



**Prosperous Communities
Committee**

Date 1st May 2018

Subject: Housing Enforcement Policy and Civil Penalties

Report by:

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Purpose / Summary:

To seek approval for the revised housing
enforcement policy and the newly proposed civil
penalties policy

RECOMMENDATION(S):

Elected Members are asked to:

- a) Approve the updated Housing Enforcement Policy to come into effect from the 21/5/18
- b) Approve the Housing Enforcement Civil Penalties Policy to come into effect from the 21/5/18

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/17/19

There are no financial implications in regards to the approval of the policies within the document.

The Housing Enforcement Policy is currently in operation and is being updated as a result of the Housing and Planning Act 2016.

The Civil Penalties Policy will enable the Council to issue financial penalties directly to landlords who commit certain offences.

Any income received from these penalties will be used to offset costs which may include additional legal costs incurred through the hearing of appeals and seeking of court orders.

It is proposed any income generated above total cost will be considered for investment in private sector housing statutory enforcement functions, should this be required.

Staffing :

Existing officers within the work areas will be delegated to use these new powers and issue the relevant civil penalties

Equality and Diversity including Human Rights :

No issues noted

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.

Climate Related Risks and Opportunities :

None noted

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

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. Purpose of report

1.1. To seek approval for the revised Housing Enforcement Policy and a new policy charging of civil penalties for certain offences under the Housing and Planning Act 2016.

2. Background

2.1. The revised policies reflect the new powers given to local authorities (under the Housing and Planning Act 2016) to impose civil penalties of up to £30,000 on individuals and organisations as an alternative to a traditional prosecution.

2.2. In order to introduce the new policy, the existing Housing Enforcement Policy 2015 has been updated to incorporate the new legislation and is included within this report for approval.

2.3. The introduction of civil penalties is one of a number of measures covering a wide range of offences that will enable the Council to continue to tackle criminal and irresponsible landlords and to improve the standard of housing in the private rented sector.

3. The Housing and Planning Act 2016

3.1. The Government is continuing in its efforts to crack down on rogue landlords and the measures within the Housing and Planning Act 2016 have been put in place to enable local authorities to enhance their abilities to deal with them. Within the Act the following provisions have been made:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain offences (came into force on 6 April 2017)
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017)
- Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties
- Banning orders for the most serious and prolific offenders

3.2. Guidance in relation to civil penalties and rent repayment orders can be found here <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

3.3. In relation to civil penalties and rent repayment orders, local authorities are permitted to retain the income this received from them and to use that income to fund private sector housing enforcement statutory functions. There is no scope for the defined use within this work area and in the short term any income would be used to offset the existing budget costs incurred, which would include any increased legal fees in relation to the work area.

4. Housing Enforcement Policy

4.1. The main amendment to this policy reflects the addition of Housing and Planning Act 2016 legislation. This is referred to within the policy as shown in appendix 1.

4.2. This policy, in line with the Corporate Enforcement Policy outlines the Council's approach to enforcement, explains what action we can and cannot take and the factors we will consider when undertaking these duties. The Council's actions will be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

5. Civil Penalties

5.1. The introduction of civil penalties provides an alternative and potentially more useful sanction local authorities. It enables consideration to be given in regards to approach taken to deal with some landlords, could reduce lengthy legal processes and provides a very clear framework for the level of penalty in relation to the level of offence and harm.

5.2. There are only certain offences, relating to certain sections of the Housing Act 2004, where the use of a civil penalties will be permitted. These are as follows:

- **Section 30 – Failure to comply with an Improvement Notice**
- **Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)**
- **Section 95 – Offences in relation to licensing of houses under Part 3 (inc. Selective Licensing)**
- **Section 139 – Offences of contravention of an overcrowding notice**

- **Section 234 – Failure to comply with management regulations in respect of HMOs**

- 5.3. The maximum civil penalty amount that can be imposed for an offence is £30,000. The Council's local policy should set out how the level of the penalty is determined. The policy is shown in Appendix 2. The level of fine is affected by the severity and harm of the particular case.
- 5.4. The guidance in regards to civil penalties is very clear that the same standard of proof is required for a civil penalty as for a prosecution. In line with the Council's approach to enforcement, it is essential to ensure that with any penalty issued, there is a realistic prospect of conviction if the case as taken to a magistrates court. This would require the Council to demonstrate beyond reasonable doubt that an offence has been committed.
- 5.5. A civil penalty can be appealed by the landlord via the First Tier Tribunal (FTT). Where an appeal is made the tribunal are confirm, vary (increase or reduce) or quash the civil penalty. Decisions made by the FTT can be appealed further to the Upper Tribunal and there is specific guidance for how an appellant would go about doing this. During any appeals the civil penalty is held in abeyance and no recovery of it can be undertaken.
- 5.6. The Council's current approach to enforcement would not change as a result of the revised policy being introduced and we would continue to investigate offences in the usual, robust manner to enable the appropriate decision to be made in regards to the issue of a civil penalty or prosecute at the appropriate point within the case.
- 5.7. Given the way this legislation has been set up, the Council will always look to issue a civil penalty in the first instance, expect in cases where there is a severe or high risk of harm or where the public interest is such to justify a prosecution. This approach would be subject to the specific case and the discretion of the authorising officer in each instance.

6. Rent Repayment Orders

- 6.1. There is already provision within the Housing Act 2004 and the Housing Enforcement Policy to make rent repayment orders to cover situations relating to the failing to obtain a license for a HMO and offences relating to the licensing of a HMO.
- 6.2. These orders are made by the First Tier Tribunal and can require a landlord to repay a specified amount of rent back to the Council or the tenant, which can be up to 12 months' rent.

6.3. The provision for rent repayment orders has now been extended to cover additional offences under the Housing and Planning Act 2016. These offences are as follows:

- **Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)**
- **Failure to comply with a Prohibition Order (Under section 32 of the Housing ACT 2004)**
- **Breach of a banning order made under section 21 of the Housing and Planning Act 2016**
- **Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)**
- **Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)**

6.4. Orders can be granted to either the tenant or the local housing authority, depending on who paid the rent. The repayment or rent via an order is distributed to the person or body that paid the rent in the first instance, or where it was shared in an equitable manner.

6.5. A rent repayment order can be made against a landlord who has received a civil penalty, but only at a time when there is no longer any prospect of the landlord appealing against the penalty. The Government has made clear the local authorities must always consider a rent repayment order after a civil penalty has been successfully imposed.

6.6. There is also an expectation that local authorities will help, support and advise tenants who wish to pursue rent repayment orders.

7. Consultation

7.1. The Council carried out consultation on the proposed Civil Penalties Policy between the 9th March and 20th April 2018. This consultation was shared locally via the Council's websites and social media accounts and was also directed to local letting agents.

7.2. The consultation generated 16 responses and the main findings were as follows:

- 81% of respondents agreed that the council should implement the policy
- 100% of respondents agreed that landlords should be fined
- 63% of respondents agreed that the proposed fines were fair

The comments received within the survey responses covered broadly the following positive aspects;

- That the proposals do not go far enough.
- Penalties should be added where landlords generally do not look after the property.
- Make public the rogue landlords fined

The comments received within the survey responses covered broadly the following negative aspects;

- Concerns that too much power was being placed in the Council's hand and that it could be abused.
- Too much use of the term rogue landlord by the Council and generally, which is adding to a stigma already in place.
- Belief that the court should decide sanctions, not the Council.

7.3. Based on the above and taking into consideration the comments there are no proposals to make any amendments to the policy.

8. Timescales

8.1. Provision for civil penalties has already been made within the fees and charges schedule for 18/19, therefore it is proposed to commence the issuing of civil penalties from the 21st May 2018, subject to Committee approval.