

Safer Housing – Revised Civil Penalties Policy  
(Section 249A & Schedule 13A Housing Act 2004 (As amended)).

Background

1. The Government introduced significant new discretionary powers under the Housing and Planning Act 2016 which enabled Local Housing Authorities to impose civil financial penalties on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004 (the Act).
2. The City Council adopted a Policy for the use of financial penalties as a formal enforcement option in August 2017 (See Delegated Decision Reference 2919). This current decision recommends the adoption of a revised, updated Policy for financial penalties. The Council remains of the view that civil penalties act as a powerful deterrents for those landlords who might otherwise have considered that the financial benefits of non-compliance outweighed the risk of enforcement action against them. The power to impose civil penalties will encourage landlords to reconsider poor practices leading to greater levels of compliance and improved housing standards across Nottingham's Private Rented Sector.
3. Local housing authorities have the power to impose a civil penalty of up to £30,000. Authorities are guided towards developing and documenting their own policy on determining the appropriate level of civil penalty in a particular case. Generally, the maximum amount should be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. Income received from civil penalties may be retained by the local housing authority and used to further develop enforcement activities within the private rented sector.
4. The amount of penalty is determined by the local housing authority in each case. In determining an appropriate level of penalty, local housing authorities must have regard to statutory government guidance which sets out the factors to take into account when deciding on the appropriate level of penalty. Recipients of financial penalties have the right to appeal a local housing authority decision in the first Tier Property Tribunal.
5. Only one penalty can be imposed in respect of the same offence. Government Guidance states that local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:
  - (a) Severity of the offence. The more serious the offence, the higher the penalty should be.
  - (b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
  - (c) The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm when (this may be as perceived by the tenant), the higher the amount should be imposing a civil penalty.

- (d) Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- (e) Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- (f) Deter others from committing similar offences. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties. Where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- (g) Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

#### Case Law

6. Schedule 13A of the Act provides the legal process that must be followed where financial penalties are to be imposed. The recipient of a financial penalty is able to challenge a local housing authority decision to impose a financial penalty or the level of financial penalty on appeal to the First Tier Property Tribunal. As would be anticipated after the introduction of new powers and a period of operating with such new powers, there is now a body of national Tribunal Appeal Judgements that can be viewed publicly and a handful of Upper Tribunal decisions which together have influenced the development of the Council's amended Policy. Of particular note is the decision of the Tribunal in *Waltham Forest LBC v (1) Marshall (2) Ustek* [2020] UKUT 0035 (LC). In this case, the Upper Tribunal affirmed that, when considering an appeal against the amount of a financial penalty imposed under section 249A, Housing Act 2004, the First-tier Tribunal must give "special" and "considerable" weight to the local authority's decision. Further, the Tribunal may not entertain a challenge to the authority's enforcement policy. It may depart from it, when making its decision, but only in certain circumstances, and only if the appellant discharges the burden of persuading it to do so. This judgement reiterates the level of regard given to Local Authority Decisions and Policy by the Tribunals but also the importance of a transparent processes which citizens, whom may be the recipient of financial penalties, can properly view and challenge the Council as part of due legal process.

#### Summary of amendments

7. The Policy document has been restructured and the process used to determine the penalty amount for an offence has been refined. Under the new policy, a 7 step process is used to determine penalty amounts. An overview of the process is as follows:

		<b>Summary of amendments</b>
Step 1:	Culpability	This section now includes a greater number of example behaviours within each level of culpability.
Step 2	Seriousness of Harm Risked	No change.
Step 3:	Penalty Band:	Calculations now start at the mid-point of the penalty band to enable flexibility taking account of the need to balance mitigating and aggravating features of each offence.
Step 4:	Offence mitigation and/or aggravating features	This section now includes a greater number of example behaviours.
Step 5:	Calculating financial benefit.	<p>Greater amount of examples of financial benefit. The Policy now includes a matrix for calculating a proportion of financial benefit to be added to a penalty which is directly connected to the level of culpability and harm in each case. In cases where rent has been paid by Housing Benefit, the Policy anticipates that the full financial gain may be included in the calculation for determining the Penalty Amount.</p> <p>Where financial benefit is taken into account, the full Penalty remains capped within the Penalty band, unless there are circumstances that justify the amount going outside of the band.</p>
Step 6:	Combining figures to get total penalty amount	No change.
Step 7:	Considering Landlord representations	Clarified processes around how the Council will treat Landlord Representations within the financial penalty process.

8. At every step the Policy has been reviewed and refined with the intention of securing:
- (i) a process that is transparent and imposed appropriately in accordance with the Council's overarching Enforcement Policy; and
  - (ii) that any penalty amounts are proportionate to the offending that has occurred.