

5 March 2019

Community, Health & Housing Committee

Housing Civil Penalties

Report of: David Carter

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 At the meeting of the Community, Health and Housing Committee on 4th December 2018 Members received a report introducing the provisions for civil penalties to be implemented for certain offences under the Housing Act 2004.
- 1.2 Members resolved to approve the introduction of civil penalties as an alternative to prosecution where appropriate and officers were instructed to prepare a schedule of fixed penalties to be considered at this meeting for adoption.
- 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.

2. Recommendation(s)

- 2.1 **Members approve the scheme for civil penalties to be considered, where appropriate and as set out in 3.5 of this report, as an alternative to prosecution for offences under the Housing Act 2004.**
- 2.2 **Any severe civil penalties considered to be imposed will be in consultation with the chair of Community, Health and Housing committee.**
- 2.3 **Any civil penalties imposed will be reported in future chairs update.**

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 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.
- 3.4 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 HMOs that are 3 storeys or higher and house 5 or more people, forming 2 or more households. Other HMOs are currently exempt from licensing.
 - Offences committed in relation to selective licensing under Part 3 of the Housing Act 2004
 - 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
 - Breach of a banning order under section 21 of the Housing and Planning Act 2016
- 3.5 Any civil penalties considered to be imposed will be reported in future chairs update reports and communicated publicly.

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 In line with the Council's operational activities in collaboration with Thurrock Council, we have recommended that the principles and penalties implemented by Thurrock are adopted to provide greater consistency in enforcement across both Council areas.
- 4.3 The scoring matrix and principles are contained in the document attached at Appendix A.

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.
- 8.2 Any penalties issued will be captured through the Council's budget monitoring processes and reported accordingly, as part of Budget updates.

Legal Implications

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The legal position and implications are set out in the body of this report. Statutory guidance has been issued under Section 23 (10 and Schedules 1 and 9 of the Housing and Planning Act 2017 to which local housing authorities must have regard in the exercise for their functions in respect of civil penalties

Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations. (The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017).

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

None identified

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 - Brentwood Borough Council Statement of principles: determining the amount of penalty charge – Housing and Planning Act 2016

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