

Report to:	CABINET
Date:	31ST JULY 2023
Heading:	CIVIL PENALTY POLICY - UPDATE
Executive lead member:	CLLR T HOLLIS – EXECUTIVE LEAD FOR STRATEGIC HOUSING AND CLIMATE CHANGE
Ward/s:	All
Key decision:	Yes
Subject to call-in:	Yes

Purpose of report

To advise Cabinet about the need to review the Council’s Civil Penalty Policy relating to housing enforcement in response to rulings made by the First Tier Property Tribunal Service and good practice.

To seek approval of the revised Policy, attached at Appendix A.

Approval of the updated policy will ensure that there is a robust, transparent and consistent charging schedule, with the expectation that this will result in more penalties being successfully upheld.

Recommendation(s)

- 1. To note the reasons why the Council’s Civil Penalty Policy relating to housing enforcement requires updating and to consider the proposed changes.**
- 2. To approve the revised Civil Penalty Policy as attached at Appendix A.**
- 3. To grant delegated approval to the Executive Director of Place to make minor changes to the Policy in future in response to Tribunal rulings, good practice and regulatory change.**

Reasons for recommendation(s)

The issuing of Civil Penalty Notices and Civil Penalty Fines is an established and important tool for dealing with rogue landlords. It is used for serious offences, as an alternative to prosecution through the courts.

The Council must ensure its Civil Penalty Policy is accurate and up to date, reflecting tribunal rulings, any changes to the regulations and good practice. As the concept of Civil Penalties is relatively new (nationally), it is a policy that needs to be reviewed on a regular basis.

The revised Civil Penalty Policy (Appendix A), reflects the latest practice and will ensure the Council is as compliant as possible, thus protecting it from challenge.

Alternative options considered.

The only alternative is to retain the existing Civil Penalty Policy, this option was not considered as it is important the Council's Policy reflects the latest Tribunal rulings and good practice.

Detailed information

The Council has a forward thinking, ambitious Environmental Health (Residential) Team who are keen to improve housing conditions in the District. The Team works in partnership with landlords and tenants to deal with issues of disrepair, poor management practices, etc. On most occasions a satisfactory outcome can be achieved through good communication and negotiation.

In exceptional cases, where landlords and property owners fail to engage and respond to reasonable requests, further action is needed. The Team has a range of tools at their disposal for this purpose, one of which is issuing a Civil Penalty Notice and fine.

The Housing and Planning Act 2016, enacted on 6th April 2017, introduced Civil Penalties as an alternative to prosecution for certain offences under the Housing Act 2004. The Council introduced a Policy in 2018 and since then has issued seven successful Civil Penalty Notices and fines.

One of the benefits of issuing a Civil Penalty as opposed to prosecuting a landlord through the court is that the fine comes back into the Council and can be reinvested in the service and into improving housing conditions in the District.

The housing offences for which a Civil Penalty may be imposed as an alternative to prosecution are:

- Failure to comply with an improvement notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of houses in multiple occupation (section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under part 3 of the Act (section 95 of the Housing Act 2004);
- Offences of contravention of an overcrowding notice (section 139(7) of the Housing Act 2004); and
- Failure to comply with management regulations in respect of houses in multiple occupation (section 234 of the Housing Act 2004)

- Breach of regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 where the Council is satisfied beyond reasonable doubt that a landlord has breached a duty under regulation 3.

A criminal standard of proof, “beyond reasonable doubt”, is required for a Civil Penalty to be issued. This requires the authority to satisfy itself that if the case were to be prosecuted in the magistrates’ court, there would be a conviction.

The Council has not been challenged at tribunal level in respect of Civil Penalty Notices and fines it has issued but other local authorities have, these cases being heard in the First Tier Property Tribunal.

The challenges relate primarily to the way in which fines have been determined and the level of fines imposed. In respect of how fines are determined, issues have related to a lack of clarity and explanation. With regards to the level of the fine, there has been a question of proportionality, that is to say, is the fine in keeping with the offence? As a rule, the Tribunal have reduced the fines issued by local authorities.

In addition to taking note of Tribunal decisions, the Council is obliged to follow the ‘Civil Penalties under the Housing and Planning Act 2016, Guidance for Local Authorities’ published by the Ministry of Housing, Communities and Local Government (MHCLG) in respect of Civil Penalties and keep our processes under review to ensure fines are reasonable and proportionate to the offence.

In response to the above, and to wider good practice, officers have reviewed the Council’s Civil Penalty Policy.

Changes have been made, primarily to the section that sets out how a fine is determined and the level of the fine. The existing Policy requires more detail and depth of explanation, it states that culpability and harm are the key factors to take account of, but it doesn’t go into detail about how each of these is determined, what is taken into account, what is excluded, how we take account of mitigating factors, etc.

The updated policy provides the clarity expected. It explains what culpability and harm are, how they are assessed and how this is then used to determine the level of fine. Similarly, the levels of fine have been adjusted to ensure they are in keeping with Tribunal judgements. As a result, we do expect to see a small fall in some of the levels of fine for an offence. It is however expected that the more robust policy will result in penalties being successfully upheld, thus ensuring the most unscrupulous landlords are held accountable with fines proportionate to the offence committed.

The Council’s Legal Team has reviewed the revised Civil Penalty Policy.

Implications

Corporate plan: the Council is committed through its Corporate Plan to ensuring there is sufficient decent and safe accommodation for its residents.

Legal: The relevant legislation is set out in the body of the report [LE 13.07.23]

Finance: No direct financial implications arising from the update to this Policy. [PH 07/07/2023].

Budget Area	Implication
General Fund – Revenue Budget	N/A
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Risk:

Risk	Mitigation
Not updating the Policy – risk of challenge in the First Tier Property Tribunal	Revised Policy will ensure the Council is protected against challenge.

Human Resources:

There are no implications

Environmental/Sustainability:

There are no implications

Equalities:

Private rented accommodation is disproportionately occupied by low-income households, those who are benefit dependent often due to physical and mental health needs. Ensuring conditions in the sector are effectively tackled will assist in addressing inequalities.

Other Implications:

Reason(s) for Urgency

n/a

Reason(s) for Exemption

n/a

Background Papers

none

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