South Cambridgeshire District Council

Civil Penalties Procedure & Guidance Housing and Planning Act 2016

Shared Waste & Environment (May 2021)

This approach to calculating civil penalties is based on the model developed by Nottingham City Council.

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Section 1: Introduction and Overview

1.1 Purpose

This document sets out the procedure for determining the amounts for civil penalties that can be imposed on a landlord or letting agent as an alternative to prosecution for specific offences under the Housing Act 2004 within the South Cambridgeshire District.

This document is intended to work in accordance with the 'South Cambridgeshire District Council Private Sector Housing Enforcement Policy 2021, as published by the South Cambridgeshire District Council.

Section 2 was created in accordance with Section 3.5 of the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' ("the DCLG Guidance"), published by the Department for Communities and Local Government.

In this document, the term "landlord" is used to refer to the "owner", "person having control", "person managing" or "licence holder", as defined under the Housing Act 2004 ("the 2004 Act"). The term "Landlord" will also be used to refer to tenants of houses in multiple occupation who have committed offences under section 234 of the Housing

Act 2004. The term “the Council” is used to refer to South Cambridgeshire District Council in its capacity as the Local Housing Authority.

1.2 What is a civil penalty?

A civil penalty is a financial penalty of up to £30,000 which can be imposed on a landlord as an alternative to prosecution for specific offences under the 2004 Act. The amount of penalty is determined by the Council having regard to the individual circumstances in each case; section 2 sets out how the Council will determine the appropriate level of civil penalty.

The Council considers that the most likely recipients of civil penalty notices will be those persons who are involved in the owning or managing private rented properties. However, the Council does have the power to impose them on tenants of Houses in Multiple Occupation, for offences under section 234 of the Housing Act 2004 and will consider doing so where it is deemed appropriate.

1.3 What offences can civil penalties be imposed for?

A civil penalty can be considered as an alternative to prosecution for any of the following offences under the 2004 Act:

- Failure to comply with an Improvement Notice (section 30).
- Offences in relation to licensing of HMOs (section 72).
- Offences in relation to licensing of houses under Part 3 of the Act (section 95).
- Contravention of an overcrowding notice (section 139).
- Failure to comply with management regulations in respect of HMOs (section 234).
- Failure to comply with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

1.4 What is the legal basis for imposing a civil penalty?

Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“the 2016 Act”) enables the Council to impose a civil penalty as an alternative to prosecution for specific offences under the 2004 Act.

1.5 What is the burden of proof for a civil penalty?

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. This means that before a civil penalty can be imposed, the Council must be satisfied beyond reasonable doubt that the landlord committed the offence(s) and that if the matter were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In determining whether there is enough evidence to secure a conviction, the Council will have regard to the Crown Prosecution Service Code for Crown Prosecutors, published by the Director of Public Prosecutions. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including whether the evidence is admissible, reliable and credible and the impact of any defence.

See appendix III for an excerpt from the Crown Prosecution Service Code for Crown Prosecutors on the Evidential Stage of the Full Code Test for criminal prosecutions.

1.6 What must be done before a Civil Penalty can be considered?

The Council must be satisfied that there is enough evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be properly served by imposing a civil penalty. The following questions should be considered:

- Does the Council have enough evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the Council?
- Has the evidence been reviewed by the Council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e. the offence is particularly serious, and the landlord has committed similar offences in the past and/or a banning order should be considered.

See appendix II for an excerpt from the Crown Prosecution Service Code for Crown Prosecutors on the Public Interest Stage of the Full Code Test for criminal prosecutions.

1.7 The Totality Principle

Where several offences have been committed and a civil penalty could be imposed for each one, consideration will be given to whether it is just and proportionate to

impose a penalty for each offence.

When calculating the penalty amounts for multiple offences there will inevitably be a cumulative effect and consideration will be given to ensure that the total amount of the civil penalties being imposed is proportionate to the offences involved.

Decisions as to whether to impose civil penalties for each offence, and if not, which offences should be subject to penalties will be taken in discussion with the Council's Service Manager (People, Protection and Planning). Where a single more serious offence can be considered to encompass several less serious offences, this offence will normally be considered as the basis for the civil penalty.

Section 2: Determining the Civil Penalty Amount

2.1 Overview

The Council has the power to impose a civil penalty of up to £30,000. This section sets out how the Council will determine the appropriate level of civil penalty in each case. The actual amount levied in each case should reflect the severity of the offence and take into account the landlord's income and track record.

The civil penalty will be made up of two distinct components.

The first is the penalty calculation; this is where the severity of the offence, the landlord's track record and the landlord's income are considered.

The second considers the amount of financial benefit, if any, that the landlord obtained from committing the offence.

These two components are added together to determine the final penalty amount that will be imposed on the landlord.

This process is broken down into four main stages:

- **Stage 1** determines the penalty band for the offence. Each penalty band has a starting amount and a maximum amount.
- **Stage 2** determines how much will be added to the penalty amount as a result of the landlord's income and track record.
- **Stage 3** is where the figures from stage 2 are added to the penalty band from stage 1. The total amount at this stage cannot go above the maximum amount for the particular penalty band.
- **Stage 4** considers any financial benefit that the landlord may have obtained from committing the offence. This amount will be added to the figure from stage 3.

Stage 1: Determining the Penalty Band

2.2 Stage 1 Overview

This stage considers the landlord's culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property.

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations and/or their actions were deliberate. Landlords are running a business and are expected to be aware of their legal obligations. There are four steps to this process and each step is set out below.

2.3 Step 1: Culpability

Table 1 sets out the four levels of culpability that will be considered: each level has accompanying examples of the behaviours that could constitute that particular level. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

Table 1 - Levels of Culpability

Very high	• Deliberate breach of or flagrant disregard for the law
High	• Offender fell far short of their legal duties, for example, by: - failing to put in place measures that are recognised legal requirements or regulations; - ignoring warnings raised by the local Council, tenants or others; - failing to make appropriate changes after being made aware of risks, breaches or offences; - allowing risks, breaches or offences to continue over a long period of time. • Serious and/or systemic failure by the person or organisation to comply with legal duties.
Medium	• Offender fell short of their legal duties in a manner that falls between descriptions in 'high' and 'low' culpability categories. • Systems were in place to manage risk or comply with legal duties, but these were not sufficiently adhered to or implemented.
Low	• Offender did not fall far short of their legal duties, for example, because: - significant efforts were made to address the risk, breaches or offences, although they were inadequate on this occasion. - they have offered a reasonable defence for why they

were unaware of the risk, breach or offence.

- Failings were minor and occurred as an isolated incident

2.4 Assessing a landlord's culpability

When assessing culpability, consider all the evidence gathered as part of the investigation into the offence and identify any aggravating or mitigating factors which may be relevant to the assessment of culpability.

Aggravating factors could include:

- Previous convictions for similar offence/s, having regard to the time elapsed since the conviction
- Motivated by financial gain
- Public figure or member of recognised landlord or letting agency association or accreditation scheme who should have been aware of their actions
- Experienced landlord or letting agent with a portfolio of properties failing to comply with their obligations
- Failure to deal with obvious threats to health, e.g. failure to maintain fire alarm systems
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation i.e. record of having to take enforcement action previously whether complied with or not
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash
- Evidence of threating behaviour/harassment of the tenant.

Section 2.12 below provides further guidance regarding when it is appropriate to consider past enforcement action taken against the landlord.

Mitigating factors could include:

- First offence where there are no aggravating factors, e.g. public figure or member of recognised good practice body
- Cooperation with the investigation e.g. turns up for the Police and Criminal Evidence Act 1984 (PACE) interview
- Voluntary steps taken to address issues e.g. submits a prompt licence application
- Willingness to undertake training
- Level of tenant culpability
- Willingness to join recognised landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance – mental

health, unforeseen health issues, emergency health concerns
- Vulnerable individual(s) (owners not tenants) where their vulnerability is linked to the commission of the offence
- Good character i.e. no previous convictions and/or exemplary conduct

Using these factors, consider each category of culpability in the table 1 and identify the one that the landlord's behaviour falls within; where a landlord's behaviour could meet more than one of the categories, choose the highest one of those met.

2.5 Step 2: Seriousness of Harm Risked

Table 2 separates the seriousness of harm risked into three levels and each one has an accompanying description to illustrate what would constitute that level of harm risked.

The harm risked by the offence should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

When using the table to determine the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred.

Table 2 - Seriousness of Harm Risked

Level A	The sum of the seriousness of harm risked that would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System[1] is 5% or more and there are relevant matters that increase the likelihood of harm occurring
Level B	The seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes and the sum of the spread of harm outcomes for Class I and Class II in the 'Housing Health and Safety Rating System' is less than 5%.
Level C	All other cases not falling within Level A or Level B (e.g. where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B).

Further information about the classes of harm and relevant matters for each hazard under the Housing Health and Safety Rating System can be found in appendix I.

[1] Office of the Deputy Prime Minister: London (2006), *Housing Health and Safety Rating System Operating Guidance*, page 47

2.6 Step 3: Penalty Levels

Using the already determined level of culpability and the seriousness of harm risked, find the appropriate penalty level (1 – 5+) in Table 3.

Table 3 - Penalty Levels

Seriousness of Harm Risked	Culpability-Very high	Culpability-High	Culpability-Medium	Culpability-Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

2.7 Step 4: Penalty Bands

Compare the penalty level from Step 3 to table 4 and this will give the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation.

Table 4 – Penalty Bands

Penalty Level	Penalty Band
1	£600 - £1200
2	£1200 - £3000
3	£3000 - £6000
4	£6000 - £15,000
5 / 5+	£15,000 - £30,000

Stage 2: Considering the landlord's income and track record

2.8 Stage 2 Overview

There are two elements to consider in stage 2: the landlord's income and the landlord's track record. Each of these will affect the penalty calculation and further details are set out below.

2.9 The landlord's Finances

The Council is permitted to consider all a landlord's income and assets when calculating a civil penalty.

The council may use its legal powers to require landlords to provide details of their finances.

Any failure to provide financial information when requested may mean that the council imposes the maximum financial penalty based on the severity of the offence.

The council also reserves the right to use investigation services such as the National Anti-Fraud Network to investigate landlords' finances.

For penalties that fall within bands 5 and 5+, a financial investigation of the landlord will be usually carried out and all sources of income received by the landlord can be considered as 'relevant income' for the purpose calculating the civil penalty. Specifically, the average weekly income of the landlord for the 12 months preceding the date of the offence will be used.

For penalties that fall within bands 1 to 4, the landlord's income will still be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where offence occurred and at the time the offence occurred.

For property agents, the relevant income will be any fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

IMPORTANT: although the Council will not normally consider carrying out a full financial investigation where the offence falls within penalty bands 1 to 4, the Council does reserve the right to do so where it considers it reasonable and proportionate to the

circumstances.

2.10 How is the increase as a result of the landlord's income calculated?

This is a two-step process with step 1 determining what counts as relevant weekly income and step 2 determining what percentage of this relevant weekly income should be added to the penalty amount. These steps are set out in more detail below.

Step 1 - take the penalty band, as determined in Stage 1, and compare it to Table 5: this will state what can be considered as relevant weekly income for the offence.

Table 5 - Defining relevant weekly income

Penalty Level	Relevant Weekly Income
1	Gross rental income or management fees for the property where the offence occurred
2	Gross rental income or management fees for the property where the offence occurred
3	Gross rental income or management fees for the property where the offence occurred
4	Gross rental income or management fees for the property where the offence occurred
5 / 5+	All income for the offender (carry out a financial assessment)

Step 2 - take the penalty band, as determined in Stage 1, and compare it to Table 6. This will give the percentage of the landlord's relevant weekly income to be added to the civil penalty.

Table 6 - % of relevant weekly income

Penalty Level	% of Relevant Weekly Income
1	50% of relevant weekly income
2	100% of relevant weekly income
3	150% of relevant weekly income
4	250% of relevant weekly income
5	400% of relevant weekly income
5+	600% of relevant weekly income

2.11 What if tenancy agreements or management contracts are not available?

Tenancy agreements and property management contracts can be requested using the Council's existing powers and this should be done where copies are not already available.

In cases where the landlord is not forthcoming with this information or documentation, the council may levy the maximum penalty level and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

Representations against estimated incomes will only be accepted where enough evidence of the landlord's income is provided to support these claims. Estimates of average weekly income will be calculated on a case by case basis, but they will generally, be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

IMPORTANT – the Council will not normally consider a landlord's assets but does reserve the right to consider assets in any cases where the Council considers it reasonable and proportionate to do so. Each of these cases will be dealt with on a case by case basis.

2.12 The Landlord's track record

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; as such, the track record of the landlord will be an important factor in determining the final amount of the civil penalty that is imposed. Below are questions that must be asked for each landlord that will receive a civil penalty.

1) Has the landlord had any relevant[1] notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years? If so, how many times have they been subject to such enforcement action in that timeframe?

2) Has the landlord had any civil penalties imposed on them in the last 2 years? If so, how many civil penalties have been imposed on them in that timeframe?

3) Has the landlord accepted any cautions for relevant[1] offences in the last 2 years? If so, how many cautions for relevant offences[1] have they accepted in that timeframe?

4) Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?

5) Has the landlord breached any relevant[2] notices, which resulted in works in default being carried out, in the last 2 years? If so, how many times have works in default been carried out under such circumstances in that timeframe?

6) Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?

7) Has the landlord been prosecuted for any relevant[3] offences in the last 2 years? If so, how many times have such prosecutions taken place in that timeframe?

8) Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?

9) Has the Landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?

[1] any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'.
[2] any notices served under any legislation relating to housing, public health or environmental health.
[3] any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

IMPORTANT – question 1 refers to all relevant notices served during the two years: this means that where the offence is failure to comply with an improvement notice, that notice should also be included in the answer to the question.

2.13 How is the increase as a result of the Landlord's track record calculated?

Table 7 – Weightings

Category	Weighting
Category 1 (*Least serious*)	1
Category 2 (*Moderately Serious*)	5
Category 3 (*Very Serious*)	10
Category 4 (*Most serious*)	20

Each of the questions will be placed into one of four categories, based on the seriousness of the offence or enforcement action to which the question refers. Each category of question is given a weighting that increases with the seriousness of the category. Table 7 shows the four categories and the weighting which is applied to each one.

Any questions where the answer is 'no' will have a weighting of zero but 'yes' answers will accrue the weighting for that particular question. E.g. the weighting for a question is 10 and the answer to that question is 'yes' so the score for that particular question will be 10.

For those questions where the number of occasions is relevant, the total weighting for a 'yes' answer will be the weighting for that question multiplied by the number of occasions. E.g. if a question has a weighting of 5 and the landlord has committed the offence 3 times, this will give a total score of 15 for the question. Table 8 shows the category which each of the questions falls within and the subsequent weighting that is applied as a result.

Table 8 - Questions & Weightings

Questions	Weighting for a 'Yes' answer	Multiplied by the number of occasions?
Has the landlord had any relevant[1] notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years?	1	Yes
Has the landlord had any civil penalties imposed on them in the last 2 years?	5	Yes
Has the landlord accepted any cautions for relevant[1] offences in the last 2 years?	10	Yes
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5	No
Has the landlord breached any relevant[2] notices, which resulted in works in default being carried out, in the last 2 years?	10	Yes
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10	No
Has the landlord been prosecuted for any relevant[3] offences in the last 2 years?	20	Yes
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20	No
Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?	20	No

[1] any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'.

[2] any notices served under any legislation relating to housing, public health or environmental health.

[3] any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

Table 9 - % Increase

Score	%
0	0%
01-Feb	5%
03-Apr	10%
05-Jun	15%
07-Aug	20%
09-Oct	25%
11-Dec	30%
13-14	35%
15-16	40%
17-18	45%
19-20	50%
21-22	55%
23-24	60%
25-26	65%
27-28	70%
29-30	75%
31-32	80%
33-34	85%
35-36	90%
37-38	95%
39+	100%

Once all the questions have been answered, the weighting for each is totaled and compared to Table 9: this gives the percentage increase that will be applied to the penalty amount. The increase will be a percentage of the starting amount for the penalty band that the offence falls within. E.g. the total score for the questions is 23 and so the corresponding percentage increase in Table 9 will be 60%.

IMPORTANT - the penalty calculation will never be increased past the upper limit of the Penalty Band determined in Step 4 of this procedure (set out in Table 4 on page 7 of this procedure). However, where the landlord has a history of non-compliance, it is appropriate to factor this into your assessment of their overall culpability. This could affect your initial assessment of the appropriate penalty level and lead to a higher penalty band being used as the starting point.

Stage 3: Adding Income and Track Records Amounts to the Penalty Band

2.14 Stage 3 Overview

Stage 1 gives the penalty band for the offence and this determines the starting amount and the upper limit for the penalty calculation. Stage 2 gives the amount that should be added as a result of the landlord's income and the amount that should be added as a result of the landlord's track record.

2.15 How are the figures from stage 1 and stage 2 combined?

To get the amount of the penalty calculation, the two figures from Stage 2 should be added to the starting amount for the penalty band. E.g. if the increase for income is £500 and the increase due to the landlord's track record is £1000, these two figures are added to the starting amount for the penalty to get the penalty calculation amount.

If the amount calculated, by adding the figures for the landlord's income and track record, is less than the upper limit for the penalty band, then this is the amount that will be used. However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used instead.

Stage 4: Financial Benefit Obtained from Committing the Offence

2.16 Stage 4 Overview

A guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed should never be less than it would have reasonably cost the landlord to comply in the first place.

2.17 How is the financial benefit determined?

Calculating the amount of financial benefit obtained will need to be done on a case by case basis but the table below gives some examples of potential financial benefit for each of the offences.

Offence	Examples of potential financial benefit
Failure to comply with an Improvement Notice (section 30)	The cost of any works that were required to comply with the improvement notice but which have not been removed by works in default.
Offences in relation to licensing of HMOs (section 72)	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.

Offences in relation to licensing of houses under Part 3 of the Act (section 95)	Rental income whilst the property was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offence of contravention of an overcrowding notice (section 139)	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMOs (section 234)	The cost of any works that are required to avoid breaching the regulations.

When calculating the cost of any works this may be based on the retail cost of suitable materials available locally that meet the council's specifications unless more detailed quotations for the works concerned at the property in question are available. The council may also include the cost of labour.

2.18 How is financial benefit added to the penalty amount?

The Council will need to be able to prove that financial benefit was obtained before it can be included in the civil penalty calculation. However, where it can be proven, the amount obtained should be added to the penalty calculation amount from Stage 3 and this will give the final civil penalty amount that will be imposed on the landlord.

IMPORTANT – where the landlord has obtained financial benefit in the form of rental income and this full amount has been added to the total penalty, it will be appropriate to take this into consideration when deciding whether or not to pursue a Rent Repayment Order. For more information on Rent Repayment Orders, see the Council's Enforcement Policy.

Section 3: Imposing a Civil Penalty

3.1 Where is the process for civil penalties set out?

Scedule 9 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a civil penalty. 3.2 Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a 'notice of intent' on the landlord in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty.
- The reasons for proposing to impose a civil penalty, and.
- Information about the Landlord's right to make representations to the Council.

3.3 Representations

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior colleague.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case by case basis and responded to where the Council considers it necessary.

3.4 Final Notice

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the notice of intent, but it cannot be a greater amount.

The imposing of a civil penalty involves serving a final notice and this notice must contain the following information:

- The amount of the financial penalty.
- The reasons for imposing the penalty.
- Information about how to pay the penalty.
- The period for payment of the penalty.
- Information about rights of appeal, and.
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

3.5 Withdrawing or amending Notices

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case by case

basis.

3.6 Appeals to the Tribunal

If a civil penalty is imposed on a landlord, that Landlord can appeal to the First-tier Tribunal ("the Tribunal") against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

3.7 Payment of a Civil Penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given ("the 28-day payment period"), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice.

3.8 Other consequences of having a Civil Penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12-month period, each for a banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

"Banning order offence" means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016.

3.9 Recovering an unpaid Civil Penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control for amounts up to £5,000.
- A Third-Party Debt Order;

- A Charging Order, and.
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, and the amount of the order is over £1,000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court. Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

3.10 Income from Civil Penalties

Any income from Civil Penalties is retained by the Local Housing Authority (in this case the Council) which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument 367 (2017).

Section 4: worked example

4.1 Worked Example 1

Landlord A owns and operates an unlicensed HMO. Landlord A has been made aware of the need to apply for an HMO licence but has failed to do so and has continued to operate unlicensed for the past 6 months. The rental income received by Landlord A during this 6-month period is £7500. This is not the first time that Landlord A has been the subject of enforcement action, having previously been cautioned for operating another unlicensed HMO a year ago and being served improvement notices on two separate occasions in the last 12 months. Both notices were complied with.

Offence: Operating an unlicensed HMO

Culpability: ‘Very High’ (*Deliberate breach of or flagrant disregard for the law*)

Justification: Landlord A is aware of requirement to licence the property and the consequences of not doing so but has chosen not to comply anyway.

Seriousness of harm risked: 'Level C'
(*All other cases not falling within Level A or Level B*)

Justification: the specific offence of operating an unlicensed HMO does not implicitly mean that there are any defects or deficiencies in the property. As such, the seriousness of harm risked would not meet the descriptions of 'Level A' or 'Level B'.

Penalty band: 4 - £6,000 to £15,000 (*'Very High' culpability and 'Level C' harm*)

Increase due to the landlord's track record: £1,800
(*30% of the starting point for the penalty*)

Justification: in the last two years, Landlord A has accepted 1 caution for a relevant offence and has been served 2 relevant notices, under Part 1 of the Housing Act 2004. This gives us a score of 12 and an increase of 30% of the penalty amount. This is an increase of £1,800.

Increase due to the landlord's income: **£721.15**
(*250% of weekly rental income from the property where the offence occurred*)

Justification: the penalty band is 4 and Landlord A is the owner of the property where the offence occurred. As such, the relevant income for consideration is the weekly rental income for the property and 250% of this will be added to the penalty amount. In this case, the relevant weekly income is £288.46 and so £721.15 will be added.

Penalty calculation amount: £8521.15 (£6000 + £1800 + £721.15 = £8521.15).

Financial benefit obtained from committing the offence: £7,500

Justification: Landlord A has received £7,500 in rental income from the property during the time that it has been unlicensed and so this can be considered the financial benefit received from committing the offence.

Final amount of the civil penalty: £16,021.15 (*£8521.15 + £7500 = £16021.15*). This is capped to £15,000 as the top of the band.

4.2 Worked Example 2

Landlord B owns and manages a single-family dwelling. During an inspection, a category 1 hazard (falls on stairs) and multiple category 2 hazards were identified at the property. The stairs were in an extremely dangerous condition but could be made safe easily. An improvement notice was served on Landlord B and some of the works to reduce the category 2 hazards were carried out but the remainder of the works on the notice were not. Works in default were carried out at the property with a total cost of £2,000. Landlord B was also prosecuted 18 months ago for failing to comply with an improvement notice. A financial investigation into Landlord B found that they have received an annual income of £50,000.

Offence: Failing to comply with an improvement notice.

Culpability: 'Very High' (*Deliberate breach of or flagrant disregard for the law*)

Justification: Landlord B was aware of the need to comply with the Improvement Notice as some of the works were completed. Landlord B is also aware of the consequences of failing to comply with the notice as previous enforcement action has been taken against them for this reason.

Seriousness of harm risked: 'Level A'

Justification: The condition of the staircase creates a Category 1 hazard and if someone were to trip or fall on the stairs, there is an 8.6% risk that they will end up with harm outcomes that meet the descriptions of Class 1 and Class 2 harm outcomes under the Housing Health & Safety Rating System. This means that the seriousness of harm risked meets the description of 'Level A'.

Penalty band: 5+ - £15,000 to £30,000 (*'Very High' culpability and 'Level A' harm*)

Increase due to the landlord's track record: £12,000
(*80% of the starting point for the penalty*)

Justification: in the last two years, Landlord B has been prosecuted for a relevant offence, has been served 1 relevant notice under Part 1 of the Housing Act 2004, and has been subject to works in default. This gives us a score of 31 for his track record and an increase of 80% of the penalty amount. This is an increase of £12,000.

Increase due to the landlord's income: £5,769.23
(*600% of the Landlord's average weekly income*)

Justification: the penalty band is 5+ and so a financial investigation was carried out to identify all of Landlord B's income. The investigation found they received a total annual income of £50,000 and 600% of their average weekly income will be added to the penalty amount. In this case, the average weekly income is £961.54 and so £5769.23 will be added.

Penalty calculation amount: £30,000 (*£15000 + £12000 + £5769.23 = £32,769.23)*

Financial benefit obtained from committing the offence: **None**

Justification: works in default were carried out at the property and the cost of these works, plus an administration fee, were charged to Landlord B. As such, it cannot be said that Landlord B obtained financial benefit from committing the offence.

Final amount of the civil penalty: **£30,000**
(*£15000 + £12000 + £5769.23 = £32,769.23 - civil penalties are capped at £30,000).*

4.3 Worked Example 3

Landlord C is the appointed manager of a three-bedroom licensed HMO. The company is

paid £90 per month to manage the property on behalf of the owner. During a compliance inspection, it was found that they had neglected to display any of the manager's details anywhere in the property. They were warned about this one year ago and stated that they were aware of the requirement but an oversight meant that they missed this property when displaying details. They have not been the subject of any formal enforcement action in the last 2 years and the property was otherwise in a satisfactory condition.

Offence: Failure to comply with management regulations in respect of Houses in Multiple Occupation.

Culpability: 'Low' (*Failings were minor and occurred as an isolated incident*)

Justification: the company does not have a history of non-compliance and the breach was fairly minor and easily rectified.

Seriousness of harm risked: 'Level C'
(*All other cases not falling within Level A or Level B*)

Justification: The seriousness of harm risked to the tenants was low and so it would not meet the descriptions of harm found in 'Level A' or 'Level B'.

Penalty band: 1 - £600 to £1,200 (*'Low' culpability and 'Level C' harm*)

Increase due to the landlord's track record: **None**

Justification: in the last two years, Landlord C has not been the subject of any formal enforcement action and so there is no increase in the penalty amount due to their track record.

Increase due to the landlord's income: £10.39 (*50% of weekly rental income from the property where the offence occurred*)

Justification: the penalty band is 1 and Landlord C is the manager of the property where the offence occurred. As such, the relevant income for consideration is the weekly management fees received for the property and 50% of this will be added to the penalty amount. In this case, the relevant weekly income is £20.77 and so £10.39 will be added.

Initial penalty calculation amount: £610.39 (*£600 + £10.39 = £610.39)*

Financial benefit obtained from committing the offence: **None**

Justification: the cost of displaying Landlord C's management details would be negligible and so it would not be reasonable to claim that financial benefit was obtained from committing the offence.

Final amount of the civil penalty: £610.39 (*£600.00 + £10.39 = £610.39*).

Appendix I – Classes of Harm (HHSRS)

When determining the seriousness of harm risked at Step 2 of this procedure regard will be had to the Housing Health and Safety Rating System Operating Guidance that sets out the health (harm) outcomes and relevant matters for each of the 29 hazards identified.

The seriousness of harm risked will be assessed based on the most relevant hazard. For example, the seriousness of harm arising from a breach of a HMO Management Regulation requiring the maintenance of fire precautions would take into account the class I and II health outcomes identified in the Fire hazard described in the HHSRS Operating Guidance.

Where several hazards arise from the same offence or offences which are the subject of a civil penalty, the most serious health outcome will be used to determine the seriousness of harm risked at Step 2 of this procedure.

When determining that the level of harm is “Level A” for the purposes of calculating a Civil Penalty under this procedure regard should also be had to the “relevant matters” for each hazard as set out in the HHSRS Operating Guidance. Where relevant matters were present in the subject property that would increase the likelihood of harm in addition to the total class I and II harm outcomes being more than 5% this will confirm the assessment of “Level A” as being the appropriate level of harm. In the absence of any of the relevant matters being identified that would increase the likelihood of harm the appropriate level of harm may be assessed as “Level B” for the purposes of this procedure.

The following is an extract from the Housing Health and Safety Rating System Operating Guidance (page 47 - 48), published by the Office of the Deputy Prime Minister (2006).

> “Examples for the Four HHSRS Classes of Harm
>
> The Classes of Harm used for the HHSRS are based on the top four Classes of Harm as identified in A Risk Assessment Procedure for Health and Safety in Buildings (2000) BRE. While this work identified seven Classes of Harm, only the top four are used for the purposes of the HHSRS as these are harms of sufficient severity that they will either prove fatal or require medical attention and, therefore, are likely to be recorded in hospital admissions or GP records.
>
> Work on developing and refining the Statistical Evidence supporting the Rating System involved classifying a more comprehensive list of harm outcomes.
>
> The examples given below are intended for guidance only. It should be noted that some of the harm outcomes may appear in more than one Class depending on the severity of the condition. For example, respiratory disease will be in Class II or III depending on the severity and duration.
>
> **Class I**

This Class covers the most extreme harm outcomes including: Death from any cause; Lung cancer; Mesothelioma and other malignant lung tumours; Permanent paralysis below the neck; Regular severe pneumonia; Permanent loss of consciousness; 80% burn injuries.

Class II

This Class covers severe harm outcomes, including: Cardio-respiratory disease; Asthma; Non-malignant respiratory diseases; Lead poisoning; Anaphylactic shock; Cryptosporidiosis; Legionnaires disease; Myocardial infarction; Mild stroke; Chronic confusion; Regular severe fever; Loss of a hand or foot; Serious fractures; Serious burns; Loss of consciousness for days.

Class III

This Class covers serious harm outcomes, including: Eye disorders; Rhinitis; Hypertension; Sleep disturbance; Neuro-psychological impairment; Sick building syndrome; Regular and persistent dermatitis, including contact dermatitis; Allergy; Gastro-enteritis; Diarrhea; Vomiting; Chronic severe stress; Mild heart attack; Malignant but treatable skin cancer; Loss of a finger; Fractured skull and severe concussion; Serious puncture wounds to head or body; Severe burns to hands; Serious strain or sprain injuries; Regular and severe migraine.

Class IV

This Class includes moderate harm outcomes which are still significant enough to warrant medical attention. Examples are: l Pleural plaques; Occasional severe discomfort; Benign tumours; Occasional mild pneumonia; Broken finger; Slight concussion; Moderate cuts to face or body; Severe bruising to body; Regular serious coughs or colds."

Appendix II – Public Interest Stage of the Full Code Test

The following is an extract from pages 8-11 of The Code for Crown Prosecutors (October 2018, 8th Edition) issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985.

The Public Interest Stage

4.9. In every case where there is enough evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.

4.10. It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases, the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than

bringing a prosecution.

4.11. When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.14 a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.

4.12. The explanatory text below each question in paragraphs 4.14 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

4.13. It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead, and those factors put to the court for consideration when sentence is passed.

4.14. Prosecutors should consider each of the following questions:

a) How serious is the offence committed?

- The more serious the offence, the more likely it is that a prosecution is required.
- When assessing the seriousness of an offence, prosecutors should include in their consideration the suspect's culpability and the harm caused, by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

- The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

- Culpability is likely to be determined by:

i. the suspect's level of involvement;

ii. the extent to which the offending was premeditated and/or planned;

iii. the extent to which the suspect has benefitted from criminal conduct;

iv. whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;

v. whether the offending was or is likely to be continued, repeated or escalated;

vi. the suspect's age and maturity (see paragraph d below).

• A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.

• Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

• The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required.

• This includes where a position of trust or authority exists between the suspect and victim.

• A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

• It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.

• Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.

• Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

• However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) What was the suspect's age and maturity at the time of the offence?

• The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18.

• The best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on their future

prospects that is disproportionate to the seriousness of the offending.

• Prosecutors must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

• Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties.

• As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

• However, there may be circumstances which mean that, notwithstanding the fact that the suspect is under 18 or lacks maturity, a prosecution is in the public interest. These include where:

i. the offence committed is serious;

ii. the suspect's past record suggests that there are no suitable alternatives to prosecution; and

iii. the absence of an admission means that out-of-court disposals that might have addressed the offending behaviour are not available.

e) What is the impact on the community?

• The greater the impact of the offending on the community, the more likely it is that a prosecution is required.

• The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending.

• Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.

• Evidence of impact on a community may be obtained by way of a Community Impact Statement.

f) Is prosecution a proportionate response?

• In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:

i. The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.14 a) to g), but cost can be a relevant factor when making an overall assessment of the public interest.

ii. Cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

• In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, ongoing investigations, international relations or national security. It is essential that such cases are kept under continuing review.

Appendix III – The Evidential Stage of the Full Code Test

The following is an extract from pages 7-8 of The Code for Crown Prosecutors (October 2018, 8th Edition) issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985.

The Evidential Stage

4.6. Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge*. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

4.7. The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.8. When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

* For the purposes of the Code for Crown Prosecutors, "conviction" includes a finding that "the person did the act or made the omission" in circumstances where the person is likely to be found not guilty on the grounds of insanity.

Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

• the likelihood of that evidence being held as inadmissible by the court; and

• the importance of that evidence in relation to the evidence as a whole.

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

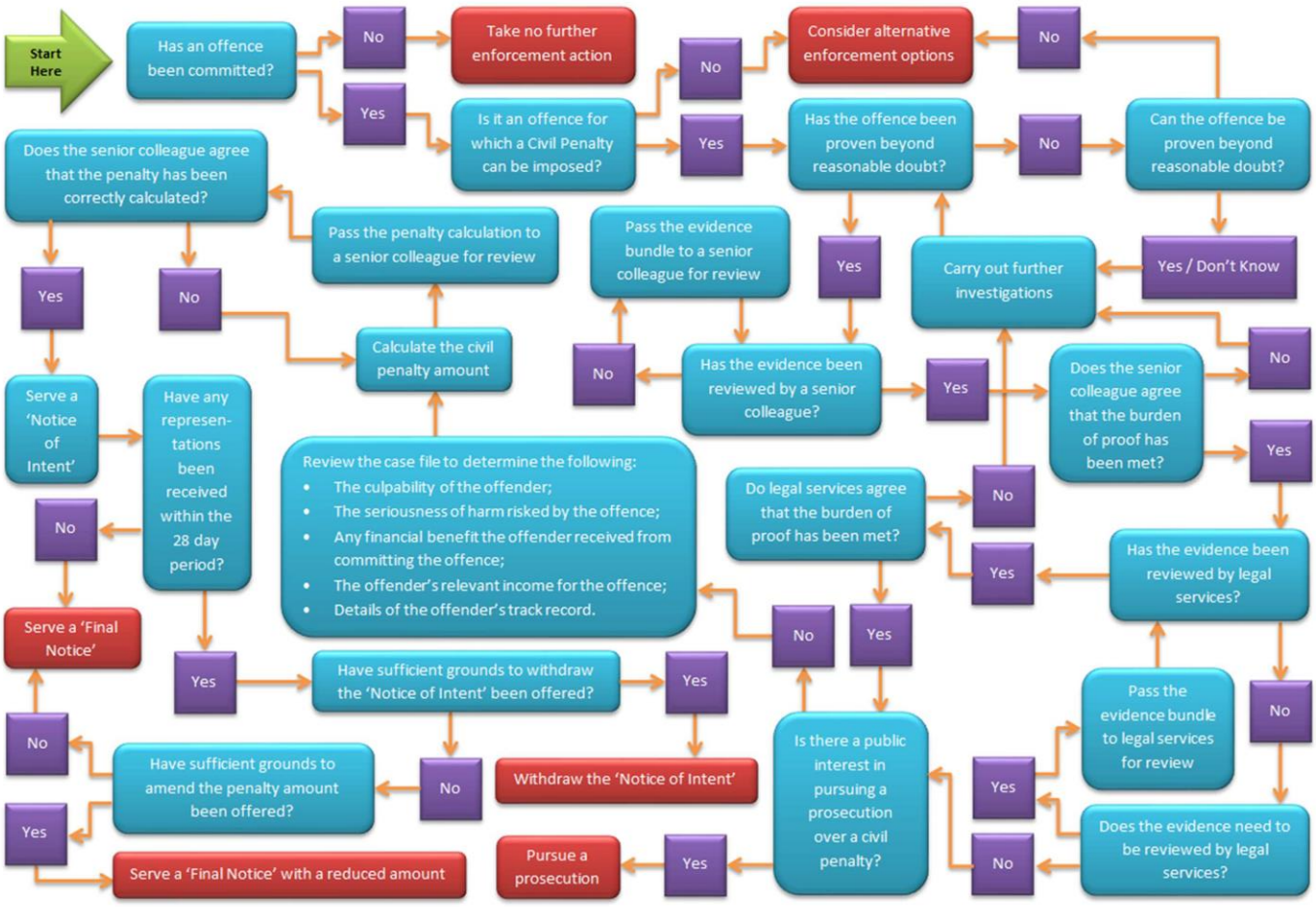
Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

Is there any other material that might affect the sufficiency of evidence?

Prosecutors must consider at this stage and throughout the case whether there is any material that may affect the assessment of the sufficiency of evidence, including examined and unexamined material in the possession of the police, and material that may be obtained through further reasonable lines of inquiry.

Appendix IV – Process flow chart



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