



Notice of a Decision Session

Executive Member for Housing & Safer Neighbourhoods

To: Councillor Lisle (Chair)

Date: Monday 16 October 2017

Time: 4.00 pm

Venue: The Auden Room - Ground Floor, West Offices (G047)

AGENDA

Notice to Members – Post Decision Calling In:

Members are reminded that, should they wish to call in any item* on this agenda, notice must be given to Democratic Services by **4:00 pm** on **Wednesday 18 October 2017**.

*With the exception of matters that have been the subject of a previous call in, require Full Council approval or are urgent which are not subject to the call-in provisions. Any called in items will be considered by the Corporate and Scrutiny Management and Policy Scrutiny Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services **by 5.00pm** on **Thursday 12 October 2017**.

1. **Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. **Minutes** (Pages 1 - 8)

To approve and sign the minutes of the meeting held on 14 August 2017 and 18 September 2017.

3. **Public Participation**

At this point in the meeting, members of the public who have registered to speak can do so. The deadline for registering is **5.00pm on Friday 13 October 2017**. Members of the public can speak on agenda items or matters within the Executive Member's remit.

To register to speak please contact Democratic Services - contact details are at the foot of the agenda.

Filming, Recording or Webcasting Meetings

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The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at

https://www.york.gov.uk/downloads/file/11406/protocol_for_webcasting_filming_and_recording_of_council_meetings_20160809

4. Introduction of Civil Penalty Notices for Housing Act Offences
(Pages 9 - 34)

This report outlines a policy to allow the Council to implement the new powers on civil penalties introduced by the Housing and Planning Act 2016 as an alternative to prosecution for a range of offences under the Housing Act 2004.

5. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democratic Services

Contact Details: Fiona Young
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For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

City of York Council

Committee Minutes

Meeting	Decision Session - Executive Member for Housing & Safer Neighbourhoods
Date	14 August 2017
Present	Councillor Lisle (Executive Member)

13. Declarations of Interest

At this point in the meeting, the Executive Member was asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which he had in the business on the agenda. No additional interests were declared.

14. Public Participation

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

15. Minutes

Resolved: That the minutes of the Decision Session – Executive Member for Housing & Safer Neighbourhoods held on 17 July 2017 be approved and then signed by the Executive Member as a correct record.

16. Sheltered with Extra Care: Service Charge

The Executive Member was asked to approve the proposed option to harmonise the service charge for current and new tenants at Glen Lodge over a phased period. The Supported Housing Manager outlined the options and recommendations to the Executive Member and she advised that the proposed option would ensure that the service charge model was fair and sustainable, whilst reducing the risk of financial hardship to affected tenants.

In regard to consultation, the Supported Housing Manager confirmed that conversations had begun with the tenants affected by the proposed changes.

The Executive Member welcomed the proposals and asked what the projected growth was for sheltered housing with extra care. The Assistant Director Housing and Neighbourhood Safety reported that the number of elderly residents over the age of 75 in York was expected to increase by 50% by 2030. He explained the number of places available and the shortfall of available places in future years, noting that there continued to be a need for this type of accommodation.

The Executive Member asked how much cheaper the sheltered housing with extra care was compared to the costs for residential care. The Assistant Director of Housing and Neighbourhood Safety explained that the weekly cost for Glen Lodge was £208, compared to £544 for a council care home with dementia support.

In response to a question from the Executive Member it was clarified that the £8 increase in the residents service charge at Glen Lodge was to fund the increase in staffing levels.

The Executive Leader commended the Officers for delivering their work and it was

Resolved: That;

- i. The revised charge be applied to all new lettings from 1st September, including current tenants who choose to transfer to a different property in Glen Lodge.
- ii. Existing tenants be consulted on a new service charge in line with the annual rent increase in April 2018. Tenants who are directly financially affected and may experience hardship will have this mitigated, so that their service charge will increase by £8 to the weekly service charge each year until they are paying the full rate.
- iii. The final staffing model for intensive housing management be phased in line with the changing demographics of tenants.

Reason:

- i. This approach will ensure the council are able to charge for the cost of services as properties are re-let and ensure that the

service model is both equitable and financially sustainable for the future. Current tenants who do not qualify for Housing Benefit will be directly affected by the increase in charge, however phasing this from the rent increase in over a period of around 10 years from April 2018 will allow customers sufficient time to prepare for the increase, and reduce or eliminate the risk of financial hardship or distress. The Intensive Housing Management staffing in Glen Lodge will be increased in line with the increase in customer need as properties are re-let to customers with a higher level of need.

- ii. Harmonising the service charge and staffing levels at the same rate allow the staffing to be increased at a pace to ensure customers are appropriately supported, without incurring a financial deficit to the council.

Cllr Lisle, Executive Member

[The meeting started at 4.00 pm and finished at 4.15 pm].

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Meeting	Decision Session - Executive Member for Housing & Safer Neighbourhoods
Date	18 September 2017
Present	Councillor Lisle (Executive Member)

17. Declaration of Interest

At this point in the meeting, the Executive Member was asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which he had in the business on the agenda. No additional interests were declared.

18. Public Participation

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

19. Conversion of Alcohol-Related Designated Public Place Orders (DPPOs) to Public Space Protection Orders (PSPOs)

The Executive Member considered a report that asked him to approve the conversion of a number of Designated Public Place Orders (DPPOs), designed to tackle alcohol-related crime and anti-social behaviour, to Public Space Protection Orders (PSPOs).

Officers gave an update and confirmed that the conversions would take place automatically on 20 October 2017. It was noted that a review would be preceded to ensure the ongoing need for a PSPO.

The Executive Member thanked Officers for their report and he welcomed the multi agency approach to tackle alcohol-related anti social behaviour. He noted that a PSPO would be discharged after 3 years, if no incidents were reported.

Resolved:

i) That the following Designated Public Place Orders (DPPOs) for conversion to Public Space Protection Orders (PSPOs), be approved:

- City Walls
- Copmanthorpe
- Scarcroft Green
- Strensall and Towthorpe
- War Memorial Gardens

Reason: There has been a continuation of incidents of alcohol-related anti-social behaviour in these areas over the past 3 years.

ii) That the following DPPOs be discharged:

- Clarence Gardens
- Cleveland Street
- Clifton Moor Community Church
- Duncombe Place
- Exhibition Square
- Glen Gardens, Heworth
- Museum Gardens
- Poppleton Community Centre
- Rawcliffe/Clifton Library
- Rawcliffe Lake
- Salisbury Terrace
- Union Terrace
- Walmgate
- Woodthorpe Green

Reasons:

- i) The Duncombe Place, Exhibition Square, Museum Gardens and Walmgate DPPOs are now incorporated into the wider City Walls DPPO which is recommended for conversion to a PSPO.
- ii) The Clarence Gardens and Union Terrace orders are now incorporated into the Groves PSPO.
- iii) There have been no reported incidents of alcohol-related ASB in the past 3 years in the:

Cleveland Street, Clifton Moor Community Church, Glen Gardens, Poppleton Community Centre, Rawcliffe/Clifton Library, Rawcliffe Lake, Salisbury Terrace areas and Woodthorpe Green areas.

Cllr Lisle, Executive Member

[The meeting started at 4.00 pm and finished at 4.05 pm].

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Decision Session - Executive Member for Housing and Safer Neighbourhoods **16 October 2017**

Report of the Assistant Director – Housing & Community Safety

Introduction of Civil Penalty Notices for Housing Act offences

Purpose of the report

1. To outline a policy to allow the Council to implement the new powers on civil penalties introduced by the Housing and Planning Act 2016 as an alternative to prosecution for a range of offences under the Housing Act 2004.

Recommendations:

2. The Executive Member for Housing and Safer Neighbourhoods is asked to:
 - a) Consider the new powers in line with Government guidance¹ on them
 - b) Approve the attached policy

Reason: to enable the council to use the civil penalties as an alternative to prosecution for specific penalties under the Housing Act 2004

Background Information

3. The Housing and Planning Act 2016, as part of a range of new measures to crack down on rogue landlords, introduced civil penalties of up to £30,000 as an alternative to prosecution for specified offences. This provision came in to force on the 6th April 2017 alongside statutory guidance. The council must have regard to this guidance when developing their policy.
4. A civil penalty is a financial penalty imposed by a council on an individual or organisation as an alternative to prosecution. We will be able to

¹ Civil Penalties under the Housing and Planning Act 2016 <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

impose a civil penalty for the following offences under the Housing Act 2004

- Section 30 – failure to comply with an improvement notice
 - Section 72 – mandatory licensing of HMO
 - Section 95 – licensing under Part 3 of the Housing Act 2004
 - Section 139 – failure to comply with an overcrowding notice
 - Section 234 – breach of management regulations in respect of HMO
5. The powers are not retrospective and will not apply to offences committed before the 6th April 2017. The council cannot both apply a civil penalty and prosecute for the same offence.
6. Before considering whether to apply a civil penalty the council must ensure that they have the same criminal standard of proof as is required for a prosecution. On the 28th September 2017 the Executive considered changes to the Enforcement Policy² which included penalties as an option to consider when taking formal enforcement action. This enforcement policy determines that the most appropriate enforcement action is taken. It is the intention of the council to use civil penalties as the main enforcement option instead of prosecution in line with Government guidance. The proposed attached policy outlines an approach which determines the appropriate level of civil penalty to be imposed once the decision to take enforcement action has been approved.
7. The overriding principle when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation. The guidance advises that we should consider a range of factors when setting the penalty. The factors being:
- Level of culpability
 - Level of harm
 - Severity of the offence
 - Aggravating Factors
 - Mitigating Factors
 - Penalty to be fair and reasonable
 - Penalty to be such as to be a deterrent and remove the gain derived through the failure to comply

² <http://democracy.york.gov.uk/documents/s117171/Annex C - Proposed Enforcement Policy.pdf>

8. Following a decision to impose a civil penalty rather than alternative legal action, the council must follow the procedure outlined in schedule 13a of the Housing Act and which is outlined in the policy. This includes the council serving an initial Notice of Intent and a Final notice.
9. Critically the council must, as part of that Notice procedure, set out the amount of the financial penalty, the reasons for imposing the penalty, information about how to pay, the payment period, how to make an appeal and the consequences of failure to comply with the notice.
10. If the council decides to serve a final notice, following the 28 day period for representations, then the person can still make an appeal to the First Tier Property Tribunal. During this appeal stage the final notice is suspended until the appeal it is determined or withdrawn by either party.

Consultation

11. Officers have been working with colleagues across the region to draft a policy which fully takes account of the law and the statutory guidance further reducing the risk that neighbouring councils adopt different approaches.

Options

- 12 **Option 1** -. To introduce the civil penalties as an alternative to prosecution
- 13 **Option 2** -. Not to introduce civil penalties

Analysis

14. **Option 1** – The private rented sector (PRS) is an important part of our housing market forming about 19% of the total housing stock within the city. While the standards have improved, our 2015 BRE research evidence base found the PRS to be the worst housing tenure sector with 1/3 of all hazards³ in this tenure despite it forming less than 20% of the whole housing stock.
- 15 We have worked to raise standards in the PRS and continue to support good landlords through a range of initiatives including the HMO licensing programme, the council's accreditation scheme, YorProperty, the council's letting agency YorHome, Landlord training, conferences and e-newsletters. However we are aware of a small number of landlords and

³ Category 1 Hazards

agents in the sector who knowingly rent out unsafe and substandard properties. The attached policy aims to utilise the full powers available with a view to tackling the landlords who deliberately flout the law. It should be noted that government has given a significant steer by advising

“It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”⁴

- 16 **Option 2** – Not adopting a policy will mean that we are unable to utilise these powers and will mean that we won’t have an additional effective tool to tackle the worst end of the PRS.

Council Objectives

- 17 Introduction of this policy will support and contribute towards a number of the Administration’s council key priorities:
- A prosperous city for all
 - A focus on frontline services
 - A council that listens to residents

Implications

- 18 The implications arising directly from this report are:
- **Financial** – Any income raised as civil penalties must be used to raise standards in the Private Rented Sector Housing
 - **Procurement** – None
 - **Human Resources** – Currently we are considering the resource implications. These would be funded from the fee income.
 - **Equalities Implications** – Attached is the Community Impact Assessment (Appendix B)
 - **Legal Implications.** The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

⁴ House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government)

Risk Management

- 19 This approach enables the council to utilise the full range of powers available to tackle the worst element of the PRS.

Contact Details

Authors:	Chief Officer Responsible for the report:		
Ruth Abbott Housing Standards and Adaptations Manager 554092 Rachel Antonelli Senior Solicitor 01904 551043	Tom Brittain Assistant Director - Housing & Community Safety.		
	Report Approved	✓	Date 5/10/17
Wards Affected: <i>All</i>			
For further information please contact the authors of the report			

Appendices

- Appendix A - City Of York Council Civil Penalties Policy
- Appendix B - Community Impact Assessment

Background Papers

- Report to Executive by the Director of Economy and Place - Update on Formal Enforcement Action and Review of Enforcement Policies, 28 September 2017

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City Of York Council
CIVIL PENALTIES POLICY

This policy should be read in conjunction with the City of York Council's (Council) Enforcement Policy (the Enforcement Policy) published by the Council and the Civil Penalties under the Housing and Planning Act 2016, Guidance for Local Authorities published by the Department of Communities and Local Government (DCLG)

The policy is divided in to two sections:

- 1) Introduction and the civil penalty notice procedure
- 2) The steps that the Council will take to determine the level of civil penalty

Section 1 Introduction and Procedure

The Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. Section 249A of the Housing and Planning Act 2016 establishes the legal basis for imposing civil penalties as an alternative to prosecution for specific offences under the 2004 Act.

Civil penalties are an alternative when a landlord fails to comply with:

- Section 30 – failure to comply with an improvement notice
- Section 72 – mandatory licensing of HMO
- Section 95 – licensing under Part 3 of the Housing Act 2004
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO

The Government has laid out statutory guidance as to the process and the criteria that needs to be considered when determining civil penalties. These are:

- The culpability and track record of the offender
- The level of harm caused to the tenant
- The severity of the offence
- Aggravating Factors
- Mitigating Factors
- Penalty to be fair and reasonable but should remove any financial benefit the offender may have obtained as a result of committing the offence
- Whether it will deter the offender from repeating the offence

The statutory guidance indicates that a Council should ensure that the civil penalty acts as a punishment, takes into account any previous patterns of offending and no offender should benefit as a result of committing the offence.

The law allows a maximum financial penalty of £30k per offence. In determining the level of any penalty a Council will have regard to local circumstances, the

relevant local enforcement policy and the relevant Government guidance detailing the factors to take into account, as shown above.

The overriding principle of when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation.

What is the burden of proof for a civil penalty?

The proof is the same as set out previously for the offences under the Housing Act 2004. For a criminal prosecution the Council must satisfy itself that it can show beyond reasonable doubt that the landlord has committed the offence and that if heard in a magistrates' court there would be realistic prospect of conviction.

The Council will have consideration of the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions when considering the evidence.

The Council will consider:

- Does it have sufficient evidence to prove beyond reasonable doubt that an offence has been committed by the landlord? – see Evidentiary Stage of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions
- Is there a public interest in imposing a Civil Penalty on the landlord in respect of the offence? – Public Interest Stage of the Full Code Test in the "Crown Prosecution Service Code for Crown Prosecutors" published by the Director of Public Prosecutions
- Has the Council taken into account its own Enforcement Policy when deciding to impose the civil penalty including the alternative option of prosecuting for the offence?

All decisions as to determining whether or not to pursue a civil penalty will be in accordance with the Enforcement Policy covering Private Sector Housing.

Process for Imposing a Civil Penalty

Where it has been determined by the Council that a financial penalty is the most appropriate action as an alternative to prosecution, the Council will follow the process set out below.

A "Notice of Intent" will be served on the person suspected of committing the offence. The Notice will specify:

- a. The amount of any proposed financial penalty
- b. The reasons for proposing the financial penalty
- c. Information about the right to make representation to the Council.

The person to whom the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. Representations can be made against an element of the proposed action. If the landlord challenges the level of the civil penalty it will be for them to provide appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence will mean that the Council will not be able to consider any representation against the level of penalty imposed.

Representations can only be made by the recipients served with a Notice of Intention. No other parties have an automatic right to make representations; the Council will consider any such information on a case by case basis.

Following the 28 day period the Council will decide whether it receives representation or not:

- a. Whether to impose a financial penalty on the person, and
- b. The value of any such penalty imposed.

If a Council decides to impose a financial penalty, a final notice will be issued imposing that penalty. The final notice will specify:

- a. the amount of the financial penalty,
- b. the reasons for imposing the penalty,
- c. information about how to pay the penalty,
- d. the period for payment of the penalty (28 days from the date of the final notice)
- e. information about rights of appeal to the First Tier Tribunal
- f. the consequences of failure to comply with the notice.

The Council can at any time withdraw either the Notice of Intent or Final Notice or reduce the level of penalty imposed. This will be in the form of a written notice to the person on whom the notice has been served.

If the Council decides to withdraw a civil penalty, it has the right to pursue a prosecution against the landlord for the original offence for which it was imposed. Each case will be considered on its merits and be in the public interest.

The person who has been served a Final Notice has the right of appeal to a First Tier Tribunal. In the event of an appeal against the council decision the penalty would be suspended until the decision has been determined.

Payment of the civil penalty will be within 28 days of the date of the Final Notice, unless appealed. Where appealed and the decision to serve the Notice upheld it

will be for the Tribunal to specify the period in which the landlord is to pay any fine imposed.

There is a reduction of a third of the penalty if at the first opportunity the landlord admits guilt for the offence and immediately remedies any outstanding issues. This is in line with the Sentencing Guidelines and will only be available for the first offence and will not be less than the minimum level of penalty. Any subsequent offence will not be subject to any reduction.

The discount will only be applied to the landlord when the Council serves the Notice of Intent and the following criteria is met:

- The payment is made within the 28 days of the date of the Notice of Intent
- The payment is made in full

At any point after 28 days of service of the notice of the Notice of Intent there will be no further offer of any reduction in the level of penalty.

This reduction will only be implemented if the level of gain is below the civil penalty. If the level of gain is above the reduction but less than the calculated penalty the reduction will be the level of gain plus £2k or 10% whichever is the greater.

If the financial penalty imposed is not paid within the appropriate time period, either 28 days from the date of the Final Notice or within such time as determined by the First Tier Tribunal the Council will commence proceedings to recover the debt owed. This will include the recovery of any additional costs to the Council from having to undertake such action. This process will be the Council's existing recovery policy and procedures for the collection of such debt including pursuance of the debt via the county courts if appropriate.

A certificate signed by the Chief Finance Officer for the Authority including the outstanding amount due will be accepted by the courts as conclusive proof of any outstanding payment due to the Council.

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

It is for the offender to disclose to a Council such data relevant to his financial position as this will enable it to assess and determine what they can reasonably afford to pay.

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

However when considering the level of any financial penalty the final determining factor will always be the level of financial gain as a result of the landlord's failure to comply with the relevant legislation.

Consequences of a Civil Penalty

Financial Penalties are an alternative to criminal proceedings and unless withdrawn and the Council determines that in the public interest a prosecution for the ordinal offence is the preferred option, then a landlord cannot be prosecuted for the same offence once the penalty has been paid and the matter concluded.

Should a civil penalty has been imposed on a landlord it will not automatically prevent the Council from granting a licence under Part 2 or 3 of the Housing Act 2004. The Council will consider each case on its merits including the reasons for the penalty and the extent of the person's involvement in any property under consideration.

Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, a Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, a Council will have regard to any guidance issued by the Secretary of State and best practise available.

Section 2 -Determining the Level of the Civil Penalties

When considering the severity of any offence Section 143(1) Criminal Justice Act 2003 states “In considering the seriousness of any offence the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably caused” It also considers harm as encompassing those offences where harm is caused but also those where neither individuals nor the community suffer harm but a risk of harm is present.

In order to set the level of the penalty the following steps will be considered by the Council:

Step 1– the Council will determine the level of penalty based on:

- the culpability and track record of an offender and
- the level of harm to the tenants

Step 2- the Council will make adjustments to the initial determination of that level of penalty having regard to:

- any aggravating or mitigating circumstances
- the totality of that level
- that the level is fair and proportionate but in all instances act as a deterrent and removes any gain

Step 3 – the Council will make adjustments to the final determination should the offender provide written information/proof to demonstrate the impact of the level fine would be unfair and disproportionate.

Step 1 Setting the initial determination

1) Culpability and track record of an offender

The level of culpability of a person will depend upon a number of factors:

High level of culpability

A person will be deemed to be highly culpable when they intentionally or recklessly breach or wilfully disregard the law:

- They have a history of non-compliance
- Despite a number of opportunities to comply they have failed to do so
- Have been obstructive as part of the investigation
- Failure to comply results in significant risk to individuals
- Are a member of a recognised landlord/letting agency association or accreditation scheme
- Are a public figure who should have been aware of their actions

- Are an experienced landlord/agent with a portfolio of properties failing to comply with their obligations
- Serious and/or systematic failure to comply with their legal duties

Medium level of culpability

A person commits an offence through an act or omission a person exercising reasonable care would not commit.

- It is a first offence – with no high level culpability criteria being met i.e. a member of an accreditation scheme
- Failure is not a significant risk to individuals
- The landlord/agent had systems in place to manage risk or comply with their legal duties but these were not sufficient or adhered to or implemented.

Low level of culpability

A person fails to comply or commit an offence with little fault:

- No or minimal warning of circumstances/risk
- Minor breaches
- Isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance

The above examples are not exclusive and other factors may be taken into account when considering the level of culpability.

2) Level of harm to the tenant

When considering the level of harm both the actual, potential and likelihood of the harm will be considered

High

A high level of harm could constitute:

- Serious effect on individual(s) or widespread impact
- Harm to a vulnerable individual
- High risk of an adverse effect on an individual
- Serious level of overcrowding

Medium

A medium level of harm could constitute:

- Adverse effect on an individual – not high level of harm
- Medium risk of harm to an individual
- Low risk of a serious effect

- The Council’s work as a regulator to address risks to health is inhibited
- Consumer/tenant mislead

Low

A low level of harm could constitute:

- Low risk of harm or potential harm
- Little risk of an adverse effect on individual(s)

The above examples are not exclusive and other factors may be taken into account when considering the level of harm.

What is meant by a vulnerable individual?

The statutory guidance states that the harm caused and vulnerability of the individual are important factors in determining the level of penalty.

The Housing Act 2004 defines a vulnerable individual(s) as one who is at greater harm and therefore the penalty should be greater when vulnerability is an issue.

The statutory guidance makes it clear that it is for each Council to determine the level of fine imposed under the Housing and Planning Act. The table below shows the initial level of fine for each level of culpability and harm, including the minimum level of fine which will be imposed for each classification

DETERMINATION OF CIVIL PENALTY LEVEL				
LEVEL OF CULPABILITY	LEVEL OF HARM			MINIMUM FINE LEVEL (when considering migrating factors)
	HIGH	MED	LOW	
HIGH	25000	15000	7500	6000
MED	15000	10000	5000	4000
LOW	7500	5000	2500	2000

Step 2 Adjustments to the Initial Determination

In order to determine the final penalty the Council will consider both aggravating and mitigating factors in each case. These will adjust the initial level of the penalty based on these factors.

Below is a list of both aggravating and mitigation factors which will be considered as part of the determination. The list is not exhaustive and other factors may be considered depending on the circumstances of each case.

Aggravating factors could include:

- Previous convictions having regard to the offence to which applies and time elapsed since the offence
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash

When considering previous offences regard should be given to the guidance on Banning Orders as well as any relevant offence such as trafficking etc

Mitigating factors could include:

- Cooperation with the investigation e.g. turns up for the PACE interview
- Voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt for the offence(s)
- Willingness to undertake training
- Willingness to join recognised landlord accreditation scheme
- Health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence
- Good character and/or exemplary conduct

For each aggravating or mitigating factor which applies to each specific case the level of fine will be adjusted by 5% of the initial fine, up to the maximum £30k or to the minimum fine for each determined level of culpability and harm as shown in the table above.

The only exception to this principle will be for the number of items of non-compliance which will be 5% for the first 5 items and 10% for any number of items greater than this level of non-compliance with items on any notice which has not been complied with.

Totality Principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality.

The total financial penalty is inevitably cumulative.

The Council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the Council.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved.

For example:

- Where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no 'double-counting'.

Fair and Proportionate

A third determinate of any civil penalty MUST be the general principle:

THE CIVIL PENALTY SHOULD BE FAIR AND PROPORTIONATE BUT IN ALL INSTANCES SHOULD ACT AS A DETERRENT AND REMOVE ANY GAIN AS A RESULT OF THE OFFENCE

The statutory guidance states that a guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed must never be less than what it would have cost the landlord to comply with the legislation in the first place.

When determining any gain as a result of the offence the Council will take into account the following issues

- Cost of the works required to comply with the legislation
- Any licence fees avoided
- Rent for the full period of the non-compliance – reviewed in conjunction with any
- Any other factors resulting in a financial benefit – potential cost of re-housing any tenants by the Council
- As penalty to act as a deterrent the cost to the Council of their investigation.

If the level of gain less than the calculated penalty the reduction will be the level of gain plus £2k or 10% whichever is the greater to the maximum of £30k.

Step 3 Final determination of the level of any civil penalty

On appeal to the initial notice the person may advise that the impact

- of the financial penalty on the offender's ability to comply with the law
- of the penalty on third party – employment of staff, customers etc
- on the offender – is it proportionate to their means – loss of home etc.

However it must be remembered that as property owners if they claim the inability to pay and show their income is small then there can always be consideration to the property/properties they own which can be sold or refinanced.

Recording of the decision

A record of each decision and the reasons for the financial penalty will to be made by an officer and how the amount of the penalty was obtained and the reasons for imposing it.

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SECTION 1: CIA SUMMARY



Community Impact Assessment: Summary

1. Name of service, policy, function or criteria being assessed: Introduction of Civil Penalty Notices

2. What are the main objectives or aims of the service/policy/function/criteria? To

Implement the new powers on civil penalty notices introduced by the Housing and Planning Act 2016 as an alternative to prosecution

3. Name and Job Title of person completing assessment: Ruth Abbott Housing Standards and Adaptations Manager

4. Have any impacts been Identified? (Yes/No)

Yes

Community of Identity affected:

Age

Summary of impact:

There is a significant Private Rented Sector in the city including a large student population, young professionals and people under 35 who are benefit living in HMOs and an increasing number of young families.

5. Date CIA completed: 3rd October

6. Signed off by:

7. I am satisfied that this service/policy/function has been successfully impact assessed.

Name:

Position:

Date:

8. Decision-making body:

Executive Member for Housing and Safer Neighbourhoods

Date:

16th October

Decision Details:

Send the completed signed off document to ciasubmission@york.gov.uk It will be published on the intranet, as well as on the council website.

Actions arising from the Assessments will be logged on Verto and progress updates will be required

Community Impact Assessment (CIA)

Community Impact Assessment Title:

What evidence is available to suggest that the proposed service, policy, function or criteria could have a negative (N), positive (P) or no (None) effect on quality of life outcomes? (Refer to guidance for further details)

Can negative impacts be justified? **For example: improving community cohesion; complying with other legislation or enforcement duties; taking positive action to address imbalances or under-representation; needing to target a particular community or group e.g. older people.** NB. Lack of financial resources alone is NOT justification!

Community of Identity: Age

Evidence	Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)
Data from the Business Intelligence Hub Private Sector Stock Condition Survey 2008 BRE research 2015 Landlord Survey 2014	Longevity; Physical Security; Health; Standard of Living;	Positive	None
Details of Impact	<i>Can negative impacts be</i>	Reason/Action	Lead Officer
			Completion Date

	<i>justified?</i>			
<p>Positive</p> <p>To adopt a policy which aims to utilise the full powers available with a view to tackling landlords who deliberately flout the law and provide unsafe and substandard properties</p>		<p>To ensure effective enforcement of laws relating to the Private Rented Sector . This will be in line with our Enforcement Policy adopted on 30th September 2017</p>	<p>Housing Standards and Adaptations Manager</p>	<p>Ongoing</p>

Community of Identity: Carers of Older or Disabled People			
Evidence	Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)

Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Disability

Evidence	Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)

Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Gender

Evidence	Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)

Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Gender Reassignment

Evidence		Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)
Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Marriage & Civil Partnership

Evidence		Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)

Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Pregnancy / Maternity

Evidence		Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)

Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Race

Evidence		Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)

Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Religion / Spirituality / Belief

Evidence		Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)
Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date

Community of Identity: Sexual Orientation

Evidence		Quality of Life Indicators	Customer Impact (N/P/None)	Staff Impact (N/P/None)

Details of Impact	<i>Can negative impacts be justified?</i>	Reason/Action	Lead Officer	Completion Date