

<b>Report To:</b>	<b>CABINET</b>	<b>Date:</b>	<b>9 JULY 2018</b>
<b>Heading:</b>	<b>CIVIL PENALTIES</b>		
<b>Portfolio Holder:</b>	<b>COUNCILLOR CHRISTIAN CHAPMAN – CABINET MEMBER (JOINT FOCUS)</b>		
<b>Ward/s:</b>	<b>ALL</b>		
<b>Key Decision:</b>	<b>YES</b>		
<b>Subject to Call-In:</b>	<b>YES</b>		

### **Purpose of Report**

The purpose of this report is to seek Cabinet’s approval of an Ashfield Civil Penalties Policy. The Housing and Planning Act 2016, enacted on 6<sup>th</sup> April 2017, introduced Civil Penalties as an alternative to prosecution for certain offences under the Housing Act 2004.

The proposed policy reflects the new powers that have been given to local authorities (under the Housing and Planning Act 2016) to impose civil penalties on individuals and organisations as an alternative to prosecution. The introduction of civil penalties, together with the extension of rent repayment orders to include a wider range of offences, will help the Council to tackle criminal, rogue and irresponsible landlords, improve standards in the private rented sector and ensure that all private rented housing is safe, well managed and properly maintained.

### **Recommendation**

**It is recommended that Cabinet approves the Private Sector Housing Civil Penalties Policy (attached to this report as Appendix A) with effect as soon as all necessary approvals are in place.**

### **Reasons for Recommendation(s)**

A Private Sector Housing Civil Penalties Policy is required to enable the Council to make use of its new powers (under the Housing and Planning Act 2016) to impose civil penalties as an alternative to prosecution.

Approval of the Policy will enable the Council to use the income that it receives from civil penalties (and the rent repayment orders that are likely to be made following the successful imposition of a civil penalty) to fund the appointment of additional staff to tackle criminal, rogue and irresponsible landlords. For these reasons, it is recommended that the Policy is approved.

The policy will also provide an affective further tool for enforcement in areas where there is no selective and/or additional licensing (or where such licencing schemes come to their prescribed end date).

### **Alternative Options Considered**

No other options considered as this is a request to formally make use of a new statutory addition in current/new legislation.

### **Detailed Information**

There are 55,862 dwellings in Ashfield, 15% of which are privately rented. 8,372 dwellings in the private sector have category 1 Housing Health and Safety Rating System (HHSRS) hazards (*as stated in the BRE Stock Condition Survey Ashfield 2017*).

As well as having a growing population, Ashfield is attracting more people through the creation of new build properties and improvements to the wider area and the close links to the M1 motorway and the City. Together with the difficulty that many people are experiencing in buying a home of their own, this is leading to more people wanting to rent accommodation in the area.

Although Ashfield has some excellent landlords and letting agents, it may ultimately have a number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is substandard and/or unsafe.

The Government has pledged to crack down on rogue landlords and has introduced a number of measures, under the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:

- **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences (these 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 (these 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 (this came into force on 1 October 2017); and
- **Banning orders** for the most serious and prolific offenders (this came into force on 1 October 2017).

Under the Housing and Planning Act 2016, local housing authorities are permitted to retain the income that they receive from civil penalties and rent repayment orders, and to use that income to fund their statutory functions in relation to their enforcement activities in the private rented sector. This might include, for example, an increase in housing enforcement capacity, support for a social lettings agency or the provision of a specialist tenancy relations service. At present, landlords who are prosecuted will normally be subject to a fine by the County Court, the proceeds of which are paid to the Court and do not contribute back in to the Ashfield area.

Ashfield's approach to housing enforcement is based on the principle that it should be the offender (rather than good landlords or local council tax payers) who pays for proactive frontline enforcement and no-one who breaks the law should gain a financial advantage over someone who does not.

It is believed that civil penalties will act as a powerful deterrent for those landlords who might otherwise have considered that the financial benefits of non-compliance outweighed the risk of enforcement action against them.

This approach enjoys widespread support from local landlords who attend the Sherwood Area Landlord Forum who want the Council to create a level playing field for all landlords by dealing robustly with offenders.

## **Implications**

### **Civil Penalties**

The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:

- **Section 30** – Failure to comply with an Improvement Notice
- **Section 72** – Offences in relation to licensing of Houses in Multiple Occupation
- **Section 95** – Offences in relation to licensing of houses under Part 3 of the Act
- **Section 139** – Offences of contravention of an overcrowding notice
- **Section 234** – Failure to comply with management regulations in respect of Houses in Multiple Occupation

Although the maximum civil penalty that can be imposed for an offence is £30,000, it is for the Council to determine the level of civil penalty. The penalty should be reasonable and proportionate depending upon the offence.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that, before taking formal action, the Council must satisfy itself that, if the case was prosecuted in the magistrates' court, there would be a realistic prospect of conviction. To achieve a conviction in the magistrates' court, the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed.

Ashfield's Private Sector Enforcement Team operate an intelligence-led, targeted approach to housing enforcement – together with its expectation that all members of the Team will study for the Advanced Professional Certificate in Investigative Practice – means that the Council is well placed to competently detect and investigate possible offences and, where appropriate, to impose a civil penalty as an alternative to prosecution.

## Rent repayment orders

- A rent repayment order is an order made by the First-Tier Tribunal requiring a landlord to repay a specified amount of rent which can be up to 12 months' rent.
- The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed; specifically offences in relation to licensing of HMOs.
- Rent repayment orders have now been extended (under the Housing and Planning Act 2016) to cover a much wider range of offences, described below.
  - 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 (enacted in November 2017);
  - 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)

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no longer any prospect of the landlord appealing against that penalty.

The Government has made it clear that local housing authorities must always consider a rent repayment order after a civil penalty has been successfully imposed.

Although it is clearly in the financial interests of local housing authorities to make an application for a rent repayment order to recover monies paid through Housing Benefit or the housing element of Universal Credit, the Government has said that it expects them to offer advice, guidance and support to help tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

## **Civil Penalties Policy**

The Private Sector Housing Civil Penalties Policy sets out the Council's approach to civil penalties and rent repayment orders. It also provides details of the proposed charging structure.

The Policy takes into account the statutory guidance that has been issued by the Government under Schedule 9 of the Housing and Planning Act 2016.

Generally, the maximum civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of offending.

In order to ensure that the civil penalty is set at an appropriate level, the Council will consider the following factors that the Government has identified, in its statutory guidance, as being pertinent:

- The severity of the offence
- The culpability and track record of the offender
- The harm caused to the tenant
- The punishment of the offender
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The last factor is an overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence.

In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords or the local council tax payers), the costs associated with investigating, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed. Other authorities using civil penalties which we have used as guidance for this policy are Greater Manchester, Northampton, Nottingham City and Derby

## **Corporate Plan**

The report and the recommendations support the Council's values of being

- Enterprising, ambitious and innovative
- Community and customer focused
- Positive, proactive and successful

It also fits with the Council's priorities relating to health and well-being and ensuring we have affordable, warm and safe housing.

## Legal

The Council has a statutory duty to consider prosecution of non-compliant landlords as set out in the body of the report above under the Housing Act 2004 provisions. Any landlord failing to comply could be dealt with either by prosecution or an alternative Civil Penalties route if adopted by cabinet for some but not all offences.

Section 126 of The Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are as set out in the implications section of this report and is further detailed in the policy (Appendix A).

The Housing and Planning Act 2016 also introduces a number of other steps that may be taken by the Council to improve the private rented sector and tackle landlords who do not comply with the law.

## Finance

<b>Budget Area</b>	<b>Implication</b>
General Fund – Revenue Budget	Any additional Income generation will be ring-fenced to fund costs associated with current or future levels of private sector enforcement activity.
General Fund – Capital Programme	n/a
Housing Revenue Account – Revenue Budget	n/a
Housing Revenue Account – Capital Programme	n/a

## Risk

<b>Risk</b>	<b>Mitigation</b>
The Housing and Planning Act 2016 specifies that all of the income that a local authority receives from the imposition of Civil Penalties and the recovery of Housing Benefit through Rent Repayment Orders can be retained by the local authority and spent on private sector housing enforcement, providing support for the private rented sector and funding the activities of a social lettings agency.	<p>To, on approval of the policy by cabinet, develop a robust business case to layout the use of civil penalties monies received by the authority as a result of their use in order that the authority can retain and use this income for the intended use.</p> <p>A comprehensive Business Case would be developed to demonstrate how the income that is received from civil penalties and rent repayment orders can be used to expand the size of the Private Sector Housing Team, increase proactive enforcement activity and speed up the improvement of standards in districts private rented sector. The Business Case would be considered by Cabinet at a future meeting.</p>

<p>However, any income that a local authority receives from Civil Penalties and Rent Repayment Orders but fails to spend in support of one of the activities listed above must be paid into a Central Government Universal Fund.</p>	<p>Finance require a review of the spend of any income as a result of a Civil Penalty issued to be focused on the activities of the PSE team and may well be used to fund posts in future in order that we negate returns to central government.</p>
<p>Another potential risk concerns the lack of certainty around the decisions that will be made by the First-Tier Tribunal when it considers an appeal against the imposition of a civil penalty or a request (from tenants or the local authority) for a rent repayment order. In both situations, an unfavourable outcome may affect the Council's income.</p>	<p>Although the First-Tier Tribunal has the power to quash, confirm, increase or reduce the civil penalty – and the civil penalties regime is currently relatively untried and untested – the Government has made it clear that offenders must not derive any financial benefit from their offences and it has briefed the Tribunals on what is expected of them.</p>
<p>Another key risk is that, if there is a substantial increase in the number of investigations, this is likely to result in a corresponding increase in the number of cases requiring legal advice and assistance and this may, in turn, put extra pressure on the existing staffing resources within the Council's Legal Services team.</p>	<p>The Civil Penalty Matrix has costs built in to pay for specialist legal advisers – to defend civil penalty appeals – and the Business Case that will be presented to Cabinet on approval of the policy, will ensure that the Council is able to 'buy in' specialist advice and support as and when it is required.</p>

## **Human Resources**

No expected staff implication's as it is the currently established team other than the training of relevant officers in the Private Sector Enforcement team to achieve the Advanced Professional Certificate in Investigative Practice qualification as listed in the main body of the report.

## **Equalities**

The proposal clearly has merit for the needs of vulnerable citizens likely to be beneficially impacted if improvements are made in living accommodation which would impact positively on health, educational outcomes and other important indicators about quality of life.

The Civil Penalties Policy will help improve housing conditions and the life chances of people with protected characteristics, including homeless people, people with disabilities and families with children. They will therefore have a positive impact on Equality and Diversity.

The new policy supports the Council's commitment to improving communities and our District as a place to live. In implementing the policies, the Council will have due regard to its Public Sector Duty and will continue to work to tackle discrimination and inequality and contribute to the development of a fairer society.

An Equality Impact Assessment will be developed for this policy to ensure all aspects of impact are identified before any charges are levied.

## **Other Implications**

The Civil Penalties Policy, and the Councils Enforcement Policy are in line with Council policy and reflect its corporate priorities.

The fees and charges for Private Sector Housing are reviewed regularly in order to ensure that they reflect the true cost of the work involved.

## **Reason(s) for Urgency**

N/A

## **Reason(s) for Exemption**

N/A

## **Background Papers**

Ashfield District Council Policy on Civil Penalties as an alternative to prosecution under the Housing and Planning Act 2016 attached to report.

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