



**ENFORCEMENT AND PENALTY POLICY
IN RELATION TO
THE RELEVANT LETTING AGENCY LEGISLATION
(DRAFT)**

March 2024

GATESHEAD COUNCIL ENFORCEMENT AND PENALTY POLICY IN RELATION TO THE RELEVANT LETTING AGENCY LEGISLATION

Tenant Fees Act 2019

Consumer Rights Act 2015

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

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

Gateshead Council ("GC") 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 and Lead Enforcement Authority under Sections 6, 7 & 26 of the Tenant Fees Act 2019 respectively.

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Enforcement Generally

Introduction

Gateshead Council ("GC") 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 and Lead Enforcement Authority under Sections 6, 7 & 26 of the Tenant Fees Act 2019 respectively.

For clarity, "relevant letting agency legislation" means: -

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

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 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

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

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.)

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 Communities and Environment Enforcement Policy. Which can be found as appendix 10. This enforcement policy is correct at the time of writing but may be amended over time, please ensure the most up to date policy is used.

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 Enforcement Policy for the service area.

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 when considering whether to impose a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalty to impose.

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 GC 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.

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.

The Council has also decided to base this policy on the principles set out in Bristol City Council's policy entitled 'Civil penalty as an alternative to prosecution under the Housing Act 2004' with the recognition that with the exception of the limited power to prosecute referred to in this policy prosecution is not otherwise an option under the TFA 2019.

The civil penalty as an alternative to prosecution under the Housing Act 2004 policy was reviewed in 2018 and was informed by the principles contained in the Sentencing Council's 'Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline'. The Council believes this to be a fair, relevant and reasonable model to follow; this policy was widely consulted on with various stakeholders.

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

Appendix 1 – The Council’s process for determining the level of penalty to set

STEP ONE – Determining the category

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

Culpability

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

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

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

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

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

Harm

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

Category 1 – High Likelihood of Harm

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

Category 2 – Medium Likelihood of Harm

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

Category 3- Low Likelihood of Harm

- 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).

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 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; it 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.

STEP TWO - Starting point and category range

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, make an assessment of a Landlord or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. 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. In particular, relevant recent convictions⁵ are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

Factors increasing seriousness

Aggravating factors:

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

Other aggravating factors may include:

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

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 take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

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

Appendix 2 – Non exhaustive list of vulnerable people:

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

Appendix 3 – Non exhaustive list of relevant offences / breaches

Housing law or landlord and tenant related

Offences under:

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

Offences involving fraud

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

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

Offences involving violence

A conviction for the offence of:

- Murder.
- Manslaughter.
- Arson.
- Malicious wounding or grievous bodily harm.
- Grievous bodily harm with intent.
- Actual bodily harm.
- Grievous bodily harm.
- Robbery.
- Criminal damage where the intent was to intimidate or was racially aggravated.
- Common assault.
- Common assault which is racially aggravated.

- Assault occasioning actual bodily harm.
- Possession of an offensive weapon.
- Possession of a firearm.

Offences involving drugs

- Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or 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

Appendix 10 – Gateshead Council Communities and Environment Enforcement Policy

Communities and Environment Enforcement Policy- Gateshead Council 2019

Contents

1. Introduction
2. Enforcement Action
3. Principles of Enforcement
4. Prosecution
5. Ancillary Orders and Costs
6. Selecting Appropriate Charges
7. Other Regulators
8. Companies and Individuals
9. Advice
10. Complaints
11. Contacts

1. Introduction

1.1 This policy outlines Gateshead Council's approach to dealing with non-compliance with the legislation it enforces.

1.2 It is a policy which applies to the following teams within the Communities and Environment Directorate:

- Private Sector Housing
- Trading Standards
- Environmental Health
- Environmental Protection
- Environmental Enforcement
- Licensing
- Planning Enforcement
- Building Control

1.3 It should be noted that additional team-specific policies might exist which outline the processes that all officers operating within that team will follow when deciding what enforcement action to take. Where such policies exist, they should be read alongside this policy.

1.4 The purpose of this policy document is to set out what those being regulated, residents of the Borough and the public can expect from our enforcement teams. Its aim is to ensure that our regulatory inspections and enforcement is carried out in a way that is transparent, accountable, proportionate, consistent, in accordance with relevant legislation, guidance and codes, and in a manner that will stand up to scrutiny from all persons, businesses or agencies affected by our actions and decisions.

1.5 All enforcement officers will have regard to this policy when exercising their duties. The Authority will ensure that its officers have the necessary knowledge and skills to be able to do their job effectively and this includes having an understanding of those they regulate.

1.6 In devising this policy reference has been made to the [Regulators Code](#) , the [Legislative and Regulatory Reform Act 2006](#), the [Crown Prosecution Service's Code for Crown Prosecutors](#), and [Corporate Complaint Policy](#).

2. ENFORCEMENT ACTION

2.1 We take very seriously incidents where persons or businesses have acted negligently, dangerously, irresponsibly, or have caused a risk to the public or the environment. In these situations, it may be necessary for us to carry out a full investigation and enforcement action may follow.

2.2 Where it is necessary to carry out an investigation in to a potential offence, we will progress the matter without delay. All investigations will be conducted in compliance with the relevant legislation and guidance.

2.3 We will explain to the person what the alleged breach is and will provide an opportunity to discuss it with the investigating officer, this might be through an informal discussion or an interview under caution (often referred to as a PACE interview). Anything said during an informal discussion or interview under caution, and any other relevant information about the individual or the offence will be taken in to account when deciding what, if any, enforcement action to take.

2.4 The Powers available to enforcement officers to enforce a breach include, but are not restricted to:

- Inspections and visits
- Verbal and written warnings
- Penalty notices for disorder (PND)
- Statutory orders
- Refusal, suspension, amendment of licences
- Enforcement notices
- Abatement notices
- Simple cautions
- Fixed penalty notices and Financial Penalties
- Work carried out in default and emergency remedial action
- Forfeiture and seizure of goods
- Undertakings and injunctive action under the [Enterprise Act 2002](#)
- Taking possession of animals
- Prosecution

2.5 We will apply the following principles to our enforcement activities:

- Direct people to appropriate services within the Council where we believe additional help is required.
- Ensure that enforcement action is carried out in such a way as to avoid negative impacts on the economic prosperity of Gateshead, whilst ensuring that public and resident safety is achieved.
- Flexibility will be used where appropriate
- All enforcement action will be justified
- Enforcement action will be carried out in a timely manner
- Any Action taken will be properly reasoned and documented by the enforcing officer. The action taken and what should be done will be fully explained to the individual.

3. PRINCIPLES OF ENFORCEMENT

3.1 The purpose of enforcement action is to ensure action is taken to protect and promote the health and safety of the public and residents, and to protect the environment. Underpinning our enforcement policy are the five principles of good regulation, as defined in section 21 of the Legislative and Regulatory Reform Act 2006, which we will apply to all enforcement decisions we take:

- Targeting of enforcement action

We will use intelligence and relevant risk assessments to help us prioritise and focus our resources in the areas that need them most and to ensure that persistent offenders are identified quickly.

- Proportionate and reasonable

We will treat everyone fairly and will ensure that any enforcement action we take is proportionate to the risks involved and the sanctions applied are meaningful.

- Transparency

We are committed to the provision of information and advice in a format that is accessible and easily understood.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those which we recommend as best practice, as best practice advice is not compulsory for a business to follow.

Where businesses and individuals have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve the monitoring of trade practices.

- Consistency

We will ensure that our enforcement practices are consistent, this means that we will adopt a similar approach in similar circumstances to achieve similar ends. We will have regard to national guidelines in our decision-making processes.

- Accountability

We will be accountable for the efficiency and effectiveness of our activities and will justify our decisions by ensuring all decisions made are properly reasoned, recorded and based on material evidence.

3.2 When considering the most appropriate course of action, we will apply the Macrory principles which state that enforcement and penalties should:

- Aim to change the offender's behaviour and deter future non-compliance
- Eliminate any benefit from their non-compliance
- Be proportionate to the nature of the offending and the overall harm, or potential harm, caused
- Ensure that any action taken is appropriate to that particular offender, and may take into account their personal circumstances
- Provide restitution for the harm caused

3.3 Where the individual circumstances of the case require, the Authority may decide to take a course of enforcement which deviates from these principles. In these situations, any decision will be properly reasoned and documented.

4. PROSECUTION

4.1 The overall decision to prosecute is made by the Service Director for Communities and the Environment, and the prosecuting lawyer, but the decision to prosecute must first be discussed with and agreed by the investigating officer's line manager.

4.2 In determining whether it is appropriate to prosecute, the investigating officer and prosecuting lawyer, will have regard to the [Code for Crown Prosecutors](#). The Code states that two 'tests' must be passed before a prosecution can commence – the evidential test and the public interest test. A prosecution will not commence unless there is sufficient evidence that an offence has been committed and there is a realistic prospect of conviction.

4.3 Regard will also be had to:

- The seriousness of the offence together with the actual or potential harm caused
- Whether the matter was pre-meditated
- Failure on the part of the person to comply either in full or in part with the requirements of a statutory notice/ order, FPN etc.
- Previous history of warnings, cautions, commission of similar or identical offences
- Anything which aggravates the circumstances of the offending, such as behaving aggressively towards members of the public or Council staff
- Whether there was any intent to deceive
- Due regard will also be given to any explanation or information given by the person about their alleged offending, and their own personal mitigating circumstances.

5. ANCILLARY ORDERS AND COSTS

5.1 Following a successful conviction, Gateshead Council may also apply for an ancillary order. These might include:

- Compensation order
- Forfeiture of equipment or vehicles used in the commission of the offence
- Confiscation of assets under the [Proceeds of Crime Act 2002](#)

5.2 Gateshead Council will recover the costs of any enforcement action where permitted to do so and will ensure that the recovery of such costs is appropriate and proportionate.

6. SELECTING APPROPRIATE CHARGES

6.1 It is the duty of the Authority to only select charges which are commensurate with the seriousness of the conduct alleged. Charges must reflect the nature and extent of the conduct alleged and provide the court with adequate sentencing powers.

7. OTHER REGULATORS

7.1 Where another prosecuting authority is involved, the investigating officer will liaise with the other authority to ensure charges aren't duplicated and the most appropriate charges are laid.

8. COMPANIES AND INDIVIDUALS

8.1 Proceedings will be taken against the person responsible for the offence. Where a company is involved, it is likely we will also prosecute the company where the offence resulted from its activities. It is also likely that action will be taken against a manager, director or other officer of the company where it can be shown that the offence was committed with their consent, involvement, was due to their neglect, or that they 'turned a blind eye' to the offending.

9. ADVICE

9.1 We recognise that most people and businesses want to comply with the law and so we will endeavour to help them meet their legal obligations through the provision of free 'compliance advice', more detailed 'comprehensive advice' may be subject to a fee. In most cases the advice provided will be confirmed in writing.

10. COMPLAINTS

10.1 A complaint about the service provided by a member of staff may be made through the Council's [Corporate Complaints Procedure](#). All complaints should be made in writing.

10.2 The complaints procedure cannot be used as a way of determining whether or not an offence has been committed, it is a separate matter which is determined by the court. Legal proceedings will not, save for in exceptional circumstances, be suspended or terminated whilst a complaint is being investigated.

11. CONTACTS

Private Sector Housing 0191 433 2350 privatesectorhousingcivic@gateshead.gov.uk

Trading Standards tradingstandards@gateshead.gov.uk 0191 433 3987 / 3890 / 3930 / 3892.

Environmental Health 0191 433 3000 environmentalhealth@gateshead.gov.uk

Environmental Protection 0191 433 3000 environmentalhealth@gateshead.gov.uk

Environmental Enforcement 0191 4333636 - EnvironmentalEnforcement@gateshead.gov.uk

Licensing 0191 4334741 licensing@gateshead.gov.uk

Planning Enforcement 0191 433 7225 enforcement@gateshead.gov.uk

Building Control 0191 433 3144 buildingcontrol@gateshead.gov.uk