

# ENFORCEMENT POLICY PRIVATE SECTOR HOUSING

## 1. Introduction

Doncaster Council aims to maintain and improve housing conditions in privately owned property in Doncaster. This document sets out standards of enforcement that landlords, businesses, individuals and the community as a whole can expect from the Council's Enforcement Team in relation to Housing matters.

This policy contains the Council's principles for enforcing and executing its duties as a Housing Authority under the following Acts and Regulations:

- The Housing Act 1985
- The Housing Act 2004
- The Building Act 1984
- The Environmental Protection Act 1990 in relation Section 79 (1) (a) any premises in such a state as to be prejudicial to health or a nuisance.
- The Equality Act 2010
- The Housing and Planning Act 2016
- Carbon Monoxide Alarm (England) Regulations 2015
- The Enterprise And Regulatory Reform Act 2013

The policy ensures all housing enforcement taken by Doncaster Council will be in line with the principles of good enforcement outlined in the Enforcement Concordat which was formally adopted by Doncaster Council at its Policy and Strategy Board on 26 February 2001. The document also implements the principles of the Regulators' Code 2014, the Code for Crown Prosecutors and should be read in conjunction with the overarching Enforcement Policy of Regulation and Enforcement.

The aim of the Council's Housing Enforcement work is to protect our residents and communities by enforcing the legislation efficiently and effectively without imposing unnecessary burdens upon property owners and occupiers.

When we take enforcement action it will be:

- **Targeted:** Examples of properties that we will seek to target for enforcement include those that pose the greatest risk, or nuisance.
- **Proportionate:** When deciding what enforcement action to take, we will take actions that are proportionate given the breach. We will avoid actions which may provide a perverse incentive for non-compliance (for example carrying out costly works in default where it is difficult for us to recover our costs).
- **Fair and objective:** Our decisions will not be influenced by the race, culture etc of the offender, victim or witness. Decisions will be based on the situation and all available facts will be taken into consideration.
- **Transparent:** We will endeavour to clearly define our policies and procedures to ensure that they can be easily understood. As far as possible, we will

provide full details upon demand. Clear reasons will be given to a person against whom enforcement action is being taken.

- **Consistent:** Whilst Officers exercise their judgement in each individual case, we will have arrangements in place to promote consistency, including liaison with other authorities and agencies. We will carry out training of our officers to promote consistency in the interpretation and enforcement of legislation and liaise with other local authorities throughout the Yorkshire Region.
- **Accountable:** We will seek to consult landlords, tenants and others with an interest in the private housing sector; where possible and appropriate.

Any complaint against the service will follow Doncaster Council's formal complaint procedure, which is easily accessible to all service users on the Council website which also explains the rights of complaint and appeal, including the likely timescales involved.

## 2. Policy

The protection of public health, residents' safety and the tackling of anti-social behaviour will be paramount when enforcing the law and assistance will be given to landlords and tenants to comply with legal requirements.

All enforcement action taken will be proportional to the risk any situation presents and will always be in accordance with statutory Codes of Practice, Council procedures and protocols, and official guidance from central and local government bodies.

Reasonable effort will be made to ensure compliance with the law by a process of advice and education. Formal action must be considered in the following circumstances:-

- Where there is a serious risk to public health or safety of residents;
- Where there is a blatant or deliberate contravention of the law;
- Where there is history of non-compliance, or cooperation for an informal approach is not forthcoming;
- Where landlords fail to take action in the timescales agreed within an informal process;
- Where the failure gives the landlord an unfair commercial advantage such as failure to licence a property.

Except in emergency situations, tenants of the private rented sector who have yet to inform their landlord of the problem and allowed them an opportunity to resolve it, will be directed to do so. Should the complainant then be unsatisfied with response or action undertaken by the landlord we will investigate the complaint. This is to ensure all landlords and property managers are given a fair chance and opportunity to resolve issues without involvement by the Council whenever this is possible.

As staff resources within the Enforcement Team are limited, we do not always respond to requests for service from tenants of Residential Social Landlords or the tenants of St Leger Homes. The reasoning behind this is that occupiers of Social Housing have alternate means of resolving any disrepair issues within their property, namely their landlord's complaints procedure which would not be available to tenants from the Private Sector. In addition to this, the Government has set targets to ensure that all Social Housing should have met the Decent Homes standard by 2010. In meeting this standard all properties should be free of Category 1 hazards and be warm, weatherproof and have reasonably modern facilities. In practice this means that unless the complainant can demonstrate to the Council they have exhausted their own landlord's complaints procedure we will not investigate their complaint.

All Housing and Licensing Officers are fully trained, competent and authorised to carry out their duties. All investigations will be carried out in accordance with the requirements of the:

- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996

### 3. Range of Options to regulate and ensure Compliance with Housing Legislation

Type of Action	Circumstances
No Action	In some circumstances formal action may not be appropriate and if necessary, the person will be directed to other sources of advice. In particular the Council will usually not find it appropriate to intervene in cases where only the person in control of the premises or their family member is affected by the breach of legislation, unless this person is vulnerable.
Informal actions including verbal advice, advisory letters and hazard awareness notices	Reasonable effort will be made to ensure compliance with the law is achieved by a process of advice and education. In most cases when a complaint is received regarding housing conditions at an address, the Council would first write to the landlord to highlight the alleged or observed deficiencies and request that the complaint be investigated and remedial action taken as necessary.
Service of Notice requiring repairs or specific legal requirements.	In some situations it is appropriate to serve a legal notice. Such decisions are made on a case by case basis, but below are a number of situation where serving a notice would usually be the most appropriate next step. The list is not exhaustive: <ul style="list-style-type: none"> <li>• There is a risk to health, safety and wellbeing of a household or the public;</li> <li>• A person/company refuses or fails to carry out the works informally or there is a lack of confidence that the individual/company will respond to an informal approach;</li> <li>• Standards are generally poor with little management awareness</li> </ul>

	<p>of statutory requirements;</p> <ul style="list-style-type: none"> <li>• There is a record of criminal convictions, simple cautions or civil penalty notices for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last 5 years;</li> <li>• It is necessary to bring an empty property back into use when informal requests to do so have failed.</li> </ul> <p>Under the Housing Act 2004 the Local Authority has the right to recover their cost in serving a statutory notice. Details of how Doncaster Council would calculate and apply such charges can be seen in Appendix 1.</p>
<b>Formal Powers of Entry</b>	<p>We recognise that most houses are also someone’s home and take great care to liaise with occupiers prior to entry to safeguard their rights to privacy. However, in some situations formal powers of entry by notice or warrant are necessary to safeguard residents’ safety and ensure compliance with legislation. This includes where it is necessary in order to:</p> <ul style="list-style-type: none"> <li>• Protect the health safety of any person from a serious risk of harm;</li> <li>• To protect the environment from serious risk of harm without avoidable delay;</li> <li>• Investigate a possible offence;</li> <li>• Prevent the obstruction of officers;</li> <li>• Carry out a statutory duty or power.</li> </ul>
<b>Powers to Require Documents</b>	<p>Authorised officers have the power to require:</p> <ul style="list-style-type: none"> <li>• Documents to be provided to enable them to carry out their powers and duties under the Housing Act 2004;</li> <li>• Electrical and gas safety certificates to be provided;</li> <li>• Details of any person with an interest in the property.</li> </ul>
<b>Emergency Remedial action/Emergency Prohibition Order</b>	<p>Where there is a Category 1 HHSRS hazard present that is considered to represent an imminent risk of serious harm to the health and safety of the occupiers of/visitors to a dwelling, the Council may serve an Emergency Prohibition Order or take Emergency remedial action.</p>
<b>Overcrowding</b>	<p>We recognise that overcrowding of houses affects the lives of occupiers, but also the community around as it often lead to increases in waste and anti-social behaviour. We will take formal action by serving overcrowding notices or other appropriate action guided by HHSRS, where we feel the problem has an impact on residents or the community.</p>
<b>Works in Default for non-compliance with a notice</b>	<p>We may choose to carry out works required by a notice if they have not been completed within the permitted time. This may be in conjunction with, or followed by a prosecution. As cost for work can often be high, the Council will consider the likelihood of recovering their expenses as part of their decision, to ensure appropriate use of</p>

	<p>public funds and also to ensure there is no financial benefits for landlords from not complying with a statutory notice. The improvement in health, safety and well-being of the tenant compared to the cost of the works will also be a key consideration.</p>
<p><b>Refusal/Revocation of licenses</b></p>	<p>We will consider refusal or revocation of licenses in cases where we have evidence that:</p> <ul style="list-style-type: none"> <li>• The manager is not a ‘fit and proper person’; and/or</li> <li>• There are serious breaches of licensing conditions, or poor standards of management.</li> </ul>
<p><b>Simple Caution</b></p>	<p>The purpose of a Simple Caution is to deal quickly and simply with less serious offenders by diverting them away from the courts, and to reduce the chances of repeat offences. Simple Cautions will be kept on file for three years. A Caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the Caution. If the offender refuses to accept a Simple Caution, a prosecution or a Civil Penalty will normally be pursued.</p>
<p><b>Civil Penalty</b></p>	<p>The Council may impose Civil Penalties, as an alternative to prosecution, for some offences. The level of the Civil Penalty is up to a maximum of £30,000 in respect of the following offences:</p> <ul style="list-style-type: none"> <li>• Failure to comply with an Improvement Notice;</li> <li>• Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs);</li> <li>• Failure to licence or other licensing offences under the Council’s Selective Licensing Scheme;</li> <li>• Failure to comply with an Overcrowding Notice;</li> <li>• Failure to comply with a Management Regulation in respect of an HMO;</li> <li>• Breaching a Banning Order.</li> </ul> <p>The level of the Civil Penalty is up to a maximum of £5,000 in relation to offences under Smoke and Carbon Monoxide Alarm England Regulations 2015 and the Enterprise and Regulatory Reform Act 2013.</p> <p>There are grounds of appeal against a Civil Penalty being imposed. If there is no upheld appeal, failure to pay a Civil Penalty, will result in County Court action to recover the debt owed.</p> <p>In circumstances where the Council has determined that it would be appropriate to issue a Civil Penalty as an alternative to prosecution, the level of the penalty would be calculated having regard to the matrix set out in the attached Appendix 2 and Appendix 3.</p>
<p><b>Prosecutions</b></p>	<p>The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a Civil Penalty, if these are the enforcement options following non-compliance, in respect of any of the offences listed above. Examples of situations in which a decision to prosecute would normally be taken include:</p> <ul style="list-style-type: none"> <li>• Issues that are judged to be particularly serious offences;</li> </ul>

	<ul style="list-style-type: none"> <li>• Where the offender has committed similar offences in the past;</li> <li>• Where a Civil Penalty had been served for a previous offence and this remains unpaid;</li> <li>• Offences where there is no option to serve a Civil Penalty such as breach of prohibition notice.</li> </ul> <p>Before deciding whether a prosecution shall be taken against a business or individual, we will consider a number of factors in line with the Code for Crown Prosecutors.</p>
<b>Rent Repayment Orders</b>	<p>The Council may apply for a Rent Repayment Order to be issued by the First Tier Tribunal for the repayment of rents received where there has been certain offence or breach of legislative requirements.</p>
<b>Management Orders</b>	<p>The Council may apply for Interim/Final Management Orders or empty dwelling management orders. These powers are used as a last resort where it appears that there is no reasonable prospect of a property requiring a licence gaining a license in the near future and that it is necessary to protect the health and safety or welfare of persons occupying it. Management orders will also be considered where no responsible appropriate person can be identified to manage a privately rented or empty home or where the landlord or property agent has received a Banning Order.</p>
<b>Banning Orders</b>	<p>The Council will consider applying for a Banning Orders where a landlord has been convicted of one or more Banning Order offence as defined by regulations made under the Housing and Planning Act 2016. This will exclude him/her from letting or engaging in letting agency or property management work. When considering applying for a Banning Order, the Council will have consideration of applicable Government Guidance ensuring that all statutory requirements are met.</p>

#### 4. Application of our policy

All officers will refer to this policy when making housing enforcement decisions. It will be read in conjunction with relevant guidance on enforcement action which may be produced and regard will be given to any relevant quality procedure. Officers will also take into account the view of any other enforcement agency where there is shared or complementary enforcement role.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the Head of Service Regulation and Enforcement before a final decision is taken. This provision shall not apply where a risk of injury to health is likely to occur due to a delay in any decision of being made.

## **5. Review**

This document will be subject to review as and when required. Improvements will be introduced to accommodate changes in legislation and local needs.

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## **Appendix 1**

### **Recovery of cost for the Service of Statutory Notices, Orders and Work in Default**

The legislation (Section 49, Housing Act 2004) allows for the recovery of reasonable fees for certain administrative and other costs, where a Housing Act statutory notice is served. Due to the variances in premises, hazards and time an Officer may have to spend on a case, it is reasonable that each Notice is calculated on its own merits. The cost will be calculated based on the hourly rate of an Officer including on-costs. This is reviewed annually. No maximum amount is set under legislation, but it is clear that charging can only be for the purpose of cost recovery and not to generate income.

It shall be the duty of each case officer to record accurately the time taken and cost incurred (including postage and travel) on a case, broken down into each category of work (e.g. inspection, HHSRS assessment, drawing plans, considering action etc.). For the purposes of transparency, this breakdown would be made available in any appeal or internal review. For the purpose of consistency and fairness all calculations, time records and final amounts will be reviewed by a Manager prior to any charge being applied.

The Council is given discretionary powers to carry out works in default where a person has been required to do works but has failed to do so. The cost of the works will be recovered in accordance with the relevant statutory provisions. The Council is also entitled to recover the costs of officer time in arranging and supervising the work, plus interest. Where charges for enforcement action are levied, they will be registered as a local land charge against the property. This means that when the property is sold the debt has to be repaid, including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). This includes smaller debts where the cost of recovery is greater than the debt owed. To recover debts the Council will use some of the following means:

- The enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs;
- Use of tracing services to track down debtors and secure judgments to recover debts;
- Use of Debt Recovery and Enforcement Agents;
- Demand rents are paid to the Council instead of the landlord to recover outstanding debts (where the legislation allows and it is appropriate to do so).



## **Appendix 2**

### **Civil penalties under the Housing and Planning Act 2016**

The Council has the power to impose civil penalties of up to £30,000. This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016. Local Authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties. Paragraph 3.5 of the statutory guidance states that the actual amount levied in any particular case should 'reflect the severity of the offence, as well as taking account of the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a) **Severity of the offence.** *The more serious the offence, the higher the penalty should be.*
- b) **Culpability and track record of the offender.** *A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.*
- c) **The harm caused to the tenant.** *This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm may be perceived by the tenant, the higher the amount should be when imposing a civil penalty.*
- d) **Punishment of the offender.** *A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.*
- e) **Deter the offender from repeating the offence.** *The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.*
- f) **Deter others from committing similar offences.** *While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through*

*informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.*

- g) Remove any financial benefit the offender may have obtained as a result of committing the offence.** *The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.*

## STEP ONE – Determining the offence category

The Council will determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Factor	Level	Description
<b>Culpability</b>	Very High	Where the offender intentionally breached, or flagrantly disregarded, the law or who has a high public profile and it is reasonable to assume that they knew their actions were unlawful.
	High	Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.
	Medium	Offence committed through act or omission which a person exercising reasonable care would not commit.
	Low	Offence committed with little fault, for example, because: <ul style="list-style-type: none"> <li>• Significant efforts were made to address the risk although they were inadequate on this occasion;</li> <li>• there was no warning/circumstance indicating a risk;</li> <li>• failings were minor and occurred as an isolated incident.</li> </ul>
<b>Harm- Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the severity if it does</b>	High	<ul style="list-style-type: none"> <li>• Serious adverse effect(s) on individual(s) and/or having a widespread impact, including failure to address Category 1 or multiple Category 2 hazards;</li> <li>• High risk of an adverse effect on individual(s) including where persons are vulnerable.</li> </ul>
	Medium	<ul style="list-style-type: none"> <li>• Adverse or risk of adverse effect(s) on individual(s) and/or having a some wider impact, including failure to address low Category 1 or high Category 2 hazards;</li> <li>• The Council and/or legitimate landlords substantially undermined or put at commercial disadvantage by offender's activities;</li> <li>• The Council's work as a regulator to address risks to health is inhibited;</li> <li>• Consumer/tenant/Council misled.</li> </ul>
	Low	<ul style="list-style-type: none"> <li>• Low risk of an adverse effect on individual(s), including failure to address Category 2 hazards;</li> <li>• Public misled but little or no risk of actual adverse effect</li> </ul>

on individual(s).

Having determined the category, the LA should refer to the following starting point to reach an appropriate level of civil penalty within the category range. The LA should then consider further adjustment within the category range for aggravating and mitigating features.

Harm	Culpability			
	Very High	High	Medium	Low
High	5	5	4	3
Medium	5	4	3	2
Low	4	3	2	1

This will give the penalty band for the offence. This penalty band both determines the starting amount and the upper limit for the penalty calculation.

Penalty Level	Penalty Band
1	£500-£2,000
2	£2,000-£4,000
3	£4,000-£6,000
4	£6,000-£15,000
5	£15,000-£30,000

## STEP TWO- Review suitable financial deterrent of penalty and ability to pay

The principle behind issuing civil penalty notices is that there should be no financial gain to the alleged perpetrator of the relevant offences from not complying with legal requirements. It is important that fines are set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. To achieve this the Council will consider the size and extent of the alleged perpetrators property business, when deciding the level of fine which is appropriate.

Although the Council is permitted to consider all of a landlord's income and assets when calculating a civil penalty, full financial investigations will normally only be considered for the more serious offences.

Extent of Business	Description	Impact on Penalty level
Regional or National landlord/letting agent	Large professional landlord gaining substantial income from property rentals.	Expected penalty at top range of penalty band,
Large local	Professional landlord	Expected penalty at top

<b>landlord/letting agent</b> • Local business premises • Employed staff	gaining substantial income from property rentals.	range of penalty band minus 30%.
<b>Local landlord/letting agent who owns or manages several properties</b>	Regular but low to medium financial income from property rentals	Expected penalty at bottom range of penalty band plus 30%.
<b>Single Property owner/accidental landlord</b>	Limited financial income from property rentals	Expected penalty at bottom range of penalty band

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the Council during the notice of intended penalty stage any data relevant to his financial position that will enable it to assess what he can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

The Council will consider if it is appropriate to reduce the penalty to the bottom range of the penalty band in cases where the alleged perpetrator can demonstrate that their total weekly income from all income sources falls below £440/week after deducting income tax and national insurance. The threshold for such a reduction is based on the Magistrates Courts sentencing guidelines and will be amended as necessary to take into any changes in such guidelines. The Council reserves the right to request further information to support any financial claim and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

### **STEP THREE – Determining aggravating and mitigating factors**

Below is a non-exhaustive list of factual elements that provide the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

	Description	Expected % change in penalty
<b>AGGREVATING FACTORS</b>	Previous convictions or Civil Penalties, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	+50% - for relevant conviction/penalty in the last 2 years.  +20% - for relevant conviction/penalty in the last 5 years.
	Motivated by financial gain	+5%
	Deliberate concealment of illegal nature of activity	+5%
	Established evidence of wider/community impact	+10%
	Multiple offences at the property in question	+5%
	Obstruction of justice	+5%
	Record of providing substandard accommodation	+5% - for previous proven complaints in past 5 years (excluding current case)
	Record of poor management or not meeting legal requirements.	+10% - for previous notices/other formal action in last 5 year (excluding current case)
	Refusal of free advice or training	+5%

<b>MITIGATING FACTORS</b>	Member of Accreditation scheme	-5%
	No previous convictions or no relevant/recent convictions	-5%
	Steps voluntarily taken to remedy problem	-10%
	High level of co-operation with the investigation, beyond that which will always be expected	-10%
	Good record of maintaining property	-10% if first proven complaint in last 5 years.
	Self-reporting, co-operation and acceptance of responsibility	-5%
	Good character and/or exemplary conduct	-5%
	Mental disorder or learning disability, where linked to the	-20%

	commission of the offence	
	Serious medical conditions requiring urgent, intensive or long-term treatment	-20%
	Age and/or lack of maturity where it affects the responsibility of the offender	-20%
	Sole or primary carer for dependent relatives	-20%

If several mitigating factors apply the maximum added reduction of penalty is 50% of the amount resulting after step 2. If several aggravating factors apply the maximum added increase is to the statutory maximum of £30,000.

#### **STEP FOUR- Reduction for early admission of guilt**

It is an established legal principle that criminal courts should take into consideration if an early guilty plea was entered when determining the appropriate fine for an offence. For cases going to Magistrates Court, the Sentencing Council propose an early plea discount of 1/3<sup>rd</sup>. As the alternative to a Civil Penalty would be a prosecution, it would be fair to offer the same early resolution discount for any civil penalty. 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 admitted guilt. Normally any discount would only be available for payment within 14 days of the penalty being issued.
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be 1/3<sup>rd</sup>. In some circumstances there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

#### **STEP FIVE- Totality Principle**

If issuing a financial penalty for more than one offence, 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. Where the offender is issued with more than one financial penalty, the Council should determine the financial penalty for each individual offence based on the seriousness of the individual offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the Local Authority. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not

just and proportionate the Council should consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved. For example:

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

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

**Appendix 3**  
**Civil penalties under Smoke and Carbon Monoxide Alarm (England)**  
**Regulations 2015 and The Enterprise and Regulatory Reform Act 2013**

The table below details the proposed Civil Penalty structure for any offences with a Statutory Maximum of £5000.

Size of business	Type of offence	Civil Penalty Amount		Second Offence (within 12-month)
			If paid within 14 days	
<b>Regional or National landlord/letting agent</b>	% of maximum	100%	33% discount	
	Smoke detectors/Redress Scheme and any other Civil Penalties with £5,000 maximum.	£5,000	£3,300	£5,000
<b>Large local landlord/letting agent</b> <b>-Local business premises</b> <b>-Employed staff</b>	% of maximum	60%	33% discount	
	Smoke detectors/Redress Scheme and any other Civil Penalties with £5,000 maximum.	£3,000*	£2,000	£5,000
<b>Local landlord/letting agent</b> <b>-owns or manages several properties</b>	% of maximum	40%	33% discount	
	Smoke detectors/Redress Scheme and any other Civil Penalties with £5,000 maximum.	£2,000*	£1,320	£4,000
<b>Single Property owner / "accidental landlord"</b>	% of statutory maximum	20%	33% discount	
	Smoke detectors/Redress Scheme and any other Civil Penalties with £5,000 maximum.	£1,000*	£666	£2,000

*\* Any second offence in the subsequent 12-month period for the same landlord/agent even if for a different property would be charged at 200% of the first penalty amount up to the statutory maximum level.*