Service Enforcement Policy (Part 1)

Contents

Introduction

Fair and effective enforcement is essential to protect the health, safety and interests of the residents, visitors and businesses of Redcar and Cleveland.

This Service Enforcement Policy is designed to make sure that everyone knows the principles that the Service will apply when carrying out enforcement work, ensuring that the same principles are routinely applied, and that everyone involved in the process is treated fairly, consistently, and effectively.

The primary aim of enforcement activities is to achieve regulatory compliance to protect the general public, legitimate businesses, the environment, and groups such as consumers, residents and workers.

Enforcement includes actions aimed at ensuring that individuals or businesses comply with the law, carried out in the exercise of, or against the background of, appropriate statutory powers. This is not limited to formal enforcement action such as prosecution but includes, for example, the provision of warnings and advice to aid compliance.

Part 1: Common Enforcement Policy

The Authorities Enforcement Policy consists of two distinct parts:

Part 1 is an 'umbrella' policy which contains information that is common to all enforcement activities across the Service.

Part 2 is a Team specific policy which includes details of enforcement options and the circumstances where each option will be used. The specific Team areas covered by Part 2 are:

- Environmental Protection
- Environmental Health (Commercial)
- Trading Standards and
- Housing Standards.

Part 2 policies are available separately on request.

This Policy applies to all Teams within the Service. The purpose of this Part of the policy is to summarize the Authority's approach to the enforcement of legislation. This part should be read in conjunction with the relevant team specific policies (see Part 2).

"Enforcement" is defined as including any advice, inspection, action, instruction or warning, caution, prosecution (or other types of court action) taken in relation to a person or organisation who is or is believed to be acting unlawfully.

The Authority will take a graduated approach to enforcement of legislation, where this is permitted. All person(s) and Businesses will be encouraged to understand the nature and extent of their responsibilities and comply voluntarily. The Authority will pursue prosecution where circumstances indicate a significant risk or crime or where formal action is otherwise in the public interest.

There may be limited circumstances where the Authority will decide to prosecute without prior warning.

Any departure from the policy or decision to prosecute without prior warning will be capable of justification and be fully considered by the Head of Service or the Assistant Director, before a decision is made, unless it is considered that there is a significant risk in delaying the decision.

This policy commits the Service to good enforcement practice, in considering whether to initiate enforcement action the Authority will take account of the following:

- the Code for Crown Prosecutors.
- the Enforcement Concordat.
- the Regulators Compliance Code.
- Police and Criminal Evidence Act 1984 (and associated Code of Practice).
- Criminal Procedure and Investigations Act 1996 - Attorney General's Guidelines on Disclosure. – made under the Criminal Procedure and Investigations Act 1996, Code of Practice Order 2020
- The Regulation of Investigatory Powers Act 2000 (RIPA)
- Criminal Justice and Police Act 2001.
- Regulatory Enforcement and Sanctions Act 2008.
- Investigatory Powers Act 2016.
- Forensic Science Regulator Code of Practice.
- Council procedures: codes of conduct & Corporate Complaints Procedure.
- Investigation Process: Legal process guidelines.
- UK General Data Protection Regulation and The Data Protection Act 2018.
- Have regard to the provisions of any other Code of Practice published by a Government Department or other advisory body as necessary and
- other service specific codes or guidance.

Further information on individual documents is provided in Part 2.

Principles of Enforcement

The Service is committed to firm but fair regulation. Underlying this policy are the principles of:

- **Proportionality** in the application of the law and in securing compliance.
- **Consistency** of approach and application
- **Transparency** about how the Service operates and what those regulated may expect from the Service, and
- **Targeting** of enforcement action.

Proportionality
Any enforcement action taken to achieve compliance or bring duty holders/ individuals to account for non–compliance action will be proportionate to the seriousness of the breach. This does not preclude court action as a first step, although no prosecution will be undertaken without subjecting the case to the tests outlined in the Code for Crown Prosecutors published by the Crown Prosecution Service.

Consistency
The Service will endeavor to carry out activities in a fair, equitable and consistent manner. However, consistency is not a simple matter. In each case officers will consider a few variables including:

- the degree of risk.
- the attitude and competence of management/duty holder.
- the previous history of the duty holder and
- the seriousness of the breach/offence.

The Service has systems in place to promote consistency between officers and other authorities and enforcement bodies.

Transparency
Officers will help duty holders to understand what is expected of them and what they should expect from the Service.

Individuals or businesses may have a right to query or appeal against enforcement action where there are statutory appeal mechanisms. Details of these will be provided where appropriate.

Targeted
Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious risk or where the risks are less well controlled. Action will be primarily focused on those directly responsible for any breach and who are best placed to control it.

Where necessary, statutory powers that exist to enable investigations to continue outside the Council's boundary will be used.

Authorisation of Officers

The Authority has a system for delegating authorisation to individual officers. This delegation is contained in the Authority's constitution which is available online.

It is the Council's procedure that only officers authorised through the delegated powers described in the Council's Constitution will take enforcement action.

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action.

Penalties and Offences

The courts have considerable scope to punish offenders and to deter others, including imprisonment or unlimited fines for some offences. The offences will be made clear to prospective defendants throughout the investigation.

Where enforcement includes the issuing of civil penalties, officers will have regard to any applicable statutory guidance when determining the appropriate level of those penalties, and the council's adopted policy. Each breach will be considered on a case by case basis, and the maximum penalty amount will only be reserved for the worst offenders.

Primary Authority Scheme

The Authority is committed to the Primary Authority Scheme, that gives companies the right to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance.

In taking enforcement action officers will notify and agree any legal action with the Primary Authority associated with a business (if such a partnership exists) before taking action unless enforcement action is required to deal with an imminent risk e.g. health and safety prohibition notice.

More information on the Primary Authority scheme is available from:
Local regulation: Primary Authority - GOV.UK

Investigation with other Agencies

Where an enforcement role is shared with another Agency, it is the policy of this authority to undertake joint enforcement activity in order to minimise any unnecessary duplication and delay. Joint working may be undertaken with agencies including other local authorities, other council services, the Police and HM Revenue & Customs Office for Product Safety and Standards (OPSS), National Trading Standards Teams or any other relevant agency as appropriate.

Equality and Diversity

The Authority has a firm commitment to ensuring full and equal access to all services. This may include:

- The provision of translators for interviews where the interviewee's first language is not English.
- The carrying out of enforcement visits outside normal office hours when the business concerned operates at those times.

- The explanation of actions to fulfil commitments under the UK General Data Protection Regulations under the Data Protection Act 2018.

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.

When dealing with juveniles or people who are vulnerable due to learning difficulties, mental illness or any other factor, due regard will be taken of this.

The Council is a public authority for the purposes of the Human Rights Act 1998 and will apply the principles of The European Convention of Human Rights with particular regard to the right of a fair trial and the right to respect for private and family life, home, and correspondence.

Status and Review

This policy will be reviewed on a regular basis but any interim need to make amendments, such as in the case of a change in legislation, addition of any new civil penalty policies, will not trigger a full review.

Should you have any queries about this policy please contact:

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Enforcement Policy (Part 2) Trading Standards

AIM

This document must be read in conjunction with **Service Enforcement Policy Part 1** which is an ‘umbrella’ policy which contains information that is common to all enforcement activities.

Part 2 of the Enforcement Policy is service specific. This policy also sets out the Council’s principles for enforcing and executing its duties as the Trading Standards Team, under the relevant statute.

The policy covers areas of the Trading Standards Team’s work where enforcement of consumer protection legislation may be involved,::- This includes

- Fair trading and consumer protection; including fraud, intellectual property, age restricted sales, illicit tobacco control,
- Product Safety and Weights & Measures,
- Feed hygiene and agricultural animal health and welfare

The primary objective is to achieve regulatory compliance and we do this mainly through advice and information. Where it becomes necessary to take formal action this will be done. There are a wide range of tools available, and this Policy aims to ensure that a sanction that is relevant and proportionate to the offence or contravention will always be chosen. The policy explains the objectives and methods for achieving compliance and the criteria considered when deciding what the most appropriate response is to a breach of legislation.

Where an enforcement role is shared with another Agency, it is the policy of this authority to undertake joint enforcement activity to minimise any unnecessary duplication and delay. Joint working may be undertaken with agencies including other local authorities, the Police and HM Revenue & Customs, Office for Product Safety and Standards (OPSS), Illegal Money Lending Team (ILMT) or any other relevant agency as appropriate.

When conducting investigations we will follow all reasonable lines of enquiry and utilise investigatory techniques within the powers that we have been granted.

- Covert surveillance of individuals will be carried out when appropriate but will be conducted within the legislative framework.

- Together with the other Authorities within the North-East area, we work in conjunction the National Trading Standards Regional Investigations Team (NE). This government-funded team operates on a regional basis. It works across local authority boundaries. Where we consider it appropriate, we will request the Regional Tasking Group to consider tasking the Regional Investigations Team to investigate where it appears that potential criminal activity may go beyond the Redcar & Cleveland area.

- In relation to matters that have a national significance, we will work with/alongside the various National Trading Standards teams, namely

- National Trading Standards Estate and Letting Agency Team – A specific enforcement policy exists in relation to our enforcement under The Tenant Fees Act 2019 and relevant lettings agents' legislation. [see Annex 1 below].

  - National Trading Standards e- Crime Team
  - National Trading Standards Scams Team
  - National Trading Standards Intelligence Team
  - National Trading Standards Feed Hygiene Delivery
  - National Trading Standards Animal Health and Welfare

Enforcement Actions

Trading Standards has a policy of taking a graduated approach to enforcement actions, **but this does not preclude formal enforcement action as a first recourse if the circumstances warrant**. In broad terms the options range from the informal to the formal and can be categorised as follows:

- **Advice and Guidance:** intended to assist individuals, existing and prospective businesses, and other organisations in complying with legal obligations. This may be achieved through guidance given during visits, explanatory leaflets, social media, etc. The resolution of issues through discussion is often achievable.

- **Informal Warnings:** are used to reinforce advice and guidance where minor breaches of the law have been identified, or it is considered not to be appropriate to take more formal action. Warnings of this type may be given verbally or in writing.

- **Formal Enforcement Action:** includes the use of

  - Statutory notices (which include Fixed Penalty Notices, Improvement Notices, Stop Notices, Completion Certificates, and Suspension Orders).
  - Simple Cautions.
  - Prosecution.
  - Seizure of goods / documents.
  - Forfeiture Order / Voluntary Surrender of goods.
  - Closure Orders.
  - Community Protection Warnings and Community Protection Notices.
  - Criminal Behaviour Orders.
  - Financial Penalties.
  - Undertakings, via the Digital Markets, Competition and Consumers Act 2024 Enforcement Orders/ Interim Enforcement Orders, via the Digital Markets, Competition and Consumers Act 2024.
  - Enhanced Consumer Measures, via the Digital Markets, Competition and Consumers Act 2024.
  - Any other appropriate measure to protect consumers as may be enacted by law.

- **Proceeds of Crime** is a procedure that the Team will use to take action in appropriate cases to recover assets that have been accrued through criminal activity, with the principal objective of removing the assets so that they cannot be re-invested in further criminal activity. The main vehicle used for this will be with the use of Court Orders, Disclosure Orders, Restraint Orders and/or Confiscation Orders.

Annex One: - Redcar and Cleveland Borough Council Enforcement Policy in relation to Relevant Letting Agency Legislation.

Annex Two: - Redcar and Cleveland Borough Council Enforcement Policy in relation to Animal Health Legislation.

ANNEX 1

REDCAR & CLEVELAND BOROUGH COUNCIL ENFORCEMENT POLICY IN RELATION TO RELEVANT LETTING AGENCY LEGISLATION

Redcar & Cleveland Borough Council (RCBC) 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 the Council in its capacity as an Enforcement Authority under Section 6 of the Tenant Fees Act 2019.

Contents

Enforcement Generally

Introduction

RCBC 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 the Council in its capacity as 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 2013[1]; and
4. Regulations under Sections 133 – 135 of the Housing and Planning Act 2016[2].

1. 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 s1 & s2, or a breach of Schedule 2 of the TFA 2019, a financial penalty not exceeding £5,000.
b. Under s12 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 £30,000.00 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 s83(3) of the Consumer Rights Act 2015 a financial penalty not exceeding £5,000.

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) to a financial penalty not exceeding £5,000. (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.)

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[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.*

In respect of 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 or
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.

The Council 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 the RCBC Enforcement Policy and as the Enforcement Authority, the Trading Standards 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 Trading Standards Enforcement Policy.

2. Statutory Guidance

The Ministry of Housing, Communities & Local Government ("MHCLG") 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 imposing a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should consider 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.

3. Determining the level of the financial penalty

In accordance with the provisions of the TFA & CMP statutory guidance, the following factors will be considered by RCBC 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 we will refer to for each penalty you consider. 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 to determine the level of financial penalty under the TFA 2019 and other relevant letting agency legislation. All stages after 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 Council's process for determining the level of penalty to set.

<u>STEP ONE – Determining the category.</u>

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 to reflect consistency and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

<u>Culpability</u>

<u>Very high</u>: Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile[3] and knew their actions were unlawful.

<u>High</u>: Actual foresight of, or willful blindness to, risk of a breach but risk nevertheless taken

<u>Medium</u>: Breach committed through act or omission which a person exercising reasonable care would not commit

<u>Low</u>: 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.

<u>Harm</u>

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 vulnerable[4].

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

- 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)

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3 *Which may include any significant role in a trade or business representative organisation*
4 *A wide definition of vulnerability will be used. See Appendix 2 for a non-exhaustive list.*

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

The nature of harm will depend on 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 the enforcement authority will be concerned with assessing the severity of the misconduct; we will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

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.

<u>STEP TWO - Starting point and category range.</u>

Having determined the category that the breach falls into, the Council will refer to the following starting points to reach an appropriate level of civil penalty within the category range. The Council 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, assess a landlord or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The Council will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council 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 the Council such data relevant to his/her financial position to facilitate an assessment of what that person 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 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. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. Relevant recent convictions[5] 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

[5] *See Appendix 3 for a list of relevant convictions*

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.

The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence, and the Council must consider 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.

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, the Council 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 the Council will issue a Notice of Intent before the end of the period of 6 months beginning with the first day on which the authority 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 the enforcement authority 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

The Council 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, the Council 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

The Council 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 the Council must consider whether to take additional action. These may include further enforcement action itself or reference to other organisations where appropriate.

STEP EIGHT – Totality of breaching conduct

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

As the total financial penalty is inevitably cumulative the Council should 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 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 total financial penalty. There are a number of ways in which this can be achieved.

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 for the most serious breach a financial penalty 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. The Council 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 the Council should consider whether all the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.
>
> Where separate financial penalties are imposed, the Council must take care to ensure that there is no double-counting.

STEP NINE – Recording the decision.

The officer deciding 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
- The Digital Markets Competition & Consumers Act 2024

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 Agents 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

Offences involving 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, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of 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 in respect 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 the Council may reduce the minimum penalties further but may not increase them above the maximum permitted 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 the Council may reduce the minimum penalties further but may not increase them above the maximum permitted 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 in respect 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 the Council may reduce the minimum penalties further but may not increase them above the maximum permitted 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 the Council may reduce the minimum penalties further but may not increase them above the maximum permitted 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 the Council may reduce the minimum penalties further but may not increase them above the maximum permitted 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 respect of a breach 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 the Council may reduce the minimum penalties further but may not increase them above the maximum permitted 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

ANNEX 2

REDCAR & CLEVELAND BOROUGH COUNCIL ENFORCEMENT POLICY IN RELATION TO RELEVANT ANIMAL HEALTH LEGISLATION

Redcar & Cleveland Borough Council (RCBC) has adopted this policy on deciding financial penalties presented pursuant to Section 4(4) of the Animals (Penalty Notices) Act 2022.

Introduction

This annex explains how Redcar & Cleveland Trading Standards can use penalty notices for animal health and welfare offences under the Animals (Penalty Notices) Act 2022 ('the act').

A penalty notice under the act gives an individual or body corporate (such as a company or charity) the opportunity to avoid prosecution for a criminal offence by paying a fee. Payment of a penalty notice does not require an admission of guilt and will not result in a criminal record.

Penalty notices will add to and complement the current suite of enforcement and regulatory options, such as:

- advice and guidance
- warning letters or statutory notices
- movement restrictions
- cautions and prosecutions

This is to support early redirection through behaviour change, to promote compliance with animal health and welfare rules.

Penalty notices are not designed for serious offences or for minor breaches where advice and guidance in the first instance would be sufficient in rectifying the issue.

Advice and guidance will be our primary enforcement action to promote compliance in most cases followed by warning letters or statutory notices. Issuing a penalty notice could supplement these actions or be the next enforcement step if we think providing advice and guidance only would be insufficient in redirecting behaviour or previous advice and guidance has not been followed and the issue remains unresolved.

We shall consider whether prosecution would be the most appropriate enforcement action in the first instance where there is evidence of:

- a serious animal welfare offence
- a significant threat to the human food chain or national biosecurity

We may only issue a penalty notice in relation to offences specified in regulations made under the act.

As we have an overarching enforcement policy in place, this shall be considered alongside this Annex.

When we will issue a penalty notice

If someone has committed an offence, we may issue them with a penalty notice if:

- the offence has been committed in England
- the offence is specified in regulations made under the act
- we are listed in those regulations as the enforcement authority for the relevant offence, and the offence falls under section 2 of the act

Collecting evidence and standards of proof

To issue a penalty notice, we must be satisfied beyond reasonable doubt that a person has committed an offence.

We must gather evidence lawfully having regard to the Criminal Procedure and Investigations Act (CPIA) 1996. The CPIA Code of Practice ('the code') made under Section 23(1) of the CPIA governs the regulatory aspects of the CPIA.

Deciding when to issue a penalty notice

We shall consider the following factors set out in section 4(2) of the act:

- the seriousness of the conduct to which the proposed notice relates (the 'relevant conduct')
- the duration of the relevant conduct
- any evidence of intention behind the relevant conduct
- any evidence of previous acts or omissions by the person similar to the relevant conduct
- any action taken by the person to eliminate or reduce any risk of harm resulting from the relevant conduct
- any action taken by the person to remedy or mitigate any harm resulting from the relevant conduct
- whether the person reported the relevant conduct to the enforcement authority or constable
- the conduct of the person after the relevant conduct is drawn to their attention by the enforcement authority or constable

We may decide that other forms of sanctions, or advice and guidance in the first instance, may be more effective and proportionate.

Time restrictions we will consider

There is no time limit for us to issue a penalty notice when an offence has been identified. However, we shall consider the time limits on prosecution of criminal offences which must be brought:

- within 6 months of the date of the offence
- within 6 months of the date the prosecutor has sufficient evidence to proceed under the Animal Health Act 1981 (and within 3 years of the date of the offence)

Issuing multiple penalty notices and when we will consider alternative enforcement approaches

A penalty notice should relate to a single offence. If, after a penalty notice has been issued, an individual continues or repeats the offending conduct, we may issue a further penalty notice.

There is no limit on the number of penalty notices that an individual can receive in any given period. Where an individual has already received one or more penalty notices for any offence in the last 3 years, we shall consider whether to adopt a different enforcement approach, such as prosecution.

In addition to section 4(2) of the act and this Annex, we shall consider the following (non-exhaustive) matters when making a decision:

- the number of penalty notices received within the last 3 years
- what offences the previous notices were received for
- the nature and seriousness of the offence(s) being considered
- the nature and seriousness of the previous offences
- the offender's circumstances and whether there is an explanation for the repeat offending

Financial objectives

Raising revenue shall never be an objective of enforcement.

We must pay sums received from penalty notices into the Consolidated Fund, the government's general bank account at the Bank of England,

Before paying sums into the Consolidated Fund, we will deduct the costs of investigating the offence and issuing the penalty notice.

Setting the penalty notice amount

The maximum penalty notice amount will be whichever is the lower of:

- £5,000
- the maximum fine the offender could be liable to pay if convicted for the same offence

The factors set out in section 4(2) of the act must be considered in every case. This Annex sets out how we will consider those factors, and other relevant factors.

Step 1: Assess culpability and harm

We will assess the offender's culpability and the harm caused by the offence. We will use the list of 'harm' factors to consider the seriousness of the offence for the purpose of section 4(2)(a). We will use the list of 'culpability' factors to consider intention for the purpose of section 4(2)(c).

Factors indicating low culpability:

- well-intentioned but incompetent care
- momentary or brief lapse in judgement
- involved through coercion, intimidation or exploitation
- mental health disorder or learning disability

Factors indicating low to medium culpability:

- failure to follow good practice to ensure the needs of an animal has been met
- not followed statutory guidance to ensure that animal health rules have been met
- disregard for rules regarding responsible ownership
- not sought veterinary advice

- unaware of up-to-date statutory guidance
- operating without a licence

Factors indicating medium to high culpability:

- deliberate disregard for welfare of the animal (including by failure to seek treatment)
- deliberate attempt to avoid duty of care of animals
- deliberate breach of animal health rules
- deliberately avoiding operating under a licensing scheme
- prolonged or repeated incidents of animal health (breaches)
- deliberate disregard for the disease control principles including standstill requirements
- deliberately ignored requirements regarding responsible ownership and keepership of kept animals
- ignoring previously issued advice or guidance
- obstructive behaviour
- obstructing an inspector or investigator
- role in organised illegal activity
- level of planning
- involvement of others through coercion, intimidation or exploitation

Factors indicating greater harm:

- greater detriment to the physical or mental wellbeing of animals
- greater detriment to the health of the animals
- greater detriment to consumer
- greater impact to the food chain
- greater impact to public health
- greater impact to local or national biosecurity
- greater risk of spreading disease
- greater risk to public health
- greater risk to public safety
- no animal traceability or significant period lack of traceability
- prolonged period without microchipping

Factors indicating lesser harm:

- lesser detriment to the physical or mental wellbeing of animals
- lesser detriment to the health of the animals
- lesser detriment to consumer
- lesser impact to the food chain
- lesser impact to public health
- lesser impact to local or national biosecurity
- lesser risk of spreading disease
- lesser impact to public health
- lesser impact to public safety
- shorter period of lack of animal traceability
- shorter period without microchipping

Where an offence does not fall into a harm or culpability category, we may consider other factors, but we must provide justification for this decision.

When we have identified the culpability and harm levels, we will find the relevant starting point and range for the penalty amount.

If the maximum fine the offender could be liable to pay if convicted for the same offence is **£5,000 or more**, we shall use these tables to determine the starting point and range of the penalty notice amount.

Low culpability

Harm Factor	Starting Point	Minimum Amount	Maximum Amount
Lesser Harm	£400	£350	£1,000
Greater Harm	£750	£600	£1,250

Low to medium culpability

Harm Factor	Starting Point	Minimum Amount	Maximum Amount
Lesser Harm	£1,500	£1,250	£2,000
Greater Harm	£2,000	£1,500	£3,000

Medium to high culpability

Harm Factor	Starting Point	Minimum Amount	Maximum Amount
Lesser Harm	£2,500	£2,000	£4,000
Greater Harm	£3,500	£3,000	£5,000

If the maximum fine the offender could be liable to pay if convicted for the same offence is **less than £5,000**, we shall use these tables to determine the starting point and range of the penalty notice amount. We can identify the starting point and range by calculating the stated percentage of the maximum fine on conviction.

Low culpability

Harm Factor	Starting Point	Minimum Amount	Maximum Amount
Lesser Harm	8%	7%	20%
Greater Harm	15%	12%	25%

Low to medium culpability

Harm Factor	Starting Point	Minimum Amount	Maximum Amount
Lesser Harm	30%	25%	40%
Greater Harm	40%	30%	60%

Medium to high culpability

Harm Factor	Starting Point	Minimum Amount	Maximum Amount
Lesser Harm	50%	40%	80%
Greater Harm	70%	60%	100%

Step 2: Assess aggravating and mitigating factors

We may take any aggravating or mitigating factors into account to adjust the penalty notice amount from the relevant starting point. The amount must not go beyond the minimum or maximum for the range as set out in the relevant table. This will give the final penalty amount.

This list of aggravating and mitigating factors incorporates the factors in section 4(2)(b), (d), (e), (f), (g), (h) of the act:

Aggravating factors

- evidence of previous acts or omissions by the person similar to the relevant conduct
- distress caused to others
- failure to comply with current court orders
- offence committed on licence or post sentence supervision
- publicised or promoted animal cruelty including via the use of technology
- ignored warning or professional advice on current offence
- declines to obtain professional advice
- animal required intervention to bring under control
- financial gain from the offence committed
- number of animals involved
- duration of the relevant conduct
- poor conduct by the person after the relevant conduct is drawn to their attention by the enforcement authority or constable
- threatening or abusive to staff or inspectors and investigators
- poor record keeping

Mitigating factors

- no evidence of previous acts or omissions by the person similar to the relevant conduct
- action taken to eliminate or reduce any risk of harm resulting from the relevant conduct
- action taken to remedy or mitigate any harm resulting from the relevant conduct
- offender reported relevant conduct to the enforcement authority or constable
- good conduct by the person after the relevant conduct is drawn to their attention by the enforcement authority or constable
- inability to pay
- offender has a mental health disorder or learning disability
- offender has been given an inappropriate level of trust or responsibility
- offender sought and implemented professional advice

What we will include in a penalty notice

A penalty notice must state the offence it relates to, and explain:

- the penalty amount for the offence
- that the enforcement authority or constable issuing the notice is satisfied that the person has committed the offence, and why
- when and how to make a payment

- that ‘the relevant period’ is the period of 28 days starting on the date the penalty notice is issued
- no proceedings will be taken for the offence until after the relevant period has expired
- that the person who committed the offence may not be convicted of the offence if they pay the full amount of the penalty notice before the end the relevant period
- that the person who committed the offence may not be convicted of the offence if they pay 50% of the penalty notice amount before the end of the period of 14 days beginning with the date on which the relevant period starts
- that a penalty notice is considered paid if the person pays 50% of the penalty notice within 14 days beginning with the date on which the relevant period starts

Payment of penalty notices

The offender must pay the penalty notice within the period of 28 days beginning with the date on which the penalty notice is issued.

They should not pay a penalty notice in instalments.

Non-payment of penalty notices

Penalty notices are issued as an alternative to prosecution. If an individual, or body corporate, issued with a penalty notice does not accept their liability for the offence, there is no requirement on them to pay the penalty notice.

Should a penalty notice go unpaid, we shall consider whether a prosecution for the original offence is necessary and appropriate.

Time limits for prosecution

In general, a prosecution of a summary offence in the magistrate’s court must be brought within 6 months of the date of the offence.

The 28-day period (the period starting on the date the penalty notice was issued) is not included in the 6-month prosecution time limit.

Offences under the Animal Health Act 1981 may be prosecuted within 3 years of the date of the offence (though, prosecution must be brought within 6 months of the date the prosecutor has sufficient evidence to proceed).

Withdrawing a penalty notice

We may withdraw a penalty notice at any point before payment.

Record keeping and reporting

Under Section 6 of the act, we will submit an annual report to the Defra Secretary of State after the end of each financial year. The report must include:

- the number of penalty notices issued
- the penalty amounts in the notices issued
- the offence for each penalty notice