

4 December 2018

Community, Health & Housing Committee

Housing Civil Penalties

Report of: David Carter

Wards Affected: All

This report is: Public

1. Executive Summary

1.1 The Housing and Planning Act 2016 introduced a number of amendments to the Housing Act 2004. Local housing authorities have the power to impose civil penalties of up to £30,000, as an alternative to prosecution for offences under the Housing Act 2004.

1.2 This report seeks to introduce civil penalties for Housing Act offences

2. Recommendation(s)

2.1 **Members approve the introduction of fixed penalties as an alternative to prosecution where appropriate for offences under the Housing Act 2004**

2.2 **Officers are instructed to prepare a schedule of fixed penalties to be considered at a future meeting for adoption**

3. Introduction and Background

3.1 The Council has statutory responsibility for the enforcement of acceptable conditions in borough housing stock, with the main focus being on the private rented sector.

3.2 Most landlords in the Borough are law abiding and keen to act on advice given. Enforcement against landlords is generally only required in a very small number of cases.

3.3 The following offences under the Housing Act 2004 can now be dealt with by imposing a civil penalty:

a) Failure to comply with an Improvement Notice (section 30)

- b) Offences in relation to licensing of HMOs (section 72)
- c) Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- d) Offences of contravention of an overcrowding notice (section 139)
- e) Failure to comply with management regulations in respect of HMOs (section 234)

- 3.4 The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. This means that before a civil penalty can be imposed, the Council must be satisfied beyond reasonable doubt that the landlord committed the offence(s) and that if the matter were to be prosecuted in the Magistrates' Court there would be a realistic prospect of conviction.
- 3.5 The use of civil penalties can provide the Council with a more cost-effective and proportionate alternative to prosecution for specified housing offences, whilst retaining the option to prosecute for the most serious housing offences.
- 3.6 A landlord, or letting agent, or both, may face a civil penalty if they:
- Fail to comply with improvement notice served under section 11 and/or 12 of the Housing Act 2004. These notices are served when there are significant hazards in premises that can be resolved in a reasonable and practicable way.
 - Commit licensing failures in relation to Houses in Multiple Occupation (HMOs). Councils currently license all HMO's that are 3 storeys or higher and house 5 or more people, forming 2 or more households. Other HMOs are currently exempt from licensing.
 - Contravene an overcrowding notice served on an (HMO) under section 139 of the Housing Act 2004.
 - Breach the Management of Houses in Multiple Occupation (England) Regulations 2006. These cover matters such as maintenance of gas and electrical supplies, disrepair and safety.
- 3.4 This report seeks to establish the principle of fixed penalties as a potential alternative to prosecution for the offences listed at 3.3 above.

4. Issue, Options and Analysis of Options

- 4.1 Authorities who have adopted fixed penalties as an alternative to prosecution are encouraged to establish a scoring matrix to link the offences to a proportionate response depending on the severity of the offence and previous record of the landlord.
- 4.2 It is recommended, in accordance with Government guidance, that Brentwood Borough Council adopts a similar approach and amends the Council's Enforcement Policy accordingly.

5. Reasons for Recommendation

- 5.1 In order to keep enforcement practices up to date with current legislation and to provide appropriate resolution to offences committed with less reliance on lengthy and expensive Court action to deal with offences

6 Consultation

- 6.1 Options for the use of civil penalties have been consulted on by Government.

7 References to Corporate Plan

7.1 Community and Health

Provide advice, support, guidance and enforcement

Reward compliant businesses by a light touch approach to public protection

8 Implications

Financial Implications

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- 8.1 The financial implications will be determined by the level of fixed penalties set. It is not envisaged this will generate a revenue stream but as an alternative to prosecution for specified housing offences.

Legal Implications

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- 8.2 The recommendations set out within this report are lawful and within the Council's powers and duties.
- 8.3 The Council must have regard to the statutory guidance issued under s23 of the Housing and Planning Act 2016, Civil penalties under the Housing and Planning Act 2016 – guidance for Local Housing Authorities, in the exercise of its functions in respect of civil penalties.

The Council's Enforcement Policy should be amended to reflect the introduction of fixed penalties as an alternative to prosecution where appropriate.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

8.4 None

9 Background Papers (include their location and identify whether any are exempt or protected by copyright)

9.1 Civil penalties under the Housing and Planning Act 2016 – guidance for Local Housing Authorities – Ministry of Housing, Communities and Local Government April 2018

10 Appendices to this report

Appendix A – Civil Penalty Guidance

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