

Decision Session - Executive Member for Housing and Safer Neighbourhoods **16 October 2017**

Report of the Assistant Director – Housing & Community Safety

Introduction of Civil Penalty Notices for Housing Act offences

Purpose of the report

1. To outline a policy to allow the Council to implement the new powers on civil penalties introduced by the Housing and Planning Act 2016 as an alternative to prosecution for a range of offences under the Housing Act 2004.

Recommendations:

2. The Executive Member for Housing and Safer Neighbourhoods is asked to:
 - a) Consider the new powers in line with Government guidance¹ on them
 - b) Approve the attached policy

Reason: to enable the council to use the civil penalties as an alternative to prosecution for specific penalties under the Housing Act 2004

Background Information

3. The Housing and Planning Act 2016, as part of a range of new measures to crack down on rogue landlords, introduced civil penalties of up to £30,000 as an alternative to prosecution for specified offences. This provision came in to force on the 6th April 2017 alongside statutory guidance. The council must have regard to this guidance when developing their policy.
4. A civil penalty is a financial penalty imposed by a council on an individual or organisation as an alternative to prosecution. We will be able to

¹ Civil Penalties under the Housing and Planning Act 2016 <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

impose a civil penalty for the following offences under the Housing Act 2004

- Section 30 – failure to comply with an improvement notice
 - Section 72 – mandatory licensing of HMO
 - Section 95 – licensing under Part 3 of the Housing Act 2004
 - Section 139 – failure to comply with an overcrowding notice
 - Section 234 – breach of management regulations in respect of HMO
5. The powers are not retrospective and will not apply to offences committed before the 6th April 2017. The council cannot both apply a civil penalty and prosecute for the same offence.
6. Before considering whether to apply a civil penalty the council must ensure that they have the same criminal standard of proof as is required for a prosecution. On the 28th September 2017 the Executive considered changes to the Enforcement Policy² which included penalties as an option to consider when taking formal enforcement action. This enforcement policy determines that the most appropriate enforcement action is taken. It is the intention of the council to use civil penalties as the main enforcement option instead of prosecution in line with Government guidance. The proposed attached policy outlines an approach which determines the appropriate level of civil penalty to be imposed once the decision to take enforcement action has been approved.
7. The overriding principle when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation. The guidance advises that we should consider a range of factors when setting the penalty. The factors being:
- Level of culpability
 - Level of harm
 - Severity of the offence
 - Aggravating Factors
 - Mitigating Factors
 - Penalty to be fair and reasonable
 - Penalty to be such as to be a deterrent and remove the gain derived through the failure to comply

² <http://democracy.york.gov.uk/documents/s117171/Annex C - Proposed Enforcement Policy.pdf>

8. Following a decision to impose a civil penalty rather than alternative legal action, the council must follow the procedure outlined in schedule 13a of the Housing Act and which is outlined in the policy. This includes the council serving an initial Notice of Intent and a Final notice.
9. Critically the council must, as part of that Notice procedure, set out the amount of the financial penalty, the reasons for imposing the penalty, information about how to pay, the payment period, how to make an appeal and the consequences of failure to comply with the notice.
10. If the council decides to serve a final notice, following the 28 day period for representations, then the person can still make an appeal to the First Tier Property Tribunal. During this appeal stage the final notice is suspended until the appeal it is determined or withdrawn by either party.

Consultation

11. Officers have been working with colleagues across the region to draft a policy which fully takes account of the law and the statutory guidance further reducing the risk that neighbouring councils adopt different approaches.

Options

- 12 **Option 1** -. To introduce the civil penalties as an alternative to prosecution
- 13 **Option 2** -. Not to introduce civil penalties

Analysis

14. **Option 1** – The private rented sector (PRS) is an important part of our housing market forming about 19% of the total housing stock within the city. While the standards have improved, our 2015 BRE research evidence base found the PRS to be the worst housing tenure sector with 1/3 of all hazards³ in this tenure despite it forming less than 20% of the whole housing stock.
- 15 We have worked to raise standards in the PRS and continue to support good landlords through a range of initiatives including the HMO licensing programme, the council's accreditation scheme, YorProperty, the council's letting agency YorHome, Landlord training, conferences and e-newsletters. However we are aware of a small number of landlords and

³ Category 1 Hazards

agents in the sector who knowingly rent out unsafe and substandard properties. The attached policy aims to utilise the full powers available with a view to tackling the landlords who deliberately flout the law. It should be noted that government has given a significant steer by advising

“It is important [to] raise the level of civil penalty to £30,000, 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”⁴

- 16 **Option 2** – Not adopting a policy will mean that we are unable to utilise these powers and will mean that we won’t have an additional effective tool to tackle the worst end of the PRS.

Council Objectives

- 17 Introduction of this policy will support and contribute towards a number of the Administration’s council key priorities:
- A prosperous city for all
 - A focus on frontline services
 - A council that listens to residents

Implications

- 18 The implications arising directly from this report are:
- **Financial** –Any income raised as civil penalties must be used to raise standards in the Private Rented Sector Housing
 - **Procurement** – None
 - **Human Resources** – Currently we are considering the resource implications. These would be funded from the fee income.
 - **Equalities Implications** – Attached is the Community Impact Assessment (Appendix B)
 - **Legal Implications.** The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

⁴ House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government)

Risk Management

- 19 This approach enables the council to utilise the full range of powers available to tackle the worst element of the PRS.

Contact Details

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	Report Approved	✓	Date 5/10/17
Wards Affected: <i>All</i>			
For further information please contact the authors of the report			

Appendices

- Appendix A - City Of York Council Civil Penalties Policy
- Appendix B - Community Impact Assessment

Background Papers

- Report to Executive by the Director of Economy and Place - Update on Formal Enforcement Action and Review of Enforcement Policies, 28 September 2017