



**Prosperous Communities
Committee**

14th July 2020

Subject: Housing Act Civil Penalties Policy Review

Report by:

Chief Executive

Contact Officer:

Andy Gray
Housing and Enforcement Manager

andy.gray@west-lindsey.gov.uk

Purpose / Summary:

To request approval for the revised Civil Penalties policy and to update on the use of these powers to date.

RECOMMENDATION(S):

Committee are asked to:

- a) Approve the revised Civil Penalties Policy; and**
- b) Grant delegated authority to the Chief Executive, in consultation with the Chairman of the Prosperous Communities Committee, to make minor housekeeping amendments to the Policy in the future.**

IMPLICATIONS

Legal:

Section 126 of the Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences. Schedule 9 of the Act amends the Housing Act 2004 including the providing of a new section 249a which covers financial penalties as an alternative to prosecution.

Financial :FIN/33/21/SSc

There are no direct financial implications in regards to the approval of the policy. It should be noted that the policy itself does seek to determine a financial penalty that is applied to a person who has committed an offence. The income collected from these penalties is ring fenced under the legislation to support work relating to housing enforcement and is used, at this stage, to cover the costs associated with a proportion of the officers that undertake that work.

Staffing :

There are no direct staffing implications.

Equality and Diversity including Human Rights :

Data Protection Implications :

Climate Related Risks and Opportunities :

The provision of the civil penalty itself does not directly have an impact on this. However the penalty could relate to a housing hazard which if not addresses could have a detrimental effect on the environment e..g poor energy efficiency or affordable warmth.

Section 17 Crime and Disorder Considerations :

Health Implications:

There is a range of evidence available that supports the notion that health is impacted by poor housing conditions. This is demonstrated via the Housing, Health and Safety Rating System (HHSRS) guidance developed to support the work officers undertake under the Housing Act 2004 mainly.

The act of issuing civil penalties acts as a way of addressing landlords or other parties who do not comply with their statutory obligations and seek to put properties into the sector that are not of the required standard. It also seeks to address issues caused by poor practice within the sector.

Title and Location of any Background Papers used in the preparation of this report:

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

<http://www.legislation.gov.uk/ukdsi/2020/9780111191934>

Risk Assessment :

Income derived from Civil Penalties – there is no guarantee that payment of a civil penalty will be made by the person it has been issued to. As a result the Council would need to seek a court order for payment, which will incur additional costs.

Mitigation – the Council has processes in place in regards to the recovery of debt and it is expected that the cost of current legal processes for lower level offences would be minimised and enable this action to be taken at no additional cost.

The First Tier Tribunal – the appeal of Civil Penalties and Rent Repayment Orders are considered by the First Tier Tribunal. This tribunal has the power to quash, confirm, increase or reduce the civil penalty and its decisions are currently untested.

Mitigation – any arising case law will be considered and cases will be developed to the same burden of proof as per our current criminal investigations.

Call in and Urgency:**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1. Introduction

- 1.1.** The Housing and Planning Act 2016 made provisions for Local Authorities to issue civil penalties for certain offences under the Housing Act 2004.
- 1.2.** The Council introduced its first policy to enable this in May 2018, revised it in March 2019 and now due to the introduction of an additional offence, is required to update and include this.
- 1.3.** This report provides information on the additional powers and gives an overview of other changes made which are felt necessary in order to improve the policy.

2. Overview of Civil Penalties

2.1. The table in appendix 1 shows how the Council has used its civil penalty powers to date. It should be noted that the issuing of a penalty is resource intensive and requires the same burden of proof as a prosecution (for which it is an alternative). There is a right of appeal available via the First Tier Tribunal and unlike a prosecution in court the details of the person/s issued with penalties is not publicly available.

2.2. In summary:

- 19 Civil Penalties have been issued since August 2018, with a further 7 cases where proceedings to instigate penalties have been commenced
- 5 (First Tier Tribunal challenges have been placed. 2 of which were dealt with via a consent order. A further three were upheld. In two cases the penalty amounts were lowered slightly.
- £16,120 has been fully paid
- £17,000 is secured on payment plans
- £33,000 is secured against assets and going through the debt recovery process
- This results in £66,120 being fully paid, paid via payment plans or secured against assets.

Also to note:

- £11,800 requires further debt recovery work
- £18,500 pending debtor invoices being raised
- The majority of penalties issued are linked to the Selective Licensing Scheme

3. Policy Amendments

3.1. The updated policy is attached as appendix 2. The main amendments are as follows:

3.1.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into effect on June 1st 2020. This regulations requires all landlords to have a valid electrical safety certificate in much the same way as a gas safety certificate is required. The difference between the two is that the Local Authority can now deal with breaches relating to this regulation via a civil penalty.

- This has been incorporated into the scoring matrix within the policy (**Civil Penalties Policy, Appendix 1, Table 2**)
- A basic offence level of £1000 is proposed to cover administrative type breaches, which can then escalate if a more serious breach occurs (**Civil Penalties Policy, Appendix 1, Table 2 – Row 6**).

3.1.2. The Council is learning with each case in relation to this policy therefore a number of general changes have been made to the scoring matrix for determining the civil penalty amounts.

- Provision has been made to ensure that penalties are lower where there are no aggravating factors. This ensures that penalties are not increased unnecessarily in these instances. (**Civil Penalties Policy, Appendix 1, Table 3 – Column 2**).
- Table 1 has been amended to reflect these changes and ensures that where there are aggravating factors an automatic additional penalty of £500 is added. This increases depending on the number of aggravating factors (**Civil Penalties Policy, Appendix 1, Table 1**)
- Two additional penalty bandings have been added to Table 1. £500 is added as the new lowest band and £2,500 has been added to between £1,000 and £5,000. This allows greater differentiation between cases at the lower end of the scales. (**Civil Penalties Policy, Appendix 1, Table 1**)
- The worked examples have been changed to reflect the overall changes made (**Civil Penalties Policy, Pages 5-6**).

4. Recommendations

Committee are asked to:

- a) Approve the revised Civil Penalties Policy; and

- b) Grant delegated authority to the Chief Executive, in consultation with the Chairman of the Prosperous Communities Committee, to make minor housekeeping amendments to the Policy in the future.