

**Name of meeting:** Cabinet  
**Date:** 2<sup>nd</sup> October 2018  
**Title of report:** Introduction of a Civil Penalty Policy for Housing Act offences

### Purpose of report

To outline a policy to allow the council to implement the new powers on civil penalties introduced by the Housing and Planning Act 2016. These will be an additional enforcement tool alongside prosecution for a range of offences under the Housing Act 2004

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	Yes
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Strategic Director</u> & name	Karl Battersby - 3.09.2018
Is it also signed off by the Service Director - Finance?	Eamonn Croston - 6.09.2018
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Julie Muscroft - 20.09.2018
Cabinet member <a href="#">portfolio</a>	Councillor Cathy Scott - Adults & Independence

**Electoral wards affected:** All Wards

**Ward councillors consulted:** Not Applicable

**Public or private:** Public

### 1. Summary

- i. New housing enforcement legislation has been introduced to give local authorities the power to impose a civil penalty as an alternative to prosecution for certain housing offences
- ii. When the legislation was introduced it was expected that this power would be used robustly as a way of clamping down on rogue landlords. Raising the level of civil penalty to £30,000 was considered important because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants.
- iii. The council is required to develop and document a policy to be used in determining the appropriate level of civil penalty in a particular case.
- iv. The policy proposed reflects the levels of penalty agreed with other West Yorkshire Authorities.

## **2. Information required to take a decision**

- i. The Housing and Planning Act 2016 gives local authorities the power to impose a civil penalty of up to £30 000 as an alternative to prosecution for certain specified housing offences under the Housing Act 2004.
- ii. The specified housing offences covered are:-
  - Failure to comply with an Improvement Notice
  - Offences in relation to licensing of Houses in Multiple Occupation (HMO)
  - Offences in relation to licensing of houses under Part 3 of the Act
  - Offences of contravention of an overcrowding notice
  - Failure to comply with management regulations in respect of HMOs
- iii. The local housing authority is the enforcing body and the same criminal standard of proof is required for a civil penalty as for prosecutions. The local housing authority must be satisfied that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.
- iv. Civil penalties cannot be used for failure to comply with a Prohibition Order. Instead the council can seek a rent repayment order in addition to prosecuting the landlord.
- v. The legislation does not allow the council to impose a civil penalty and prosecute for the same offence.
- vi. Housing Officers have developed a policy in conjunction with housing colleagues from other West Yorkshire Authorities to ensure consistency in both levels in penalty and service application
- vii. See Appendix A for proposed Civil Penalty Policy (Housing & Planning Act 2016)
- viii. As with landlord prosecutions for offences under the Housing Act 2004, civil penalties will be undertaken by the Housing Compliance team within the Housing Solutions Service
- ix. The level of civil penalty is to be determined on a case-by-case basis with a maximum penalty of £30,000. The policy includes a matrix to determine the level of penalty dependent upon the levels of culpability and harm.
- x. The policy also outlines both aggravating and mitigating factors which will be considered as part of any adjustments to the initial determination.
- xi. The final determination of any civil penalty will adhere to the general principle:-
  - The civil penalty should be fair and proportionate but in all instances should act as a deterrent and remove any gain as a result of the offence

## **3. Implications for the Council**

### **3.1 Early Intervention and Prevention (EIP)**

- Civil penalties are designed to prevent the small number of rogue or criminal landlords from profiting from renting out unsafe and substandard accommodation and deter others from undertaking such activities. Effective communications to publicise civil penalties and their impact will help promote high quality standards and practices within the private rented sector.

### **3.2 Economic Resilience (ER)**

- The introduction of civil penalties will support the Economic Resilience Vision of combining a strong sustainable economy with a great quality of life by tackling poor landlords and driving up good quality private rented accommodation and management practices.

### **3.3 Improving Outcomes for Children**

- Eliminating poor quality housing and driving up good quality accommodation will improve well-being for the entire family.

### 3.4 Reducing demand of services

- Disrupting the business model of poor landlords and driving them out of the private rented market will reduce demand upon the reactive service of the Housing Compliance team.

### 3.5 Other (eg Legal/Financial or Human Resources)

- Income received from a civil penalty can be retained by the local housing authority to further their statutory functions in relation to their enforcement activities covering the private rented sector.

## 4. Consultees and their opinions

- Officers have been working with housing colleagues across the region to develop a robust policy. Additionally, staff procedures, guidance, communications and training plans have been developed for Housing Compliance Officers. Through this partnership approach neighbouring councils and landlords, operating across administrative boundaries, are provided consistency.
- Legal Services have reviewed the all Notice templates
- Councillor Mather has also been consulted given the enforcement aspect

## 5. Public Sector Equality Duty

- Members are reminded that before making any decisions that they have a legal duty to consider the **Equality Act 2010, Section 149**, which introduced a public sector equality duty that the Council must in the exercise of their functions , have due regard to the need to
  - eliminate discrimination, harassment, victimisation;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- Members should have due regard to the Equality Impact Assessment which has minimal impact on groups with protected characteristics - See Appendix B.

## 6. Next steps

- Housing Officers to further develop the range of additional measures introduced through the Housing and Planning Act 2016 including rent repayment orders, rogue landlord database and Banning Orders for the most serious and prolific offenders

## 7. Officer recommendations and reasons

Cabinet is asked to:-

- Introduce civil penalties as an alternative to prosecution for offences under the Housing Act 2004
- Approve the Civil Penalty Policy (Housing & Planning Act 2016) – See Appendix A

## 8. Cabinet portfolio holder's recommendations

The Portfolio Holder is fully supportive of introducing civil penalties as an additional tool to tackle rogue landlords and drive up property conditions and management practices within the private rented sector

**9. Contact officer**

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**10. Background Papers and History of Decisions**

Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities: MHCLG, April 2018

**11. Service Director responsible**

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