidence and documented.

5. NOTIFYING ALLEGED OFFENDERS

- 5.1 If information is received, for example from a complainant, that may lead to enforcement action against a business or individual, that business or individual will be notified of any intended enforcement action as soon as is practicable, unless this could defeat the purpose of the proposed action, impede the progress of an investigation or pose a safety risk to those concerned or to the general public.
- 5.2 Except in cases where immediate action is necessary SBC will provide an opportunity for the offender to discuss the circumstances of the case and, where applicable, to try and resolve matters. Where immediate action is considered necessary, reasons for the action will be given at the time and confirmed in writing at the earliest opportunity.
- 5.3 During the progression of enforcement action, alleged offenders and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information will only be released to a court when required and/or in accordance with the Data Protection Act 2018.

6. DECIDING WHAT ACTION TO TAKE

- 6.1 There are two issues to determine in deciding what action to take. The first is what level of enforcement action to take. The second is that, if the first decision is to take formal enforcement action, is that action viable and appropriate. These are each discussed in detail below.
- 6.2 The level of enforcement action taken will be proportionate to the risk or detriment involved to the public, the environment and other affected groups, taking into account, amongst other things, the individual circumstances of the case, the seriousness of the compliance failure, the attitude, age and previous history of the offender, the policies and priorities of SBC and any statutory guidance, codes of practice or legal advice.
- 6.3 There are a range of potential enforcement options available. The level of action taken varies from no action through to proceedings in court. Examples of the main types of action that may be considered are shown below:-
- No action.
 - Informal action and advice.
 - Formal notice.
 - Fixed penalty notice.
 - Penalty charge notice.
 - Administrative penalty.
 - Civil or financial penalty notice.
 - Seizure of goods/equipment/documentation.
 - Forfeiture proceedings.
 - Injunctive action and other civil sanctions.
 - Refusal, review, suspension or revocation of a licence.
 - Simple caution.
 - Prosecution.
 - Post-conviction court order.
 - Proceeds of crime application.
- 6.4 The order in which the enforcement actions are listed is not necessarily in absolute order of escalating seriousness relative to each other. SBC reserves the right to escalate its level of enforcement action, having regard to the requirements of this Policy. An explanation of the main enforcement actions available is given below:-

6.5 No Action

- 6.5.1 In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to SBC outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health and formal action would seriously damage their wellbeing. In such cases SBC will advise the offender of the reasons for taking no action.

6.6 Informal Action and Advice

- 6.6.1 For minor breaches of the law, verbal or written advice and warnings may be given. These will clearly identify any contraventions of the law and, where appropriate, give advice on how to put them right and include a deadline by which this must be done. The time allowed will be reasonable and take into the account the seriousness of the contravention and the implications of non-compliance. In providing advice, officers will ensure that legal requirements are clearly distinguished from best practice guidelines. Failure to comply could result in an escalation of enforcement action and may be referred to in any subsequent proceedings.

6.7 Formal Notice

- 6.7.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require contravening activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed to rectify a contravention will be reasonable, taking into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. In certain circumstances SBC may charge the person/business involved for the service of a notice.
- 6.7.2 Certain types of notice allow for works to be carried out in default. This means that if a notice is not complied with, SBC may carry out the necessary works to satisfy the requirements of the notice. Where the law allows, SBC may then charge the person/business served with the notice, for any cost incurred in carrying out the work.
- 6.7.3 A prohibition order under the Housing Act 2004 can be used to prohibit the use of residential premises, whether for all purposes or for any particular purpose. Generally, the order becomes operative 28 days after it is made. It is an offence to fail to comply with a prohibition order without reasonable excuse. SBC will revoke the order, or part of it, when it is satisfied that the hazard(s) in respect of which the order was made no longer exist. If applicable an emergency prohibition order can be used and this has the effect of immediately prohibiting the use of all, or part, of the premises.
- 6.7.4 A community protection notice issued under the Anti-social Behaviour, Crime and Policing Act 2014 can be used to deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life, by targeting the person or organisation responsible. The notice can direct any person, business or organisation responsible to stop causing the problem and if needed, to take reasonable steps to ensure that it does not occur again. In advance of serving the notice, SBC will issue a written warning to the perpetrator, allowing them a reasonable time in which to remedy the matter. The breach of any requirement of a notice is a criminal offence subject to a fixed penalty notice (see paragraph 6.8 below).

6.8 Fixed Penalty Notice

- 6.8.1 Certain offences, prescribed by legislation are subject to fixed penalty notices. They enable an offender to avoid a criminal record and discharge their liability to a prosecution for the original offence. Where legislation permits an offence to be dealt with by way of a fixed penalty notice, SBC may choose to administer such a notice on a first occasion without issuing a warning.
- 6.8.2 If the alleged offender fails to accept or pay the fixed penalty notice within the required timescale, consideration may be given for the prosecution of the original offence under the primary legislation.

6.9 Penalty Charge Notice

- 6.9.1 Penalty charge notices are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. A penalty charge notice does not create a criminal record and SBC may choose to issue such a notice without first issuing a warning. The alleged offender may challenge the notice at the time of issue or later may appeal to an independent adjudicator.
- 6.9.2 In circumstances where a person or business fails to successfully challenge or pay a penalty charge notice, then SBC will consider instituting civil action to recover the debt.
- 6.9.3 If a vehicle is considered to be in breach of any SBC traffic related provision an officer may issue a penalty charge notice. The person ultimately responsible in law is routinely the registered vehicle keeper. The notice may be fixed to the vehicle, handed to the driver or posted to the registered vehicle keeper. If, after the consideration of any challenge, that challenge is dismissed and the offender still fails to pay the penalty charge, SBC reserves the right to institute civil proceedings to recover the debt. This can include a debt referral to the Council's bailiff for collection purposes.

6.10 Administrative Penalty

- 6.10.1 An administrative penalty may be offered as an alternative to prosecution in suitable cases of benefit or council tax fraud. It is a type of fine, the rate of which is laid down by legislation, which the offender is required to repay on top of the monies already overpaid to them. If the offender refuses to accept the administrative penalty, SBC retains the right to take the matter forward for prosecution.
- 6.10.2 Whilst an administrative penalty is an alternative to prosecution, SBC can still take civil recovery action in a court of law if there is a failure to repay the debt and the administrative penalty.

6.11 Civil or Financial Penalty Notice

- 6.11.1 SBC has, in certain circumstances, the power to issue civil or financial penalties in relation to particular offences. These powers are set out in law and SBC will follow the relevant legislation, guidance and policy when deciding on whether to make a civil or financial penalty and on what the amount of the penalty shall be. The details of appealing these penalties will be set out in any notices served. In some cases, this will include the right to make representations before a final penalty notice is issued.
- 6.11.2 The Enforcement and Regulatory Policy for Private Sector Housing refers to information on the fees and penalties chargeable in relation to breaches of the Housing Act 2004 and other housing related legislation.

6.11.3 The policy that SBC has adopted for the Tenant Fees Act 2019 and associated letting agency legislation, in relation to deciding financial penalties and the appropriateness of prosecution as an alternative to imposing financial penalties, is attached at Appendix 1.

6.11 Seizure

6.11.1 Certain legislation enables authorised officers to seize goods, equipment or documents, for example, unsafe food, sound equipment that is being used to cause a statutory nuisance, counterfeit goods or any goods that may be required as evidence for possible future court proceedings. When officers seize such items, they will give the person from whom the items are taken an appropriate receipt.

6.11.2 If officers seize unfit food, they will produce it before a Magistrate as soon as possible for them to confirm the seizure and consider if the food is unfit. If the Magistrate does not condemn the food, the officers will return it to the owner, who will then be entitled to compensation for any loss suffered.

6.12 Forfeiture Proceedings

6.12.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them from re-entering the marketplace or being used to cause a further problem.

6.12.2 If it is unlikely that the offender will agree to sign over the goods for appropriate disposal or if officers are unable to identify the owner of the goods, then a forfeiture application may be made to the court. The court can make a forfeiture order if it is satisfied that an offence has taken place, whether or not the owner of the goods is prosecuted for that offence.

6.13 Injunctive Actions and Other Civil Sanctions

6.13.1 In dealing with repeat offenders, social disorder, dangerous circumstances and significant consumer, environmental, housing and public health detriment, injunctive action, closure orders and/or banning orders may be considered to be the most appropriate form of enforcement activity. Where applicable, this can be done in addition to any other course of action outlined in the Policy.

6.13.2 Action under the Enterprise Act 2002 may be brought where an individual or business has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is, or could potentially be, significant consumer detriment. Action to stop the breach can range from obtaining an informal assurance or a formal undertaking as to future conduct, through to applying to a court for an interim order, a court order or finally for contempt proceedings.

6.13.3 SBC may apply to a court for a civil injunction when an individual has engaged in, or threatens to engage in, conduct capable of causing nuisance and annoyance.

6.13.4 The use of closure notices / orders under the Anti-social Behaviour, Crime and Policing Act 2014 can be used to protect victims and communities by quickly closing premises that are causing, or are likely to cause, nuisance or disorder. A closure notice can be issued by SBC to close a premises for 48 hours when satisfied on reasonable grounds, that the use of the particular premises has resulted in, or (if the notice is not issued) is likely to result in, nuisance to members of the public, or that there has been, or (if the notice is not issued) is likely to be, disorder near those premises associated with the use of those premises. SBC must also be satisfied that the notice is necessary to prevent the nuisance or disorder from occurring, continuing or recurring.

6.13.5 Before issuing a closure notice SBC must make reasonable efforts to inform people who live on the premises and any person with control of, or responsibility for, the premises, or who has an interest in them, that the notice is going to be issued. SBC must also ensure that all appropriate bodies, such as the police, have also been consulted.

6.13.6 Whenever a closure notice is issued an application can be made to a Magistrates Court for a closure order. This must be heard by the Court not later than 48 hours after service of the closure notice, however the court may adjourn the hearing of the application for a period of not more than 14 days. A closure order can be made for up to 3 months, with the possibility of seeing extension to six months.

6.13.7 Other powers can include the use of hygiene emergency prohibition notices / orders in accordance with regulations made under the Food Safety Act 1990. A hygiene emergency prohibition notice (HEPN) can be used to address food hygiene concerns that pose an imminent risk to public health. The service of a HEPN will lead to a food business operator being prohibited from using the premises or equipment for the purposes of any food business. This normally means that there will be a closure of the premises. Whenever a HEPN is issued an application shall be made to a Magistrates Court for a hygiene emergency prohibition order. This must be heard by the Court not later than 72 hours after service of the HEPN. Such a notice or order can be lifted when officers are satisfied that the operator has taken sufficient steps to mitigate against the health risk.

6.14 Refusal, Review, Suspension or Revocation of a Licence, Permit or Registration

6.14.1 SBC has the power to refuse, review, suspend or revoke a range of licences, permits or registrations, subject to the applicable legislation. Some of these powers rest with officers but in other cases the law demands that decisions are made by a Committee of Elected Councillors. Applicants and/or licensees have the right to attend Committee Hearings and may have a statutory right to appeal to the courts against the decision made, depending on the applicable legislation.

6.15 Simple Caution

6.15.1 In appropriate circumstances, where a prosecution would otherwise be justified, a simple caution may be administered with the consent of the offender.

6.15.2 A simple caution is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction.

6.15.3 Where appropriate, SBC will use simple cautions to:-

- Deal quickly and simply with low level offences.
- Divert offenders from appearing in the criminal courts.
- Record an individual's criminal conduct for future reference in possible criminal proceedings.
- Reduce the likelihood of re-offending.

6.15.4 For a simple caution to be issued a number of criteria must be satisfied:-

- Sufficient evidence is available to prove the case.
- The offender has not been previously cautioned for the offence within the last 2 years.
- The offender admits the offence.
- The offender agrees to be cautioned and understands the significance of it.
- The offender is aged 18 years or over.

- It is in the public interest to use a simple caution.

6.15.5 A record of the caution will be kept on SBC databases and, where appropriate, recorded on any national databases. If the offender is subsequently prosecuted for another offence, the caution may be cited in court and may influence the severity of the sentence that the court imposes.

6.15.6 If the offender refuses to accept the offer of a simple caution, then this will be a material consideration in deciding what further action to take. In these circumstances it is likely that a prosecution will follow.

6.16 Prosecution

6.16.1 Where circumstances warrant it and alternative enforcement actions are considered inappropriate, a prosecution will be considered and may ensue.

6.16.2 In order to take a prosecution forward, the offender must meet one or more of the following criteria:-

- Engaging in fraudulent activity.
- Deliberately or persistently contravening legal obligations.
- Deliberately or persistently ignoring written warnings or formal notices.
- Endangering or posing a risk to the health, safety or wellbeing of people, animals or the environment.
- Obstructing an enforcement officer during the course of his or her duties.
- Causing, or having the potential to cause, significant consumer or trade detriment.

6.17 Post-Conviction Court Order

Where a person is convicted of a relevant offence in the criminal courts, SBC may apply for an appropriate ancillary order or remind the court of its power to make such an order. These orders include, for example, a criminal behaviour order, which prohibits the offender from doing anything described in the order or requires the offender to do anything described in the order. Other ancillary post-conviction orders can include a compensation order, a dog destruction order, a remedial order following the breach of a community protection notice and a disqualification order to prevent a person from being the director of a company or otherwise concerned with a company's affairs.

6.18 Proceeds of Crime Application

6.18.1 SBC either through its own enforcement officers or in cooperation with the Police or other enforcement agencies, may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender.

6.18.2 This will be used in conjunction with a criminal prosecution where the law and circumstances allow it. The purpose of any such application is to recover the financial benefit that the offender has obtained from their criminal conduct. Proceedings are conducted according to a civil standard of proof.

7. DETERMINING WHETHER FORMAL ACTION IS VIABLE AND APPROPRIATE

7.1 There are two stages in the decision to take formal enforcement action:-

- Stage 1: the evidential test.
- Stage 2: the public interest test.

7.2 SBC will only start, and continue, with formal enforcement action when the case has passed both tests. Paragraphs 7.5 to 7.8.1 below, detail how this Policy applies to the consideration of taking a prosecution. The principles outlined apply equally to the other types of formal enforcement action that are available.

7.3 Decisions about what formal enforcement action to take will normally involve consultation between the Investigating Officer(s), the relevant Service Manager and the Legal Section.

7.4 The final decision to institute legal proceedings through the courts will be taken by an appropriate senior officer with the relevant delegated authority.

7.5 The Evidential Test

7.5.1 There must be enough evidence to provide a 'realistic prospect of conviction' against each offender on each charge. A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the offender of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if it is sure of an offender's guilt.

7.5.2 When deciding whether there is enough evidence to prosecute, consideration must be given as to whether the evidence is admissible, reliable and credible and whether there is any other material that might affect the sufficiency of the evidence, including any examined and as yet unexamined material and material that may be obtained through further reasonable lines of enquiry. Account should also be taken of whether the offender is able to satisfy any applicable statutory defence, such as a due diligence defence. If the case does not pass the evidential test, it should not proceed, no matter how important or serious it may be.

7.6 The Public Interest Test

7.6.1 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually go ahead unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

7.6.2 Factors for and against prosecution must be balanced carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence and the circumstances of the case. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

7.6.3 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Officers must decide how important each factor is given the circumstances of each case and go on to make an overall assessment.

7.6.4 Some common public interest factors are listed below, both for and against prosecution. The list is not exhaustive and the factors that apply will depend on the circumstances in each case.

7.7 Some Common Public Interest Factors in Favour of Prosecution

7.7.1 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:-

- A conviction is likely to result in a significant sentence.
- The evidence shows that the offender was a ringleader or an organiser of the offence.
- The offender has benefitted significantly from the criminal conduct.
- There is evidence that the offence was premeditated.
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal trauma, damage or disturbance.
- The offence was motivated by any form of discrimination, including against the victim's ethnic or national origin, gender, sex, religious beliefs, political views or sexual orientation, or the offender has demonstrated hostility towards the victim based on any of those characteristics.
- There is a marked difference between the actual or mental ages of the offender and the victim, or if there is any element of corruption.
- The offender's previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct and ignoring previous warnings.
- The offence has endangered or posed a risk to the health, safety or wellbeing of people, animals or the environment.
- The offence has caused, or has the potential to cause, significant consumer or trade detriment.

7.8 Some Common Public Interest Factors Against Prosecution

7.8.1 A prosecution is less likely to be needed if:-

- The court is likely to impose a nominal penalty.
- The offender has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- There has been a long delay between the offence taking place and the date of the trial, unless:
 - The offence is serious.
 - The delay has been caused in part by the offender.
 - The offence has only recently come to light.
 - The complexity of the offence has meant that there has been a long investigation.
- A prosecution is likely to have a detrimental effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence.
- The offender is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- There is likely to be a much lower level of culpability if the offender has been compelled, coerced or exploited, especially when this is linked to their offending. The interests of a youth offender must be considered when deciding whether it is in the public interest to prosecute. The stigma of a conviction can cause very serious harm to the prospects of a youth offender or young adult. Young offenders can sometimes be dealt with without going to court, for example, by issuing a cautionary letter to the youth and their parents/guardians. However, a prosecution will not be avoided simply because of the offender's age. The seriousness of the offence or the offender's past behaviour may make prosecution necessary.

7.9 Charging

7.9.1 Where taking a prosecution is felt to be the most appropriate course of action, it is important that offences are selected which:-

- Reflect the seriousness and extent of the offending.
- Give the court adequate powers to sentence and impose appropriate post-conviction orders.
- Allow a confiscation order to be made in appropriate cases, where a defendant has benefitted from criminal conduct.
-
- Enable the case to be presented in a clear and simple way.

7.9.2 Where there is another prosecuting authority involved, officers will liaise with the other authority to ensure that the most appropriate charges are laid.

7.9.3 SBC will take account of any relevant change in circumstances as the case progresses after charge.

7.10 Companies and Individuals

7.10.1 Criminal proceedings will be taken against those persons responsible for the offence. Where a body corporate is involved, it will be usual practice to prosecute the company where the offence resulted from its activities.

7.10.2 SBC will also consider any part played in the commission of the offence by directors, managers, company secretary and employees of the company. Action may also be taken against a manager, director or other officer of the company where it can be shown that the offence was committed with their consent, involvement, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it. The attitude, personal awareness and motive of the company officer will be taken into account.

7.11 Considering the Views of Those Affected by Offences

7.11.1 SBC undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see paragraphs 7.6 to 7.8.1 above) the consequences for, and views of, those affected by the offence, including any victim, injured party or relevant person, will be taken into account in determining how to deal with the matter.

7.11.2 In particular, SBC enforcement activity will, where practicable, take account of local circumstances to minimise any adverse effects on legitimate businesses and individuals.

7.11.3 Those people affected by the offence will be told about any decision that makes a significant difference to the case in which they are involved, subject to any applicable data protection and disclosure rules.

7.12 Re-starting a Prosecution

7.12.1 People should be able to rely on enforcement decisions taken on behalf of SBC. Normally, if an offender is advised that there will not be a prosecution or that the enforcement action has been stopped, that is the end of the matter and the case will not start again. However, occasionally there are special reasons why enforcement action will re-start, particularly if the case is serious. These reasons include:-

- Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand.
- Cases that are stopped so that more evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the offender will be told that the enforcement action may well start again.
- Cases which are stopped because of a lack of evidence but where more significant evidence is discovered at a later date.

7.13 Accepting Guilty Pleas

7.13.1 Offenders may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the offence. An offender's plea will only be accepted if:-

- The court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating factors.
- It enables the court to make a confiscation order in appropriate cases where a defendant has benefitted from criminal conduct.
- It provides the court with adequate powers to impose other ancillary orders, bearing in mind that these can be made with some offences but not with others.

7.13.2 SBC will never accept a guilty plea just because it is convenient.

7.13.3 In considering whether the pleas offered are acceptable, SBC will aim to ensure that the interests, and where possible the views, of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision on whether a basis of plea is acceptable rests with SBC.

7.13.4 In cases where an offender pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened and then sentence on that basis.

8. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

8.1 SBC Regulatory Services will coordinate their activities to maximise the effective enforcement of any matters that are related to more than one of the services.

8.2 Where an enforcement matter affects a wide geographical area beyond SBC's boundaries or involves enforcement by one or more other local authorities or organisations, all relevant authorities and organisations will be informed of the matter as soon as possible and all relevant enforcement activity will be coordinated with them.

8.3 SBC will share intelligence relating to wider regulatory matters with other enforcement agencies and regulatory bodies, including government agencies, police forces, fire authorities, statutory undertakers and other local authorities.

8.4 If SBC become aware of an enforcement issue that would be more properly dealt with by another enforcement agency, the information will be passed to that agency as soon as possible. Equally SBC will take and investigate referrals from other agencies when it is appropriate to do so.

8.5 Accredited Civic Enforcement Officers

8.5.1 Accredited Civic Enforcement Officers conduct two elements of their enforcement activity under national guidelines and within the protocols and procedures laid down by external bodies:-

- Driver and Vehicle Licensing Agency (DVLA) - the impounding and seizure of untaxed vehicles are carried out following national training and procedures laid down by the DVLA. Officers act as agents for the DVLA and any appeals against actions are considered jointly between the designated SBC Officer and the relevant Senior DVLA Officer.
- Cleveland Police Community Safety Accreditation Scheme - the powers bestowed on Civic Enforcement Officers, and the manner in which they are applied, form part of an application and accreditation to the Chief Constable to operate under the scheme. The complaints and licensing of officers are monitored jointly between the Chief Constable and SBC's designated Accreditation Officer and signatory.

8.6 Primary Authority Partnerships

8.6.1 When dealing with a business operating in more than one local authority area and that business has a registered Primary Authority Partnership under the Regulatory Enforcement and Sanctions Act 2008, SBC will, where required, comply with the agreement provisions for enforcement and notify the Primary Authority of any proposed enforcement action against that business.

8.6.2 The relevant Primary Authority and/or the business in question have the right to object to SBC's proposed enforcement action, in which case either the Primary Authority, the business itself or SBC may refer the matter through to the Department for Business, Energy and Industrial Strategy for a determination as to the legitimacy of the proposed action.

9. APPEALS AGAINST ENFORCEMENT ACTION

9.1 For certain types of enforcement action there exists a statutory appeal system. The offender will be informed of these mechanisms, where appropriate. However, in all cases the offender has the right to appeal directly to SBC. The matter will then be considered in accordance with the prevailing [corporate complaints procedure](#).

9.2 Please note that the corporate complaints procedure cannot be used to determine whether or not an offence has been committed and legal proceedings will not normally be suspended whilst a complaint is investigated, the legal process takes precedence.

10. IMPLEMENTATION AND REVIEW

10.1 This Policy will take effect from Day Month 2022.

10.2 SBC will keep this Policy under review and revisions may be made to it when it is considered appropriate to do so. A full review of the Policy will be conducted every five years from the date of effect given above.

APPENDIX 1

STOCKTON-ON-TEES BOROUGH COUNCIL

PENALTY POLICY IN RELATION TO THE RELEVANT LETTING AGENCY LEGISLATION

Tenant Fees Act 2019

Consumer Rights Act 2015

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, made under the Housing and Planning Act 2016

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A. INTRODUCTION

Stockton-on-Tees Borough Council (SBC) has adopted this Policy on deciding financial penalties and the appropriateness of prosecution as an alternative to imposing financial penalties under the relevant letting agency legislation.

It applies in relation to any decision made by SBC in its capacity as an Enforcement Authority under Section 6 of the Tenant Fees Act 2019.

For clarity, “relevant letting agency legislation” means:-

1. The Tenant Fees Act 2019, “the TFA 2019”.
2. Chapter 3 of Part 3 of the Consumer Rights Act 2015 as it applies in relation to dwelling houses in England.
3. An order under Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013¹.
4. Regulations under Sections 133 – 135 of the Housing and Planning Act 2016².

The content of this Policy does not constitute legal advice, only a court of law can provide certainty.

B. SANCTIONS

The Tenant Fees Act 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach, as follows:-

- a. In respect of a first breach of S.1 & S.2, or a breach of Schedule 2 of the TFA 2019, a financial penalty not exceeding £5,000.
- b. Under S.12 of the TFA 2019, a second or subsequent breach of S.1 or S.2 within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is alternative power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

In respect of a failure of Letting Agents to publicise their fees as required by S.83(3) of the Consumer Rights Act 2015, a financial penalty not exceeding £5,000 applies.

In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) (England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work), a financial penalty not exceeding £5,000 applies. Note that it is not sufficient to simply register for redress – the correct category of membership must be obtained depending on the work carried out.

In respect of Client Money Protection Schemes for Property Agents (Requirements to Belong to a Scheme etc.) Regulations 2019:-

¹ Pertaining to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

² Pertaining to The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

- a. A failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3, a financial penalty not exceeding £30,000 applies.
- b. A failure to display a certificate of membership; or publish a copy of that certificate on the relevant website (where one exists); or produce a copy of the certificate free of charge to any person reasonably requiring it as required; or notify any client in writing within 14 days of a change in the details of a underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked, as required by Regulation 4, a financial penalty not exceeding £5,000 applies.

SBC will determine what is the most appropriate and effective sanction and whether it is appropriate to impose a financial penalty or prosecute having due regard to its Regulatory Services Enforcement Policy.

Other Types of Enforcement Action That May Be Taken

In appropriate circumstances, consideration will be given to less formal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with the relevant SBC Regulatory Services Enforcement Policy.

C. STATUTORY GUIDANCE

The Government has published guidance for enforcement authorities in respect of the Tenant Fees Act 2019 - [“Tenant Fees Act 2019: Statutory Guidance for Enforcement Authorities”](#) and in respect of Client Money Protection requirements – [“Mandatory Client Money Protection for Property Agents – Enforcement Guidance for Local Authorities”](#).

This is statutory guidance to which enforcement authorities must have regard to when considering to impose a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalty to impose and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case.

D. DETERMINING THE LEVEL OF THE FINANCIAL PENALTY

In accordance with the provisions of the TFA & CMP statutory guidance, SBC will consider the following factors when determining the level of penalty to impose for a breach of relevant letting agency legislation:-

- a. Severity of the breach
- b. Punishment of the landlord or agent
- c. Aggravating and mitigating factors
- d. Fairness and proportionality

Each of these factors are explained in more detail in the statutory guidance which should be referred to for each penalty under consideration. For ease, the same considerations will be applied in cases of redress membership and breaches of S.83 Consumer Rights Act 2015.

Although the Council has therefore a wide discretion in determining the appropriate level of financial penalty in any particular case, regard has been given to the statutory guidance when making this Policy.

Appendix 1 of this Policy contains the processes that the Council will use in order to determine the level of financial penalty under the TFA 2019 and other relevant letting agency legislation. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the suspension of the process should an appeal be made to the First Tier Tribunal.

APPENDIX 1 – THE PROCESS FOR DETERMINING THE LEVEL OF PENALTY TO SET

STEP ONE – DETERMINING THE CATEGORY

The Council will determine the breach category using only the culpability and category of harm factors below. Where a breach does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. Other discretionary factors may also be applied in order to reflect consistency and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

CULPABILITY

Very high: Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile³ and knew their actions were unlawful.

High: Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken.

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

Low: Breach committed with little fault, for example, because:-

- Significant efforts were made to address the risk although they were inadequate on the relevant occasion.
- There was no warning/circumstance indicating a risk.
- Failings were minor and occurred as an isolated incident.

HARM

The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business.
- High risk of an adverse effect on individual(s) – including where persons are vulnerable⁴.

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1).
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
- Tenants and/or legitimate landlords or agents substantially undermined by the conduct.
- The Council's work as a regulator is inhibited.
- Tenant or prospective tenant misled.

Category 3 – Low Likelihood of Harm

³ Which may include any significant role in a trade or business representative organization.

⁴ A wide definition of vulnerability will be used. See Appendix 2 for a non-exhaustive list.

- Low risk of an adverse effect on actual or prospective tenants.
- Public misled but little or no risk of actual adverse effect on individual(s).

SBC will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable persons). There are graduations of harm within all of these categories.

The nature of harm will depend on the personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular breach on the victim.

In some cases no actual harm may have resulted and SBC will be concerned with assessing the severity of the misconduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

Harm to the Community

Some breaches cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

STEP TWO – STARTING POINT AND CATEGORY RANGE

Having determined the category that the breach falls into, SBC will refer to the following starting points to reach an appropriate level of civil penalty within the category range. SBC will then consider further adjustment within the category range for aggravating and mitigating features.

Obtaining Financial Information

The statutory guidance advises that local authorities can use their powers to, as far as possible, make an assessment of a Landlord or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. SBC will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, SBC may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless it has obtained, or the Landlord or Agent has supplied, any financial information to the contrary.

The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to SBC such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay. Where SBC is not satisfied that it has been given sufficient reliable information, SBC will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case, which may include the inference that the person can pay any financial penalty.

Starting Points and Ranges

The tables in Appendices 4-9 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach:-

- Appendix 4 First breach in respect of a Prohibited Payment.
- Appendix 5 Second & subsequent breach in respect of a Prohibited Payment.
- Appendix 6 Breach of Publication of Fees requirements.
- Appendix 7 Breach in respect of membership of a Redress Scheme.
- Appendix 8 Breach in respect of membership of a Client Money Protection Scheme.

- Appendix 9 Breach of transparency requirements of membership of a Client Money Protection Scheme (Regulation 4).

Context

Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. SBC will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions⁵ are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

Factors Increasing Seriousness

Aggravating factors:-

- Previous breaches of the TFA 2019 or relevant letting agency legislation.
- Previous convictions, having regard to:
 - the nature of the offence to which the conviction relates and its relevance to the current breach; and
 - the time that has elapsed since the conviction.

Other aggravating factors may include:-

- Motivated by financial gain.
- Deliberate concealment of illegal nature of activity.
- Established evidence of wider / community impact.
- Obstruction of the investigation.
- Record of poor compliance.
- Refusal of advice or training or to become a member of an Accreditation Scheme.

Factors Reducing Seriousness or Reflecting Personal Mitigation

- No previous or no relevant/recent breaches.
- No previous convictions or no relevant/recent convictions.
- Steps voluntarily taken to remedy problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good record of relationship with tenants.
- Self-reporting, co-operation and acceptance of responsibility.
- Good character and/or exemplary conduct.
- Mental disorder or learning disability, where linked to the commission of the breach.
- Serious medical conditions requiring urgent, intensive or long-term treatment and supported by medical evidence.

STEP THREE – GENERAL PRINCIPLES TO CONSIDER IN SETTING A PENALTY

SBC will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and SBC will take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

⁵ See Appendix 3 for a list of relevant convictions.

The level of financial penalty should reflect the extent to which the conduct fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, SBC will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in Step Eight below.

STEP FOUR – ISSUE NOTICE OF INTENT

In respect of prohibited payments, publication of fees etc and client money protection membership and transparency requirements, SBC will issue a Notice of Intent before the end of the period of 6 months beginning with the first day on which SBC has sufficient evidence of the breach. In respect of redress membership, the Notice of Intent must be served within 6 months of the date on which SBC is first satisfied of the failure to comply with Article 3 or Article 5. If the breach is ongoing the 6-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

While there are slight variations in the statutory requirements according to which breach is being addressed a Notice of Intent will contain the amount of the proposed penalty, the reason for imposing the penalty and information about the right to make representations concerning the penalty. In respect of the TFA 2019, the date of service is also required on the Notice of Intent.

STEP FIVE – CONSIDERATION OF REPRESENTATIONS AND REVIEW OF FINANCIAL PENALTY WHERE APPROPRIATE

SBC will review the penalty and, if necessary, adjust the initial amount reached at Step Four, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below.

Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two, providing it doesn't increase the penalty over the prescribed maximum. Where this is not readily available, SBC may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP SIX – REDUCTIONS

SBC will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties, such as (but not limited to):-

- The impact of the financial penalty on the Landlord or Agent's ability to comply with the law or make restitution where appropriate.
- The impact of the financial penalty on employment of staff, service users, customers and the local economy.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:-

- The stage in the investigation or thereafter when the offender accepted liability.
- The circumstances in which they admitted liability.

- The degree of co-operation with the investigation.

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the breach itself.

STEP SEVEN – ADDITIONAL ACTIONS

In all cases SBC will consider whether to take additional action. This may include further enforcement action itself or a reference / referral to other organisations where appropriate.

STEP EIGHT – TOTALITY OF BREACHING CONDUCT

Where more than one financial penalty has been considered, SBC will consider the guidance from the Sentencing Council's definitive guideline on 'Offences Taken into Consideration and Totality' which appears to SBC to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative, SBC will determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case including the financial circumstances of the Landlord or Agent so far as they are known, or appear, to SBC.

For example:-

Where a Landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose a financial penalty for the most serious breach which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches. Where a Landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. SBC should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate SBC should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.

Where separate financial penalties are imposed, SBC must take care to ensure that there is no double-counting.

STEP NINE – RECORDING THE DECISION

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

APPENDIX 2 – NON-EXHAUSTIVE LIST OF VULNERABLE PEOPLE

- Young adults and children.
- Persons vulnerable by virtue of age.
- Persons vulnerable by virtue of disability or sensory impairment.
- People on a low income.
- Persons with a drug or alcohol addiction.
- Victims of domestic abuse.
- Children in care or otherwise vulnerable by virtue of age.
- People with complex health conditions.
- People exploited where English is not their first language.
- Victims of Trafficking or sexual exploitation.
- Refugees.
- Asylum seekers People at risk of harassment or eviction,
- People at risk of homelessness.

APPENDIX 3 – NON-EXHAUSTIVE LIST OF RELEVANT OFFENCES / BREACHES

Housing Law or Landlord and Tenant Related

Offences under:-

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004
- The Consumer Protection from Unfair Trading Regulations 2008

Offences Involving Fraud

Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:-

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a company director

Offences Involving Violence

A conviction for the offence of:-

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

Offences Involving Drugs

- Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agent's business activities. The nature, quantity, purity and class of drugs should be taken into account. In addition, where an offence of possession with intent to supply is involved regard should be had to the role and importance of the subject in the supply chain.

Sexual Offences

- An offence contained in Schedule 3 of the Sexual Offences Act 2003.

Unlawful Discrimination

- Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

Other Offences

- Modern slavery / human trafficking offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation.

APPENDIX 4 – FINANCIAL PENALTY IN THE CASE OF A FIRST BREACH OF PROHIBITED PAYMENTS

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply SBC may reduce the minimum penalties further but may not increase them above the maximum permitted level of £5000.

| | | Range | |
|------------------------------|--------------------|---------|---------|
| | Starting point (£) | Min (£) | Max (£) |
| Low culpability | | | |
| Harm category 3 | 1250 | 250 | 2250 |
| Harm category 2 | 1500 | 500 | 2500 |
| Harm category 1 | 1750 | 750 | 2750 |
| Medium culpability | | | |
| Harm category 3 | 2000 | 1000 | 3000 |
| Harm category 2 | 2250 | 1250 | 3250 |
| Harm category 1 | 2500 | 1500 | 3500 |
| High culpability | | | |
| Harm category 3 | 2750 | 1750 | 3750 |
| Harm category 2 | 3000 | 2000 | 4000 |
| Harm category 1 | 3250 | 2250 | 4250 |
| Very high culpability | | | |
| Harm category 3 | 3500 | 2500 | 4500 |
| Harm category 2 | 3750 | 2750 | 4750 |
| Harm category 1 | 4000 | 3000 | 5000 |

APPENDIX 5 – FINANCIAL PENALTY IN THE CASE OF A SECOND OR SUBSEQUENT BREACH IN RESPECT OF PROHIBITED PAYMENTS WITHIN 5 YEARS OF A PREVIOUS BREACH

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply SBC may reduce the minimum penalties further but may not increase them above the maximum permitted level of £30000.

| | | Range | |
|------------------------------|--------------------|---------|---------|
| | Starting point (£) | Min (£) | Max (£) |
| Low culpability | | | |
| Harm category 3 | 3500 | 2000 | 8000 |
| Harm category 2 | 6500 | 4000 | 10000 |
| Harm category 1 | 8500 | 4500 | 15000 |
| Medium culpability | | | |
| Harm category 3 | 6500 | 4750 | 17000 |
| Harm category 2 | 10500 | 5000 | 20000 |
| Harm category 1 | 12500 | 5500 | 22000 |
| High culpability | | | |
| Harm category 3 | 10500 | 5500 | 20000 |
| Harm category 2 | 15000 | 6250 | 24000 |
| Harm category 1 | 18000 | 7000 | 26000 |
| Very high culpability | | | |
| Harm category 3 | 15000 | 7000 | 24000 |
| Harm category 2 | 17500 | 7250 | 28000 |
| Harm category 1 | 20000 | 7500 | 30000 |

APPENDIX 6 – FINANCIAL PENALTY IN THE CASE OF A BREACH OF PUBLICATION OF FEES

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply SBC may reduce the minimum penalties further but may not increase them above the maximum permitted level of £5000.

| | | Range | |
|------------------------------|--------------------|---------|---------|
| | Starting point (£) | Min (£) | Max (£) |
| Low culpability | | | |
| Harm category 3 | 1250 | 250 | 2250 |
| Harm category 2 | 1500 | 500 | 2500 |
| Harm category 1 | 1750 | 750 | 2750 |
| Medium culpability | | | |
| Harm category 3 | 2000 | 1000 | 3000 |
| Harm category 2 | 2250 | 1250 | 3250 |
| Harm category 1 | 2500 | 1500 | 3500 |
| High culpability | | | |
| Harm category 3 | 2750 | 1750 | 3750 |
| Harm category 2 | 3000 | 2000 | 4000 |
| Harm category 1 | 3250 | 2250 | 4250 |
| Very high culpability | | | |
| Harm category 3 | 3500 | 2500 | 4500 |
| Harm category 2 | 3750 | 2750 | 4750 |
| Harm category 1 | 4000 | 3000 | 5000 |

APPENDIX 7 – FINANCIAL PENALTY IN THE CASE OF A BREACH IN RESPECT OF MEMBERSHIP OF A REDRESS SCHEME

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply SBC may reduce the minimum penalties further but may not increase them above the maximum permitted level of £5000.

| | | Range | |
|------------------------------|--------------------|---------|---------|
| | Starting point (£) | Min (£) | Max (£) |
| Low culpability | | | |
| Harm category 3 | 1250 | 250 | 2250 |
| Harm category 2 | 1500 | 500 | 2500 |
| Harm category 1 | 1750 | 750 | 2750 |
| Medium culpability | | | |
| Harm category 3 | 2000 | 1000 | 3000 |
| Harm category 2 | 2250 | 1250 | 3250 |
| Harm category 1 | 2500 | 1500 | 3500 |
| High culpability | | | |
| Harm category 3 | 2750 | 1750 | 3750 |
| Harm category 2 | 3000 | 2000 | 4000 |
| Harm category 1 | 3250 | 2250 | 4250 |
| Very high culpability | | | |
| Harm category 3 | 3500 | 2500 | 4500 |
| Harm category 2 | 3750 | 2750 | 4750 |
| Harm category 1 | 4000 | 3000 | 5000 |

APPENDIX 8 – FINANCIAL PENALTY IN THE CASE OF A BREACH IN RESPECT OF A FAILURE TO OBTAIN MEMBERSHIP OF A CLIENT MONEY PROTECTION SCHEME

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply SBC may reduce the minimum penalties further but may not increase them above the maximum permitted level of £30000.

| | | Range | |
|------------------------------|--------------------|---------|---------|
| | Starting point (£) | Min (£) | Max (£) |
| Low culpability | | | |
| Harm category 3 | 3500 | 2000 | 8000 |
| Harm category 2 | 6500 | 4000 | 10000 |
| Harm category 1 | 8500 | 4500 | 15000 |
| Medium culpability | | | |
| Harm category 3 | 6500 | 4750 | 17000 |
| Harm category 2 | 10500 | 5000 | 20000 |
| Harm category 1 | 12500 | 5500 | 22000 |
| High culpability | | | |
| Harm category 3 | 10500 | 5500 | 20000 |
| Harm category 2 | 15000 | 6250 | 24000 |
| Harm category 1 | 18000 | 7000 | 26000 |
| Very high culpability | | | |
| Harm category 3 | 15000 | 7000 | 24000 |
| Harm category 2 | 17500 | 7250 | 28000 |
| Harm category 1 | 20000 | 7500 | 30000 |

APPENDIX 9 – FINANCIAL PENALTY IN THE CASE OF A BREACH IN RESPECT OF TRANSPARENCY REQUIREMENTS OF MEMBERSHIP OF A CLIENT MONEY PROTECTION SCHEME (REGULATION 4)

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply SBC may reduce the minimum penalties further but may not increase them above the maximum permitted level of £5000.

| | | Range | |
|------------------------------|--------------------|---------|---------|
| | Starting point (£) | Min (£) | Max (£) |
| Low culpability | | | |
| Harm category 3 | 1250 | 250 | 2250 |
| Harm category 2 | 1500 | 500 | 2500 |
| Harm category 1 | 1750 | 750 | 2750 |
| Medium culpability | | | |
| Harm category 3 | 2000 | 1000 | 3000 |
| Harm category 2 | 2250 | 1250 | 3250 |
| Harm category 1 | 2500 | 1500 | 3500 |
| High culpability | | | |
| Harm category 3 | 2750 | 1750 | 3750 |
| Harm category 2 | 3000 | 2000 | 4000 |
| Harm category 1 | 3250 | 2250 | 4250 |
| Very high culpability | | | |
| Harm category 3 | 3500 | 2500 | 4500 |
| Harm category 2 | 3750 | 2750 | 4750 |
| Harm category 1 | 4000 | 3000 | 5000 |