



Name of meeting: Cabinet
Date: 15th December 2020
Title of report: Amendments to Civil Penalty Policy for Housing related offences

Purpose of report: To outline the changes to the Civil Penalty Policy following the introduction of additional legislation and to seek delegated powers for future minor changes to the policy

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 Housing enforcement tool effective Kirklees wide
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u> ?	Key Decision – Yes Private Report/Private Appendix – No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Strategic Director</u> & name	David Shepherd - 4.12.20
Is it also signed off by the Service Director for Finance?	Eamonn Croston - 4.12.20
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft - 4.12.20
Cabinet member portfolio	Cllr Cathy Scott – Housing & Democracy

Electoral wards affected: All Wards

Ward councillors consulted: Not Applicable

Public or private: Public

Has GDPR been considered? Yes

1. Summary

- Housing enforcement legislation was introduced to give local authorities the power to impose a civil penalty as an alternative to prosecution for certain housing offences.
- When the legislation was introduced it was expected that this power would be used robustly as a way of clamping down on rogue landlords, property managers and letting agents.
- As civil penalties were brought in appropriate guidance and procedures were developed.
- For offences under the Housing and Planning Act 2016, 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.
- The council was required to develop and document a policy to be used in determining the appropriate level of civil penalty in a particular case. Such a policy was agreed by Cabinet on 2nd October 2018.
- Since then further housing legislation has been introduced where civil penalties can be used.
- The Policy is being revised to consolidate all existing housing offences where civil penalties can be considered and to take account of the new legislation coming into effect.
- That authority to make future minor amendments to the Civil Penalty Policy for Housing related offences in order to comply with legislation, guidance and case law, is delegated in consultation with the Portfolio Holder to the Service Director, Growth & Housing

2. Information required to take a decision

Background

- The Civil Penalty Policy, agreed by Cabinet on 2nd October 2018, is for housing offences under the **Housing and Planning Act 2016**. The specific 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
- 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.
- The policy also outlines both aggravating and mitigating factors which will be considered as part of any adjustments to the initial determination.
- The revised Civil Penalty Policy is Appendix A

Consolidation of existing housing legislation civil penalties

- The **Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014** – there is a legal requirement to belong to a government approved redress scheme for those engaged in:-
 - Lettings agency work
 - Property management work
 - Estate agency work dealing with residential properties.
- Failure to comply with the regulations may result in a civil penalty up to a maximum £5,000.
- The new policy will outline how the level of fine will be determined.
- The **Smoke and Carbon Monoxide Alarm (England) Regulations 2015** – requires landlords to ensure:-
 - A smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
 - A carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
 - The alarms are in proper working order at the start of any new tenancy.

- This provision does not place an excessive burden on landlords and a reasonable timescale for compliance is given prior to any penalty charge being levied. The charge for a first offence is £1,000 and subsequent penalties are £5,000 per notice.

New legislation

- The ***Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020*** apply to all new tenancies from 1st July 2020 and to all existing tenancies from 1st April 2021.
- Private Landlords must ensure national standards for electrical safety are met and that their rented properties are inspected and tested by a qualified and competent person every five years. A copy of the inspection report should be supplied to the tenant.
- Failure to comply with the regulations may result in a civil penalty with a maximum financial penalty of £30,000. The policy document will be used to determine the level of penalty dependent upon the levels of culpability and harm similarly to Housing and Planning Act 2016 offences.
- The ***Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*** and Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 are designed to tackle the least energy efficient properties – those rated F or G on the Energy Performance Certificate (EPC).
- From 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G. Where a valid exemption applies, landlords must register the exemption on the PRS Exemptions Register.
- Failure to comply may result in a civil penalty up to maximum limits set by the Regulations. The total amount of the financial penalty may not be more than £5,000 per property.
- The policy document will set out the considerations to determine the penalty.

3. Implications for the Council

- **Working with People**

Our Civil Penalty Policy is intended to prevent the small number of rogue or criminal landlords, property managers or letting agents from profiting from renting out unsafe and substandard accommodation and deter others from undertaking such activities. Providing a clear and transparent policy together with effective communications to publicise civil penalties and their impact will help promote high quality standards and practices within the private rented sector.

- **Working with Partners**

The introduction of civil penalties will support the vision of combining a strong sustainable economy with a great quality of life by tackling poor landlords, property managers and lettings agents and driving up good quality private rented accommodation and management practices. Collaboration and working together with housing, accommodation and enforcement partners is key.

- **Place Based Working**

Civil penalties and enforcement are tools used across the entire Kirklees area. This policy considers levels of culpability and harm as well as mitigation and risk factors on a case by case basis. While not geographic, the matrix approach allows for a more bespoke solution across the sector.

- **Climate Change and Air Quality**

Tackling the poorest landlords, property managers and letting agents is designed to eliminate unsafe and substandard accommodation. This will help improve and promote higher quality standards within homes. This will include reducing emissions, energy efficiency and affordability. Good quality accommodation results in a healthier and more sustainable

environment. Improvements across the private rented sector will also minimise housing inequalities for those living within Kirklees.

- **Improving outcomes for children**

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

- **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.

Civil penalties are an additional enforcement tool alongside prosecutions. The same criminal standard of proof is required and the same investigative procedures followed. Co-operation with legal colleagues will remain for all enforcement action. As there is an appeals process connected to a civil penalty there may be a legal and financial resource implication. However, this risk is relatively small.

Do you need an Integrated Impact Assessment (IIA)?

An Integrated Impact Assessment Stage 1 has been completed. The outcome does not require progressing to the next stage. The policy changes are a result of Government legislation which has considered whether any potential discriminatory impact on people with protected characteristics exists. The revision of the policy will not have any adverse impact across the range of environmental and sustainability considerations.

4. Consultees and their opinions

- Officers worked with housing colleagues across the region to develop a robust policy. There continue to share best practice around housing enforcement. 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
- This report and revised policy has been shared with Portfolio Holder. The previous policy was approved by Cabinet on 2nd October 2018

5. Next steps and timelines

- To undertake a communications and publicity campaign throughout Winter 2020-21 outlining the legislative changes and possible consequences of non-compliance.

6. Officer recommendations and reasons

Cabinet is asked to approve: -

- The changes to the Civil Penalty Policy for Housing Related Offences. (Appendix A)
- That future minor amendments to this policy are delegated in consultation with the Portfolio Holder and the Service Director, Growth & Housing.

7. Cabinet Portfolio Holder's recommendations

The Cabinet Portfolio Holder **recommends** that Cabinet approves the changes to the Civil Penalty Policy for Housing Related Offences and that future minor amendments to this policy are delegated in consultation with the Portfolio Holder and the Service Director, Growth & Housing.

8. Contact officer

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9. Background Papers and History of Decisions

Civil Penalty Policy for Housing related Offences
Cabinet Decision 2nd October 2018

10. Service Director responsible

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