

**INTRODUCTION OF CIVIL PENALTIES FOR FAILURE TO COMPLY WITH STANDARDS IN THE PRIVATE RENTED SECTOR**

Relevant Portfolio Holder	Councillor Shirley Webb
Portfolio Holder Consulted	Yes
Relevant Head of Service	Judith Willis
Ward(s) Affected	All wards
Ward Councillor(s) Consulted	No
Key Decision / Non-Key Decision	No

**1. SUMMARY OF PROPOSALS**

The Government has introduced powers under the Housing and Planning Act 2016 for local authorities to use Financial Penalties as an alternative to prosecution for some offences under the Housing Act 2004 and this report seeks approval to introduce the use of financial penalties in tackling offences in the private sector and to adopt Government guidance on the implementation of this power to establish a framework for levels of penalty to be imposed.

**2. RECOMMENDATIONS**

**The Cabinet is asked to RECOMMEND**

- 2.1 That power be delegated to the Head of Community Services to approve the use of Civil Penalties in appropriate housing related offences as an alternative to prosecution
- 2.2 The financial penalty matrix attached to the report as appendix 1 be adopted.

**3. KEY ISSUES**

- 3.1 The council currently provides a number of services to tenants and landlords in the private rented sector in Bromsgrove, which supplies in the region of 3000 homes to local residents.
- 3.2 Inevitably, things can sometimes go wrong in the private rented sector and when this happens the council can intervene to try and resolve the situation. Usually a resolution can be found through negotiation but sometimes the council has no other option but to pursue enforcement action against landlords which is often a costly, protracted and resource-intensive exercise.
- 3.3 Introducing Civil Penalties as an alternative to other enforcement action should offer a swifter and more financially efficient way of working as well as helping the council drive up standards in the private rented sector, with the associated

benefits for tenants, in line with the council's strategic purpose 'help me find somewhere to live in my locality'.

**Financial Implications**

- 3.4 The use of Civil Penalties to address incidents of non-compliance with current housing standards in the Private Rented Sector will result in the Council imposing a fine aligned to the degree of non-compliance. Under the Fixed Penalty Notice process the fines imposed are fully retained by the Council to recompense the full costs associated with the general enforcement function whereas under the existing court process the Council receives only the specific enforcement costs for each individual case and only where the case is successful.
- 3.5 Landlords and agents can appeal against a Civil Penalty to the First Tier Tribunal. Where the landlord or property agent fails to pay a Civil Penalty, the local authority can seek a Court Order in the County Court. If necessary, the local authority may use county court bailiffs to enforce the Order and recover the debt.
- 3.6 In cases where there is difficulty in obtaining the payments the Council may instead opt to secure recovery of the fine by placement of registered charge against the property.

**Legal Implications**

- 3.7 The Housing and Planning Act 2016, introduced powers for local authorities to use Civil Penalties (a fine) as an alternative to prosecution. The prosecution process via the Courts system is becoming increasingly protracted and resource-intensive and the use of Civil Penalty Notices is considered to provide a more efficient means of penalising non-compliance for the majority of cases, however prosecution will nonetheless remain as an option for the most serious offenders, subject to the public interest test.
- 3.8 Civil Penalties can be used for wide range of breaches under the Housing Act 2004. This report sets out the principles to be adopted when using this new power. The Council may also consider whether or not to undertake the works in default when an Improvement Notice has not been complied with.
- 3.9 Guidance issued by the Ministry of Housing Communities and Local Government (MHCLG) in April 2017 sets out the criteria for decision making about the level of fine able to be imposed and the process that the Council should follow. In consultation with other West Midlands and Worcestershire local authorities it was generally agreed to seek adoption of a common standard for Civil Penalties which has regard to the Government guidance to enable a more consistent approach to the penalties across the region.
- 3.10 The Act allows a maximum financial penalty of £30,000 to be imposed for the most serious offence. This is an increase on previous levels to reflect the

governments concerns that the Fixed Penalty process should not be considered a lesser deterrent than the court process.

- 3.11 In determining whether to impose a financial penalty the Council will have regard to any relevant Governmental guidance. In particular to the factors set out in the Government Guidance on Civil Penalties under the Housing and Planning Act 2016 has been incorporated into the charging table adjustments set out in Appendix 1.
- 3.12 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.
- 3.13 A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:
- a. The amount of any proposed financial penalty
  - b. The reasons for proposing the financial penalty
  - c. Information about the right to make representation to the Council.
- 3.14 The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 3.15 Following the 28 day period the Council will decide:
- a. Whether to impose a financial penalty on the person, and
  - b. Any amendments to the value of any such penalty imposed.
- 3.16 If the Council decided to impose a financial penalty, a final Notice shall be issued imposing that penalty. The final notice will specify:
- a. The amount of financial penalty,
  - b. The reasons for imposing the penalty,
  - c. Information about how to pay the penalty,
  - d. The period for payment of the penalty,
  - e. Information about the rights of appeal to the First Tier Tribunal,
  - f. The consequences of failure to comply with the notice
- 3.17 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by Order from a County Court. Where appropriate, the Council will also seek to recover the additional costs incurred in taking this action from the person to which the financial penalty relates.
- 3.18 Financial penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.

3.19 The Council may, at any time:

- a. Withdraw a notice of intent or final notice
- b. Reduce the amount specified in a notice of intent or final notice.  
Where the Council decided to take either action, it will write to the person to whom the notice was given.

3.20 Where a person has received two financial penalties under the legislation in any 12 month period, irrespective of the locality to which the offence were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, The Council will have regard to any guidance issued by the Secretary of State.

3.21 Where the Council secures a financial penalty it will have a zero tolerance approach to the recovery of this debt. Income received from Civil Penalties will be retained by the Council to further help the statutory functions of the Private Sector Housing Team.

**Background / Service Implications**

3.22 The introduction of financial penalty charge notices, as an additional enforcement measure, for Part 1 Housing Act 2004 allows authorised officers to consider the best course of action to address non-compliance by private sector landlords. The Government's position is clear and detailed in paragraph 5.5 requiring Local Authorities to be robust in their enforcement approach.

3.23 The rationale in relation to the financial penalty is in accordance with Magistrates Court procedures for imposing fine levels taking into account culpability and income from their housing related activities.

3.23 The financial penalty matrix and associated enforcement notes have been consulted and adopted in both the Worcestershire Authorities and the wider West Midlands Authorities through the Private Sector Housing Officers Group. Officers from Private Sector Housing Team have consulted with other Worcestershire and West Midland local authorities and national groups such as the Houses in Multiple Occupation Network on the framework for Civil Penalties. The majority of West Midlands Authorities have adopted or are in the process of adopting the same standard of charges set-out in this report to help ensure a level of consistency across the region. The proposed policy has also been discussed with the MHCLG who issued guidance. The MHCLG model on how to implement the Civil Penalty is proposed to be adopted by most West Midlands Authorities.

**Customer / Equalities and Diversity Implications**

- 3.24 The options available within the Civil Penalties approach are an important way of addressing poor practice in the private rented sector, thereby helping vulnerable adults and children remain housed and living independently in the district.

**4. RISK MANAGEMENT**

- 4.1 Landlords receive advance warning from the council of an impending fixed penalty so they are given sufficient time to address issues identified.
- 4.2 Prosecution of landlords will remain an option for the most serious offenders, subject to the public interest test.
- 4.3 Officers from the council's Private Sector Housing Team will analyse and monitor the impact of this new approach and its impact on the sector in Bromsgrove. They will also share this analysis and any future proposals for developing this approach with both the Portfolio Holder for Strategic Housing and Health and Well Being and the Portfolio Holder for Planning and Regulatory Services.
- 4.4 The Private Sector Housing Team will manage and respond to ongoing Civil Penalty cases, liaising with landlords and tenants as necessary.

**5. APPENDICES**

Appendix 1 - Civil Penalty legislation & Fine Matrix

**6. BACKGROUND PAPERS**

Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities (MHCLG).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/697644/Civil\\_penalty\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf)

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