



## **Policy Development and Decision Group (Joint Operations Team)**

Monday, 4 September 2017 at 4.00 pm  
to be held in Meadfoot Room, Town Hall, Castle Circus, Torquay, TQ1 3DR

### **Membership**

Councillor Haddock (Chairman)

Councillor Amil  
Councillor Excell  
Councillor King

Councillor Mills  
Councillor Parrott  
Mayor Oliver

### **Agenda**

1. **Apologies**  
To receive apologies for absence.
2. **Disclosure of Interests**
  - (a) To receive declarations of non pecuniary interests in respect of items on this agenda  
**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
  - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For information relating to this meeting or to request a copy in another format or language please contact:

**Teresa Buckley, Town Hall, Castle Circus, Torquay, TQ1 3DR  
(01803) 207013**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

3. **Minutes** (Pages 3 - 8)  
To confirm as a correct record the Minutes of the meeting of the Policy Development and Decision Group held on 24 July 2017.
4. **Urgent Items**  
To consider any other items the Chairman decides are urgent.
5. **Housing Standards - Civil Penalty Policy, Housing and Planning Act 2017** (Pages 9 - 25)  
To consider a report that seeks approval for the adoption of the Housing Standards Civil Penalty Policy.
6. **Exclusion of Press and Public**  
To consider passing a resolution to exclude the press and public from the meeting prior to consideration of the following item on the agenda on the grounds that exempt information (as defined in Schedule 12A of the Local Government Act 1972 (as amended)) is likely to be disclosed.
7. **Lease Renewal of Hollacombe Community Centre (CRC) and St Edmunds Centre** (Pages 26 - 32)  
To consider an exempt report on the above.



## **Policy Development and Decision Group (Joint Operations Team)**

**24 July 2017**

**-: Present :-**

Mayor Oliver, Councillors Amil, Excell, Haddock, King, Mills and Parrott

(Also in attendance: Councillors Barnby, Brooks, Ellery, Manning, Morey, Stubbley and Tyerman)

### **9. Appointment of Vice-Chairman**

Councillor King was appointed as Vice-Chairman for the remainder of the 2017/18 Municipal Year.

### **10. Minutes**

The minutes of the Policy Development and Decision Group (Joint Operation Team) held on 18 May 2017 were confirmed as a correct record and signed by the Chairman.

### **11. Article 4 Direction for Houses in Multiple Occupation**

The Group considered a report which sought to agree whether to progress an Article 4 Direction which would remove permitted development rights from properties which allow change of use from Use Class C3 Dwelling to C4 House in Multiple Occupation (HMO) (for between 3-6 persons) across Torbay.

The Policy Development and Decision Group (Joint Operations Team) made the following recommendations to the Mayor:

- (i) that Spatial Planning and Community Services undertake to investigate any further potential to align Housing Licensing and Development Management processes to ensure that full opportunity for early intervention regarding breaches of existing planning and/or licensing requirements with regards to HMOs is undertaken; and
- (ii) that Spatial Planning prepares a report and further develops a case for Council to make a decision on whether to prepare an Article 4 Direction which would have the effect of removing permitted development rights to change dwellings to small houses in multiple occupation (Class C3 Dwellings to C4 Small Houses of Multiple Occupation), without the need for express planning permission. That 6 months notice is given prior to the Article 4 Direction taking effect.

The Mayor considered the recommendations of the Policy Development and Decision Group (Joint Operations Team) set out above at the meeting and his decision, together with further information is attached to these Minutes.

**12. Mayor's response to the Section 5 report issued by the Monitoring Officer**

The Mayor considered the Section 5 report issued by the Monitoring Officer. The Mayor's response is attached to these minutes.

Chairman

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## Record of Decisions

### Article 4 Direction for Houses in Multiple Occupation

#### Decision Taker

The Mayor on 24 July 2017

#### Decision

- (i) That Spatial Planning and Community Services undertake to investigate any further potential to align Housing Licensing and Development Management processes to ensure that full opportunity for early intervention regarding breaches of existing planning and/or licensing requirements with regards to HMOs is undertaken; and
- (ii) that Spatial Planning prepares a report and further develops a case for Council to make a decision on whether to prepare an Article 4 Direction which would have the effect of removing permitted development rights to change dwellings to small houses in multiple occupation (Class C3 Dwellings to C4 Small Houses of Multiple Occupation), without the need for express planning permission. That 6 months notice is given prior to the Article 4 Direction taking effect.

#### Reason for the Decision

Members had raised concerns regarding the proliferation and management of HMOs in Torbay and were keen to investigate further ways that the problems associated with HMOs could be better managed.

#### Implementation

The decision will come into force and may be implemented on Wednesday, 9 August 2017 unless the call-in process is triggered (as set out in Standing Orders in relation to Overview and Scrutiny).

#### Information

This proposal had been developed for further discussion at Policy Development and Decision Group before being considered at Council. An Article 4 Direction would remove permitted development rights from properties which allow change of use from Use Class C3 Dwelling to C4 House in Multiple Occupation (HMO) (for between 3-6 persons) across Torbay.

The potential benefits of managing small HMOs may lead to better realising the achievement of mixed and balanced communities and better amenity for residents in Torbay (helping to achieve a Prosperous and Healthy Torbay).

#### Alternative Options considered and rejected at the time of the decision

Not to proceed with an Article 4 Direction.

#### Is this a Key Decision?

No

**Does the call-in procedure apply?**

Yes

**Declarations of interest** (including details of any relevant dispensations issued by the Standards Committee)

None

**Published**

1 August 2017

Signed: \_\_\_\_\_  
Mayor of Torbay

Date: \_\_\_\_\_

## Interim report from Elected Mayor Oliver

Issued in response to the Monitoring Officer Report dated 3 July 2017

### 1. Introduction

#### 1.1 On 27 June the Elected Mayor took the following decision

“That following receipt of a valuation from the District Valuer dated 17 May 2017 which at paragraph 11 confirms that a 10 year covenant would not have an effect on the value of the Council’s property interest in land comprising Churston Golf Course the Council enters into a deed covenanting with the residents of Churston & Galmpton ward in the following terms:-

‘Torbay Council covenants with all inhabitants of the ward of Churston and Galmpton that for a period of **10 years** beginning on the date of this deed it will not on the land, shown edged in red on the plan attached to the submitted report to the Council meeting on 25 September 2014, known to be Churston Golf Course, allow any development of Churston Golf Course without any such proposal first obtaining the majority of votes in a referendum of the persons who at the day of the referendum would be entitled to vote as electors at an election of Councillors for the Churston and Galmpton Ward and are registered as local government electors at an address within this Ward. For the purposes of this covenant ‘development’ shall not include any development permitted under the terms of the lease between The Council of the Borough of Torbay and Churston Golf Club Limited dated 3 April 2003. Nothing contained or implied in this Deed shall prejudice or affect the exercise by the Council of its regulatory functions under the Town and Country Planning Act 1990 or any other statute or statutory instrument.’

In accordance with the Local Government Act 1972, the Mayor on behalf of the Council has all necessary information to make this Covenant. The covenant will then be appropriately registered with the Land Registry with immediate effect

#### 1.2 In my opinion, as the former Managing Partner of a firm of Chartered Surveyors and Property Valuers based in Torbay, this 17<sup>th</sup> May advice from the District Valuer was clear and unambiguous. It was on the basis of this I made my decision.

#### 1.3 After having made my decision as presented with new information from the District Valuer dated 29 June 2017 and a Monitoring Officer Report dated

- 1.4 The constitution as at 21 June 2017 states on page 393:

**5. Consideration of Monitoring Officer Reports**

5.1 The Executive or Council (as appropriate) must consider a Monitoring Officer Report within 21 days of copies being first sent to the elected Mayor and all members. The Executive or Council (as appropriate) are also under a duty to ensure that no step is taken to give effect to any proposal or decision to which such a report relates until the end of the first business day after the day on which consideration of the report is concluded. The Executive and Council's responsibilities under this paragraph may not be delegated.

5.2 As soon as practicable after the Executive has concluded its consideration of a Monitoring Officer Report, the Executive must prepare a report and send a copy to every member of the Council and to the Monitoring Officer. This report must specify what action (if any) the Executive has taken in response to the Monitoring Officer Report; what action (if any) it proposes to take (and when); and the Executive's reasons for taking (or not taking) action. (There is no equivalent obligation upon the Council to prepare a report in response to a Monitoring Officer Report.)

**2. Mayor's interim response**

2.1 In accordance with this draft of the constitution and as announced at the meeting on 24 June, the Mayor and the Executive begun considering the Monitoring Officer Report within the 21 day period. However we have not yet been able to conclude our consideration of the report for the reason below.

2.3 I have determined I require independent advice. It is for this reason I have requested certain facts from the Monitoring Officer. The Monitoring Officer has not yet been able to respond to me, therefore I am not in a position to respond to the Monitoring Officer

Signed:  Date: 2 August 2017  
Elected Mayor of Torbay



Meeting: Mayor PDDG / JOT

Date: 4 September 2017

Wards Affected: All

Report Title: Housing Standards – Civil Penalty Policy, Housing and Planning Act 2017.

Is the decision a key decision? No

When does the decision need to be implemented? At the earliest opportunity

Executive Lead Contact Details: Mark King, Executive Lead for Planning, Transport and Housing. Telephone 207114, email: mark.king@torbay.gov.uk.

Supporting Officer Contact Details: Robert Kelly, Acting Principal Officer Housing Standards, telephone: 208042, email: Robert.Kelly@Torbay.gov.uk

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## 1. Proposal and Introduction

- 1.1 The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords, which come into operation during 2017, these include:
  - a) ***The ability of the Local Authority to issue Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force April 2017);***
  - b) Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (came into force April 2017);
  - c) Database of rogue landlords and property agents convicted of certain offences (scheduled to come into force on 1 October 2017);
  - d) Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).
- 1.2 This paper seeks approval for the adoption of the Housing Standards Civil Penalty Policy. It details when a civil penalty will be used and for what amount the penalty will be.
- 1.3 The amount of the penalty is determined by the local housing authority with the maximum being £30,000. In determining an appropriate level of penalty, local housing authorities should have regard to the guidance which has been incorporated into this policy document, which sets out the factors to take into account when deciding on the appropriate level of penalty.
- 1.4 The benefits of such a scheme will be:
  - a) Improved standards within the private rented sector
  - b) Allow a more effective and efficient mechanism within which to tackle rogue landlords.

- c) Reduce the burden on the courts
- d) Level of fine more conducive to the offense committed
- e) Payments from fines come into the LA ring fenced by regulation for Housing Standards enforcement.

1.5 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction. In order to ensure that the level of fine is conducive to the offence, the policy escalates taking into account the severity of the offence, the culpability and track record of the Landlord and the harm to the tenant. As part of the process a landlord facing a civil penalty can make representations and can appeal at a Housing Tribunal.

## **2. Reason for Proposal**

2.1 A policy document is required to enable the local authority to issue Civil penalties under the new legislation. It also ensures a consistency of approach and that there are protections and safeguarding practices in place for landlords. It will also enable a robust mechanism within which to defend any challenges that are open to the local authority from landlords, through the means of a tribunal.

2.2 To enable effective implementation of the policy, additional resource is required within Housing Standards of 0.5 FTE this will increase the number of inspecting officers from 2.5 FTE to 3 FTE. It is anticipated that the costs will be met by the income from the civil penalties.

## **3. Recommendation(s) / Proposed Decision**

3.1 That the Housing Standards – Civil Penalty Policy, Housing and Planning Act 2017 detailed in appendix 1 be approved. This sets out how Torbay Council will deliver section 249a of The Housing Act 2004 (as implemented by section 126 of the Housing and Planning Act 2016) in order to issue civil penalties as alternative to prosecution.

3.2 That funding for 0.5 FTE of Housing Standards Environmental Health Officer be agreed (£23,796)

## **Appendices**

Appendix 1: Housing Standards – Civil Penalty Policy, Housing and Planning Act 2017

## **Background Documents**

Department for Communities and Local Government – Civil penalties under the Housing and Planning Act 2016, Guidance for Local Housing Authorities

## Section 1: Background Information

|           |  |
|-----------|--|
| <b>1.</b> | <p><b>What is the proposal / issue?</b></p> <p>Rogue landlords can have an incredibly distressing impact on the lives of individuals, families and communities. Picking up the pieces after them is also costly and increasingly challenging for organisations that have diminishing resources at their disposal.</p> <p>Progress has been made in addressing this issue through the Mayors support and commitment to tackle this problem. This proposal provides an additional mechanism to provide an alternative sanction that is more efficient, with fewer burdens on public sources and with greater sanctions, with the aim of facilitating behaviour change across the sector.</p>   |
| <b>2.</b> | <p><b>What is the current situation?</b></p> <p>Torbay is heavily reliant on the private rented sector and achieving good quality provision which is affordable in a low wage economy is a challenge. The private rented sector accounts for almost 22% of the housing stock in Torbay compared, to 12% nationally.</p> <p>The Housing Standards team provide a robust approach to rogue landlords and issues such as the Grenville fire have only highlighted the wider concerns across the private rented sector.</p> <p>In the first quarter of this year 70% of all inspections undertaken by the team has required formal intervention. This illustrates the need to provide an additional mechanism by which to enable and facilitate more expedient action from property owners.</p> <p>Prosecutions are undertaken by the Local Authority. Although there is no difference in the burden of proof required in issuing a civil penalty to that of a prosecution, the time required across the whole criminal justice system is significantly less. The level of fines issued by the Courts, are not always conducive to the level of the offence committed. This seeks to address both.</p> |
| <b>3.</b> | <p><b>What options have been considered?</b></p> <p>Not adopting the policy will mean that the local authority will not be able to utilise the legal sanctions available to them.</p>  |
| <b>4.</b> | <p><b>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</b></p> <p>Enforcement activity undertaken by the Housing Standards team contributes to the corporate plan in the ways described below. Providing a safe home not only impacts on health but also educational attainment and hence the economic wellbeing of those concerned.</p>   |

|                  |   |
|------------------|---|
|                  | <p>Ambitions: Prosperous and Healthy Torbay</p> <p>Principles:</p> <ul style="list-style-type: none"> <li>• Use reducing resources to best effect</li> <li>• Reduce demand through prevention and innovation</li> <li>• Integrated and joined up approach</li> </ul> <p>Targeted actions:</p> <ul style="list-style-type: none"> <li>• Protecting all children and giving them the best start in life</li> <li>• Working towards a more prosperous Torbay</li> <li>• Promoting healthy lifestyles across Torbay</li> <li>• Ensuring Torbay remains an attractive and safe place to live and visit</li> <li>• Protecting and supporting vulnerable adults</li> </ul>   |
| <p><b>5.</b></p> | <p><b>Who will be affected by this proposal and who do you need to consult with?</b></p> <p>It is the intention that the proposal will facilitate the ability to drive up standards in the private rented sector in Torbay. As such it will impact both on landlords and also tenants.</p> <p>Significant consultation has been undertaken by Central Government on the implementation of the legislation, both through statutory agencies and those representatives that provide housing, including landlord associations.</p> <p>Significant peer consultation has already been undertaken across Devon and Somerset, to ensure a consistent approach to the implementation of the legislation.</p> <p>With the adoption of this policy it is intended to consult with landlords and their representatives on its implementation and provide appropriate information.</p> |
| <p><b>6.</b></p> | <p><b>How will you propose to consult?</b></p> <p>The overarching policy guidance from Central Government has been based on an extensive consultation exercise with National Landlord Associations. As such any implementation will be undertaken at a local through engagement with landlords associations.</p>  |

## Section 2: Implications and Impact Assessment

|     |  |
|-----|--|
| 7.  | <p><b>What are the financial and legal implications?</b></p> <p>Income received from a civil penalty is retained by the Council and can only be used towards the statutory functions in relation to its enforcement of standards in the private rented sector. The Council may also apply for costs and expenses incurred in relation to the enforcement action.</p> <p>Any income generated from this activity is unpredictable based on the nature of enforcement action. It is therefore not possible to forecast any income levels for the year.</p> |
| 8.  | <p><b>What are the risks?</b></p> <p>Failure to agree the document and hence have an appropriate policy in place means the Council will be unable to issue civil penalties for such offences.</p> <p>The issuing of any penalties are open to legal challenge through a Housing Tribunal.</p> <p>Not providing adequate resource may impact on the deliverability and implementation of the new legislation.</p>   |
| 9.  | <p><b>Public Services Value (Social Value) Act 2012</b></p> <p>N/A</p>   |
| 10. | <p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <p>The policy document has been based on documentation provided by DCLG on Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Authorities.</p>   |
| 11. | <p><b>What are key findings from the consultation you have carried out?</b></p> <p>As a result of consultation with other Devon local authorities it is their intention to adopt Torbay's policy document. This will provide a consistent approach across the region.</p>  |
|     | <p><b>Amendments to Proposal / Mitigating Actions</b></p> <p>N/A</p>   |

## Equality Impacts

| 13  | <b>Identify the potential positive and negative impacts on specific groups</b> |                                      |                |
|---|--|--------------------------------------|----------------|
| <b>Not required</b>   |  |                                      |                |
|   | Positive Impact  | Negative Impact & Mitigating Actions | Neutral Impact |
| Older or younger people   | New powers to deal with poor housing conditions                                |                                      |                |
| People with caring Responsibilities   | New powers to deal with poor housing conditions                                |                                      |                |
| People with a disability  | New powers to deal with poor housing conditions                                |                                      |                |
| Women or men  | New powers to deal with poor housing conditions                                |                                      |                |
| People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i> | New powers to deal with poor housing conditions                                |                                      |                |
| Religion or belief (including lack of belief)   | New powers to deal with poor housing conditions                                |                                      |                |
| People who are lesbian, gay or bisexual   | New powers to deal with poor housing conditions                                |                                      |                |
| People who are transgendered  | New powers to deal with poor housing conditions                                |                                      |                |
| People who are in a marriage or civil partnership   | New powers to deal with poor housing conditions                                |                                      |                |
| Women who are pregnant / on maternity leave   | New powers to deal with poor housing conditions                                |                                      |                |

|           |   |   |  |  |
|-----------|---|---|--|--|
|           | Socio-economic impacts<br>(Including impact on child poverty issues and deprivation)  | New powers to deal with poor housing conditions   |  |  |
|           | Public Health impacts (How will your proposal impact on the general health of the population of Torbay)                           | New powers to deal with poor housing conditions which will improve the wider determinants of health |  |  |
| <b>14</b> | <b>Cumulative Impacts – Council wide</b><br>(proposed changes elsewhere which might worsen the impacts identified above)          | N/A   |  |  |
| <b>15</b> | <b>Cumulative Impacts – Other public services</b><br>(proposed changes elsewhere which might worsen the impacts identified above) | N/A   |  |  |



## **Housing Standards – Civil Penalty Policy**

Policy document setting out how Torbay Council will deliver section 249a of The Housing Act 2004 (as implemented by section 126 of the Housing and Planning Act 2016) in order to issue civil penalties as alternative to prosecution

Section 126 and schedule 9 of the Housing and Planning Act 2016 came into force on the 6th April 2017.

These provisions give the local housing authority the power to issue a financial penalty for certain Housing Act 2004 offences as an alternative to prosecution.

The civil penalties option can be used for the following Housing Act 2004 offences:

- Failure to comply with an improvement notice
- Offences in relation to HMO licensing
- Offences relating to the contravention of an overcrowding notice
- Failure to comply with the HMO management regulations

The council is required to have a policy in place that details when to prosecute and when to consider a civil penalty.

The council must also provide guidance on how the fine levels will be set.

The guidance document issued by DCLG provides details on the considerations that must be taken into account as part of the fine setting process. It places particular emphasis upon the severity of the offence and the landlord's previous record of offending. A scoring mechanism has been devised to reflect the considerations set out in the DCLG guidance. This scoring mechanism is set out below.

### **When to prosecute and when to consider a civil penalty**

The same criminal standard of proof is required for a civil penalty as for prosecution.

Torbay Council will firstly satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In order to do so Torbay Council will consider its own enforcement policy, consult the Crown Prosecution Service Code for Crown Prosecutors' and work closely with legal advisors.

Once satisfied that there would be a realistic prospect of conviction a decision will be taken as to whether to prosecute or to issue a civil penalty. All decisions will be taken on a case-by-case basis.

The guidance document issued by DCLG suggests that prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.

It is likely that a civil penalty will be considered as the most appropriate course of action except in the aforementioned circumstances where further consideration will be taken.



## Levels of fine to be set

The guidance document issued by DCLG provides the following considerations when determining the level of a civil penalty;

### a) **Severity of the offence** - *The more serious the offence, the higher the penalty should be.*

In order to measure the severity of the offence the following criteria will be used;

**Level one** – Major impact – serious and substantial risk to the health and safety of the occupiers and/or community as a result of the offence, with potentially life threatening results or loss of major limbs. Housing defects posing such a risk may be associated with electrical hazards, carbon monoxide exposure, fire safety risk, explosions, structural collapse and falling elements or significant collision and entrapment issues. They may be associated with hazards assessed under the HHSRS, conditions of an HMO licence or be a failure to comply with the HMO Management Regulations. These examples do not represent an exhaustive list.

For each Level 1 issue considered a score of 5 will be added.

**Level two** - Serious Impact – serious risk to the health and safety of the occupiers and/or immediate neighbours, potentially leading to serious injury or disease requiring prolonged treatment and/or hospital admission. Housing defects posing such a risk may be associated with collision and entrapment issues, falls, asbestos, biocides or lead exposure, excessively cold or hot conditions, radiation or hot surfaces. They may be associated with hazards assessed under the HHSRS, conditions of an HMO licence or be a failure to comply with the HMO Management Regulations. These examples do not represent an exhaustive list.

For each Level 2 issue considered a score of 3 will be added.

**Level three** – Minor impact – Risk of injury or disease to the occupiers potentially resulting in treatment at the doctors. Housing defects posing such a risk may be associated with damp and mould issues, overcrowding, hygiene or food safety issues. They may be associated with hazards assessed under the HHSRS, conditions of an HMO licence or be a failure to comply with the HMO Management Regulations. These examples do not represent an exhaustive list.

For each Level 3 issue considered a score of 1 will be added.

A one-off premium of 10 points will be added where any hazard or issue would affect more than 1 household i.e. whole building issues or common parts issues in HMO's. This is to ensure that the scope of the hazard or issue is considered in addition to its ability to harm.

**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.*

In order to measure the culpability of the perpetrator the following criteria will be used;

### **Culpability**

**Deliberate**– An intentional breach by a landlord or property agent or flagrant disregard for the law for example by failing to comply with a notice or regulations.

For Deliberate acts a score of 20 will be added

**Reckless**– An actual foresight of, or wilful blindness to the risk of offending but decides to take the risk nevertheless for example failing to comply with a strict liability in the HMO regulations.

For Reckless acts a score of 15 will be added

**Negligent**– The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence, for example partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.

For Negligent acts a score of 10 will be added

**Low or no culpability**– The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

For Low culpability acts a score of 5 will be added

A premium will be added where the requirement to licence a property under Parts 2 or 3 of the Housing Act 2004 has not been complied with.

Where a landlord or person managing fails to obtain a licence without direct contact by Torbay Council requiring them to do so a score of 5 will be added.

Where a landlord or person managing fails to obtain a licence despite direct contact by Torbay Council requiring them to do so a score of 15 will be added.



## Track record

**1st offence** – no previous conviction or civil penalty imposition for the same type of offence in the previous four years irrespective of the locality to which the offence relates.

For 1<sup>st</sup> offences a score of 10 will be added

**2nd subsequent offence by same person/company** – any conviction or civil penalty imposition for the same type of offence within four years of the 1<sup>st</sup> offence, irrespective of the locality to which the initial offence relates.

For 2<sup>nd</sup> offences a score of 20 will be added

**Ongoing non-compliance** - any conviction or civil penalty imposition for the same type of offence within four years of the previous instance (at least 3<sup>rd</sup> occurrence) irrespective of the locality to which the initial offence relates.

For ongoing offences a score of 30 will be added

**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 (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.*

The severity of harm calculation above reflects the types of issues encountered however a premium score will be added for actual harm having occurred and the vulnerability of the tenant as set out in the Housing Health and Safety Rating System and in the table below;

| <b>Hazard</b>                              | <b>Vulnerable age group (age of occupant)</b> |
|--|---|
| Damp and mould growth                      | 14 and under                                  |
| Excess Cold                                | 65 or over                                    |
| Excess Heat                                | 65 or over                                    |
| Carbon Monoxide                            | 65 or over                                    |
| Lead                                       | under 3 years                                 |
| Personal Hygiene, Sanitation and Drainage  | under 5 years                                 |
| Falls associated with baths etc.           | 60 or over                                    |
| Falling on level surfaces etc.             | 60 or over                                    |
| Falling on stairs etc.                     | 60 or over                                    |
| falling between levels                     | under 5 years                                 |
| Electrical hazards                         | under 5 years                                 |
| Fire                                       | 60 or over                                    |
| Flames, hot surfaces etc.                  | under 5 years                                 |
| Collision and entrapment                   | under 5 years                                 |
| Collision and entrapment - low headroom    | 16 or over                                    |
| Position and operability of amenities etc. | 60 or over                                    |

A score of 10 will be added where the occupiers have suffered harm due to the defects noted.

A score of 3 will be added for each hazard or issue noted where the vulnerable age group are present

**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 demonstrates the consequences of not complying with their responsibilities.*

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

**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.*

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

**f) Deter others from committing similar offences** – *While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.*

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

**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.*

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. In particular the fine level must not be less than it would cost to undertake any necessary works contributing to the initial offence. The inspecting officer will evaluate the cost of rectifying the deficiencies based upon their knowledge and experience of the local building industry. A costing sheet will be produced and any fine must be at least 50% greater than this total up to a limit of £30K. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.



## Reductions

**Level of compliance by perpetrator, their attitude in doing so and payment early payment** - Where the decision has been taken that a prosecution is appropriate or subsequently a civil penalty notice should be issued, it is unlikely that the perpetrator could be deemed compliant however if there is a clear behavioural change and a will to ensure future compliance, followed by a payment within the prescribed 28 days a reduction of 10% may be attributed to the total.

**Financial hardship** - Local housing authorities should make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty. The perpetrator will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship in those representations. It will be for the perpetrator to provide sufficient documented evidence of income when relying upon such representations. The Council reserves the right to request further information to support any financial claim, and where this is incomplete, appears to be inaccurate or is not sufficiently evidenced may determine that the representation should not be considered. It should be noted that due to the average value of property in the Torbay area and the upper limit of £30K associated with any civil penalty action, it is unlikely that perpetrators with multiple properties will be able to demonstrate financial hardship.



## Examples

Person A has failed to comply with an improvement notice containing 6 hazards; Excess Cold, Fire Safety, Falls on Stairs, Electrical hazards, Damp and Mould and Entry by Intruders (2 at level 1, 2 at level 2 and 2 at level 3). They were prosecuted for failing to comply with an improvement notice 3 years ago at a different address. The occupant is a 67 year old lady who has recently been in hospital with pneumonia.

Scoring;

Severity of the offence =  $2 \times 5 + 2 \times 3 + 2 \times 1 = 18$

Multiple households affected = 0

Culpability - Deliberate as failed to comply with notice = 20

Premium added for Licensable HMO = 0

Track record – 2<sup>nd</sup> offence in 4 years = 20

Harm – Pneumonia (excess cold) = 10

Vulnerability – excess cold, falls on stairs & fire  $3 \times 3 = 9$

Total = 77

Penalty charge = £20K

Once the Notice of intent is served the perpetrator engages positively with the LA. They accept the charge and pay within 28 days.

Reductions = Compliance, attitude, acceptance and early payment –10%

Subtotal = £18K

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Person B is the person managing a poorly converted HMO. During an inspection 8 contraventions of the HMO management Regulations are noted. The most serious relate to fire safety provisions and the electrical installation. There are 3 at level 1, 2 at level 2 and 3 at level 3. The landlord was written to recently at another HMO to remind him of the need to comply with the management regulations at all of his properties.

Scoring;

Severity of the offence =  $3 \times 5 + 2 \times 3 + 3 \times 1 = 24$

Multiple households affected = 10

Culpability - Reckless as failed to comply with HMO Management Regs = 15

Premium added for Licensable HMO = 0

Track record – 1<sup>st</sup> offence despite recent advice = 10

Harm – non demonstrated = 0

Vulnerability – 3 x over 60's living in the property (fire)  $1 \times 3 = 3$

Total = 62

Penalty charge = £15K



Person C has failed to comply with an improvement notice requiring an excess cold hazard to be addressed. This is the 1<sup>st</sup> time the LA has had any engagement with the landlady who claims that she has had difficulty organising the works and gaining access. A young family occupy the property.

Scoring;

Severity of the offence =  $1 \times 3 = 3$

Multiple households affected = 0

Culpability - Deliberate unless evidence to the contrary = 20

Premium added for Licensable HMO = 0

Track record – 1st offence = 10

Harm – non demonstrated = 0

Vulnerability = 0

Total = 33

Penalty charge = £5K

Once the Notice of Intent is served Landlady makes representations suggesting that she would suffer financial hardship. She has 3 properties and the income is her only income. The cost of the works is estimated to be £3K

Person C has assets in the form of property from which she would be able to derive funds to pay the charge. No reduction is made.

In order not to undermine consideration g (above) the charge should be a minimum of £4500

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Person D has failed to licence a licensable HMO. She was written to following an initial visit 1 month ago advising that a licence was necessary. The property needs some attention however no notices have been served and it is not considered that the HMO management regulations have been breached. There is no history of non-compliance in the past.

Scoring;

Severity of the offence = 0

Multiple households affected = 0 (despite housing multiple households, there is no hazard or issue affecting health or wellbeing)

Culpability - Reckless = 15

Premium added for failure to licence = 15

Track record – 1st offence = 10

Harm – non demonstrated = 0

Vulnerability = 0

Total = 40

Penalty charge = £5K



Person E has failed to licence a licensable HMO. During the initial inspection 8 contraventions of the HMO management Regulations are noted. The most serious relate to fire safety provisions and the electrical installation. There are 3 at level 1, 2 at level 2 and 3 at level 3. Despite being written to no action has been taken to rectify the issues or licence the property. There are elderly occupants who are the most vulnerable to hazards relating to fire safety. In the past 8 years, Person E has been prosecuted on 2 other occasions for a similar offences at neighbouring local authorities, the most recent within the last 4 years.

Scoring;

Severity of the offence =  $3 \times 5 + 2 \times 3 + 3 \times 1 = 24$

Multiple households affected = 10

Culpability - Reckless for failing to comply with HMO Management Regulations and Deliberate for failure to licence = 20

Premium added for failure to licence = 15

Track record – 3<sup>rd</sup> offence = 30

Harm – non demonstrated = 0

Vulnerability 2 x over 60's living in the property (fire)  $1 \times 3 = 3$

Total = 102

Penalty charge = £30K

### Scoring Chart

| Score   | Penalty Charge |
|---------|----------------|
| 1-10    | £1,000         |
| 11-20   | £2,000         |
| 21-30   | £3,000         |
| 31-40   | £5,000         |
| 41-50   | £7,500         |
| 51-60   | £10,000        |
| 61-70   | £15,000        |
| 71-80   | £20,000        |
| 81-90   | £25,000        |
| 91-100+ | £30,000        |

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted