

## **Report to Portfolio Holder for Public Protection**

**Subject:** Approval for consultation on draft Private Sector Housing Civil Penalties Policy

**Date:** 29<sup>th</sup> August 2018

**Author:** Food, Health and Housing Manager

### **Wards Affected**

All wards

### **Purpose**

To approve a 4 week public consultation on the draft Private Sector Housing Civil Penalties Policy (Appendix A) with the view to adopting the policy to enable the Council to issue civil penalties as an alternative to prosecution for certain housing offences under the Housing Act 2004.

### **Key Decision**

Not a key decision

### **Background**

- 1.1 The Housing and Planning Act 2016 amended the Housing Act 2004 and brought forward powers for the Council, as local housing authority, to impose civil penalties as an alternative to prosecution for certain housing offences. When powers were introduced by the Housing and Planning Act 2016, Ministers made very clear they expected these powers to be used robustly as a way of addressing issues caused by 'rogue landlords'.
- 1.2 Guidance has been issued by Department for Communities and Local Government about implementation. In order to implement charges, the Council must adopt a policy that has regard to Government Guidance.
- 1.3 Adopting a Private Sector Housing Civil Penalties Policy will mean additional enforcement options are available to the Council to help protect occupants and help ensure residents can live in safe homes.
- 1.4 The Council has previously adopted a policy to impose penalty charges in relation to smoke detectors and carbon monoxide alarms (17<sup>th</sup> December

2015).

- 1.5 In the overwhelming majority of cases, the Council has no need to intervene in relation to housing conditions in the private rented sector and matters are resolved between the tenant, landlord or lettings agent.
- 1.6 In a small minority of cases the Council may choose to intervene, options available to the Council range from informal advice, service of a formal notice, undertaking works to remedy defects to prosecuting landlords.
- 1.7 The proposed introduction of the use of civil penalties is not intended to increase the level of enforcement activity but to allow a greater range of enforcement tools that can be considered and applied to the worst offenders when informal and formal actions have failed to achieve compliance. There will be no negative impact on compliant landlords.
- 1.8 It is the Council's intention to encourage landlords to meet their obligations without the need to impose a Penalty Charge. However, the ability to impose such charges is likely to be a deterrent and encourage compliance. It is intended that the use of penalty charges will provide greater certainty and speed than a prosecution route in dealing with serious housing offences.
- 1.9 The Council will be able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004 subject to adoption of a formal policy:
  - Failure to comply with a Statutory Improvement Notice (s30)
  - Failure to obtain a licence for a licensable House in Multiple Occupation (s72)
  - Offences in relation to licensing of houses under Part 3 of the Act (s95) (if the Council adopted selective or additional licencing)
  - Contravention of an overcrowding notice (s139)
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation (s234)
- 1.10 A penalty will only be imposed where the Council is satisfied that where there would be a realistic prospect of a conviction if we proceeded to prosecution. The criminal burden of proof, beyond all reasonable doubt, must be satisfied.
- 1.11 Where both a landlord and a letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution.

- 1.12 The maximum penalty is £30,000. There is no minimum penalty level. In setting the level of a civil penalty the Council must have regard to Government Guidance and take into account the severity of the offence, culpability and track record of the offender, harm or potential harm caused to the tenant e.g. physical injury, damage to health, distress, punishment of the offender, to deter the offender from repeating the offence and/or to deter others from committing similar offences.
- 1.13 The proposed Private Sector Housing Civil Penalties Policy in Appendix A has been drafted having regard to the Public Protection Service Enforcement Policy and the draft revised Private Sector Housing Enforcement Policy which also due to be consulted on have been drafted with the public interest considerations that govern the Regulatory Framework.
- 1.14 Landlords/ agents will have the right to oppose and appeal any Civil Penalty through the independent external First Tier Residential Property Tribunal. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence or that the Courts have convicted the landlord of a relevant offence.
- 1.15 If the policy is adopted it is intended that the Civil Penalties will be administered by the Public Protection Service in consultation with Legal Services. Where circumstances arise that warrant a civil penalty the Food, Health and Housing Manager will consult with Legal Services before issuing a landlord or agent with a notice of intent to issue a civil penalty.
- 1.16 Any representations will be considered by the Public Protection Service Manager before issuing a final notice. The civil penalty will be subject to the councils sundry debtors process, and if unpaid the Revenues Service will pursue the outstanding civil penalty in accordance with the councils debt recovery processes.

## **Proposal**

- 2.1 It is proposed that the Portfolio Holder approves a 4 week public consultation on the draft Private Sector Housing Civil Penalties Policy (Appendix A) to seek views before reaching a decision to formally adopt the policy.

## **Alternative Options**

- 3.1 To adopt a civil penalties policy without a prior consultation, this would not be in accordance with the adopted Public Protection Service enforcement policy which states the council will engage with those we regulate to contribute to the development and service standards. Before changing policies we consider the impact on businesses and engage with business

representatives.

### **Financial Implications**

- 4.1 Performing a consultation on the draft Private Sector Housing Civil Penalties Policy will be conducted within existing council resources. Should the policy be adopted it will enable the council to issue civil penalties in accordance with the proposed policy attached in appendix A. The penalty is made up of two elements the investigative/enforcement charge and the punitive charge.
- 4.2 The Council is permitted to retain any revenue from penalty charges with use being ring fenced to the Council's statutory functions in relation to private rented enforcement activities.

### **Appendices**

- 5.1 Appendix A – Draft Private Sector Housing Civil Penalties Policy

### **Background Papers**

- 6.1 Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Authorities
- 6.2 Public Protection Service Enforcement Policy
- 6.3 Draft Private Sector Housing Enforcement Policy, subject to approval following a public consultation.

### **Recommendation(s)**

- 7.1 It is recommended that the Portfolio Holder approves a 4 week public consultation on the draft Private Sector Housing Civil Penalties Policy (Appendix A) to seek views before reaching a decision to formally adopt the policy.

### **Reasons for Recommendations**

- 8.1 To seek views before deciding whether to adopt a council policy that will enable the new civil penalties provisions to be utilised and provide an alternative to prosecution as a means of enforcing standards within the private rented sector. The use of these provisions will contribute to the following corporate priorities:
  - Reduce antisocial behaviour, crime and fear of crime
  - Improve health and wellbeing

- Provide an attractive and sustainable environment that local people can enjoy and appreciate