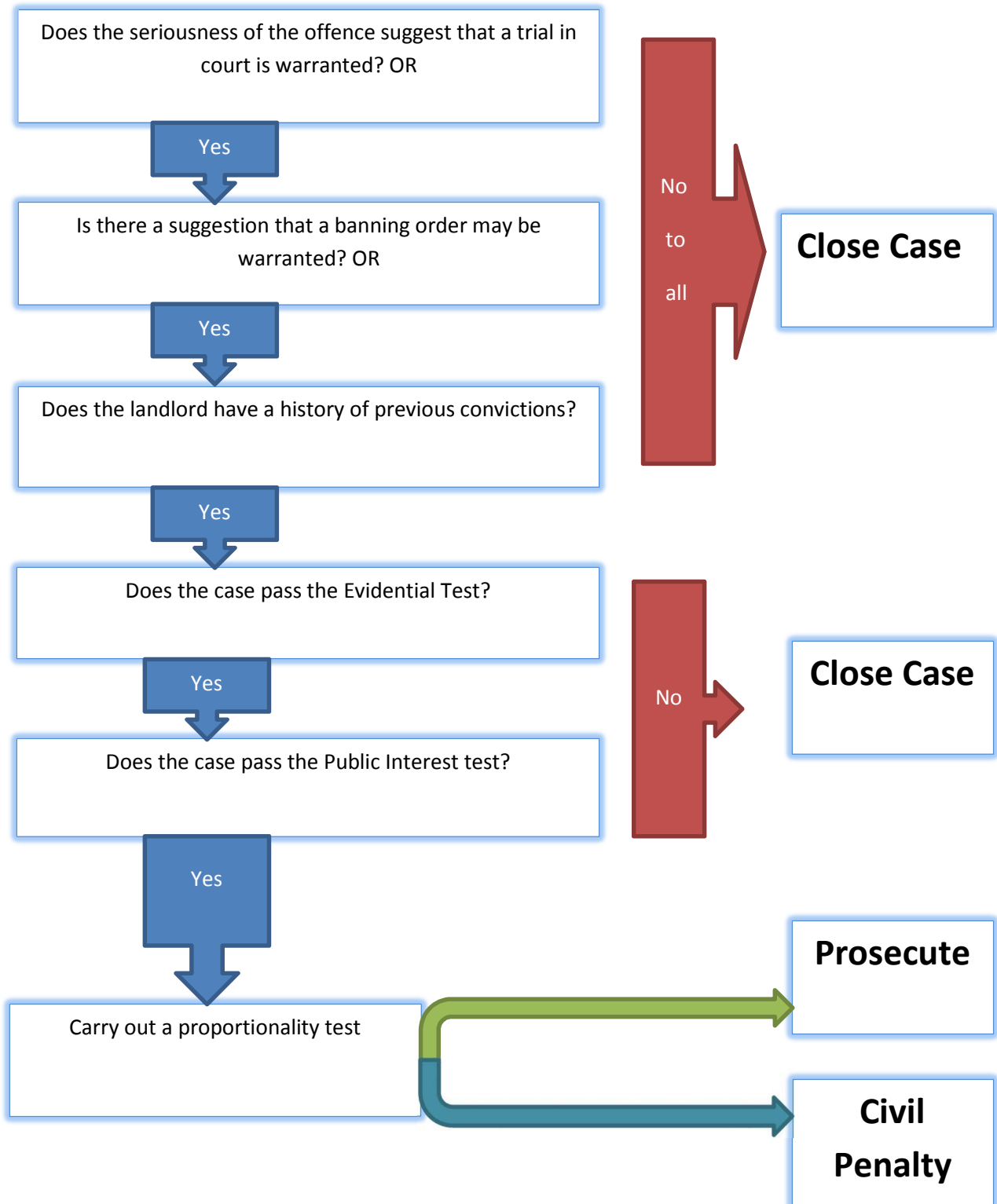


## Appendix 1 - Calculation of Civil Penalty Charge

H&CS Committee 8<sup>th</sup> March 2018

### Stage 1 – Determination of the Proportionality of use of a Civil Penalty



**Stage 2: Calculation of Scale of Penalty Based on Culpability and Harm**

| What Describes the Culpability of the Offence?              | Scale     |
|---|-----------|
| Serious breach of legislation                               | Very High |
| History of failing to comply with legislation               | High      |
| Act or omission that a 'reasonable person' would not commit | Medium    |
| Effort was made to comply which was insufficient            |           |
| Minor failings due to an isolated incident                  | Low       |

Note: Apply the highest score relevant to the case in question

| What Describes the Harm of the Offence?  | Scale |
|--|-------|
| Serious adverse effect on individual or high risk of adverse effect.   | Cat 1 |
| Adverse effect, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled | Cat 2 |
| Low risk of an adverse effect  | Cat 3 |

**Overall Liability Scale**

Use the Culpability and Harm scales to calculate the overall scale of liability using the matrix below.

| Culpability | Harm  |       |       |
|-------------|-------|-------|-------|
|             | Cat 1 | Cat 2 | Cat 3 |
| Very High   | 6     | 5     | 4     |
| High        | 5     | 4     | 3     |
| Medium      | 4     | 3     | 2     |
| Low         | 3     | 2     | 1     |

The range of the civil penalty which should be applied to the offence shall be determined from the Overall Liability Scale. The Standard Scale (Criminal Justice Act 1982) has been used as reference and converted below to provide a point scale within the range of the civil penalty.

| Calculated Overall Liability Scale | Range of the Civil Penalty |
|------------------------------------|----------------------------|
| Scale 1                            | £1 - £500                  |
| Scale 2                            | £501 - £1,000              |
| Scale 3                            | £1,001 - £2,500            |
| Scale 4                            | £2,501 - £7,000            |
| Scale 5                            | £7,001 - £17,000           |
| Scale 6                            | £17,001 - £30,000          |

### **Stage 3: Other Influencing Factors**

The more of the following factors which apply to the case, the greater the weighting should be towards the **upper** end of the civil penalty scale:

- The offender has previous convictions. Regard needs to be paid to a) the nature of the offences to which the conviction relates and its relevance to the current offence; and b) the time that has been elapsed since the conviction
- The offence was committed whilst the offender was on bail
- There is clear evidence that the offence was motivated by financial gain
- The offender deliberately tried to conceal the illegal nature of the offence
- There is evidence of a wider or community impact associated with the offence
- The offender attempted to obstruct the investigation
- The offender has a record of providing substandard accommodation
- The offender refused or ignored free advice

The more of the following factors which apply to the case, the greater the weighting should be towards the **lower** end of the civil penalty scale (this is not an exhaustive list):

- The offender has no previous convictions or no relevant/recent convictions
- The offender took voluntary steps to remedy problem
- The offender provided a high level of co-operation with the investigation, beyond that which will always be expected
- The offender has previous history of a good record of maintaining property or is a member of an Accreditation scheme
- The offender has shown a history of co-operation with the regulatory authority and acceptance of responsibility

Having completed the civil penalty calculation the investigating officer must submit the proposal in the form of an enforcement decision template to the Strategic Director Service Delivery (or any other Strategic Director) with a clear explanation of the reasoning behind the final proposed figure for the civil penalty.

A copy of the enforcement decision template shall also be submitted to the Legal and Democratic Services Manager for legal approval before any civil penalty is issued.

The civil penalty shall only be issued following the approval of a Strategic Director.