

## Appendix 2

### Civil Penalty Matrix

<b>DETERMINATION OF INITIAL CIVIL PENALTY LEVEL</b>			
<b>Level of culpability</b>	<b><u>Level of harm/effect</u></b>		
	HIGH	MED	LOW
HIGH	£30,000	£15,000	£7,500
MED	£15,000	£7,500	£3,750
LOW	£7,500	£3,750	£1,875

### Determining the Initial Level of Civil Penalties

In order to set the level of civil penalty the Council will take the following steps:

#### **Step 1**

- Assess the culpability and track record of an offender and,
- Assess the level of harm, or potential harm, to the occupiers

#### **Step 2**

We will then make adjustments having regards to:

- Any aggravating or mitigating circumstances

#### **Step 3**

Make final adjustments to ensure that:

- The level of penalty is fair and proportionate but in all instances will act as a punishment/deterrent and removes any benefit to the offence.

### Notes

#### Culpability and track record of an offender

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

#### High level of culpability

A person will be deemed to be highly culpable where the Council is satisfied that they intentionally or recklessly breach or willingly disregard the law. Factors which may lead to that conclusion include:

- A history of non-compliance
- Despite a number of opportunities to comply they have still failed to comply
- The offender has been obstructive to the investigation or to investigating Officers
- The offender is an experienced landlord/agent with a portfolio of properties and would be expected to know their responsibilities

- There have been serious and/or systematic failure to comply with their legal duties

#### Medium level of culpability

Where a landlord commits an offence through an act or omission which the Council considers that a person exercising reasonable care would not commit. Factors that may lead to that conclusion include the following:

- It is a first time offence- with no high level culpability criteria being met
- The landlord/agent had systems in place to manage risk or comply with their legal duties but the systems were not sufficient or being complied with on this particular occasion

#### Low level of culpability

Where a person fails to comply, or commits an offence where:

- There was no or minimal warning given to the offender
- The breaches are minor
- The offence is an isolated occurrence
- A significant effort has been made in order to comply but was inadequate and did not achieve compliance

The above lists of factors are not intended to be exhaustive and when considering the level of culpability and other factors may be taken into account.

#### **Level of harm or effect to the occupier**

When considering the level of harm the Council will have regard to actual harm, potential harm and the likelihood of harm:

##### High

- Actual harm to an individual
- High risk of harm to an individual
- Serious level of overcrowding
- Serious effect on individual(s) or a widespread impact

##### Medium

- Adverse effect on an individual
- Medium risk of harm to an individual
- Moderate risk of harm to an individual(s) or a broader impact

##### Low

- Minimal adverse effect on individual(s)
- Low risk of harm to an individual
- Limited impact or effect on occupiers

The above lists of factors are not intended to be exhaustive and when considering the level of harm other factors may be taken into account.

**Making further adjustments to the initial level of Civil Penalty: STEP 2).**

The Council will consider if there are aggravating and/or mitigating factors in each case. These factors may affect the initial level of penalty reached in stage 1.

**Aggravating factors** may include but are not limited to:

- Previous convictions having regard to the offence to which it relates and the time elapsed since that offence
- Landlord 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
- A record of letting substandard accommodation
- A record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash

**Mitigating factors** may include, but are not limited to:

- Co - operation with the investigation e.g. attends a PACE interview
- Any voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt and remorse for the offence(s)
- Willingness to undertake training
- Health reasons preventing reasonable compliance e.g. mental health, unforeseen health issues, emergency health concerns
- Has no previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence
- Previous 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 accordingly based on the circumstances, up to the maximum fine of £30k.

**Determining the Final Level of Civil Penalty: STEP 3).**

The statutory guidance advises 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 will normally not be less than what it would have cost the landlord to comply with the legislation in the first place.

The final consideration when setting the level of penalty is therefore, making sure that any financial benefit to the offender of committing the offence is removed, and that as well as being fair and proportionate, the level of penalty acts as an effective deterrent.

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
- Any other factors resulting in financial benefit

This matrix should be read in conjunction with Derbyshire Dales District Council's Civil Penalty Enforcement Policy and the [current guidance](#) issued by the Ministry of Housing, Communities and Local Government.

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