

<b>Cabinet Meeting</b>	
<b>Meeting Date</b>	4 March 2019
<b>Report Title</b>	Housing Enforcement Civil Penalties Policy - An alternative to prosecution for certain housing legislation offences.
<b>Cabinet Member</b>	Cllr Alan Horton, Cabinet Member for Housing and Safer Communities
<b>SMT Lead</b>	Emma Wiggins, Director of Regeneration
<b>Head of Service</b>	Charlotte Hudson - Housing, Economy and Community Services.
<b>Lead Officer</b>	Glyn Pritchard- Private Sector Housing Manager
<b>Key Decision</b>	yes
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. Adopt and implement the use of Civil Penalties Policy as an alternative to prosecution. Appendix I.</li> <li>2. Delegation to the Head of Housing, Economy and Community Services all powers to issue, use and enforce civil penalties as detailed in the Housing and Planning Act 2016 and any regulations made there under, including deciding on the level of penalty and dealing with representations.</li> <li>3. The Head of Housing, Economy and Community Services in consultation with the Cabinet Member for Housing and Safer Communities be delegated to make amendments to the policy, to maintain functionality and reflect changes in guidance or legislation.</li> </ol>

## **1 Purpose of Report and Executive Summary**

- 1.1 This report seeks approval to use civil penalties and sets out how the Council will implement new enforcement powers contained in the Housing and Planning Act 2016. This allows financial penalties to be imposed as an alternative to prosecution for certain housing offences under the Housing Act 2004 and for a breach of a banning order under the Housing and Planning Act 2016.
- 1.2 The introduction of civil penalties will provide an additional enforcement tool to improve accommodation in the private rented sector. It will add to the options available for effective enforcement against criminal landlords.
- 1.3 Income received from civil penalties can be retained by the Council and used in relation to its housing enforcement functions.

## 2 Background

- 2.1 Local Authorities have various statutory powers under the Housing Act 2004. There is a range of action that can be taken when an offence is committed. This includes the service of notices, cautions and prosecutions.
- 2.2 The Housing & Planning Act 2016 introduced civil penalties (CP) as an alternative to prosecution of individuals and organisations for offences under the Housing Act 2004. The penalty is a financial penalty, which can be imposed by a local authority, up to a maximum of £30,000
- 2.3 The Government introduced these CP's as part of its campaign to clamp down heavily on criminal landlords. Councils have been given the authority to determine whether to prosecute or to impose a CP. All monies collected following the issue of a CP can be retained by the Council to further its statutory functions in relation to private housing enforcement work.
- 2.4 The Council will be able to impose penalties as an alternative to prosecution for offences under the Housing Act 2004 and Housing and Planning Act 2016
  - Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
  - Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
  - Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004);
  - Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004)
  - Breach of a banning order (section 21 of the Housing and Planning Act 2016)
- 2.5 The Council will determine, on a case-by-case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any offences listed above.
- 2.6 In addition to existing offences under housing legislation, section 23 of the Housing and Planning Act 2016 provides that a CP may be imposed in respect of a breach of a Banning Order.
- 2.7 Banning Orders prohibit landlords and agents from letting or managing residential properties. An order can prohibit a person from:
  - Renting out a residential accommodation
  - Engaging in letting agency work
  - Engaging in property management work

- 2.8 The Ministry for Housing, Communities and Local Government has issued under S23(10) Schedules 1 and 9 of the Housing and Planning Act 2016 statutory guidance about the implementation of CP's and in order to issue fines, the Council must first adopt a policy that has regard to this guidance. The recommended policy for the Council in determining its approach in setting its financial penalty is set out at Appendix I.
- 2.9 Adopting a Policy Statement on CP's will provide additional enforcement options to help protect occupants and help ensure residents can live in safe homes.
- 2.10 The proposed introduction of CP's will allow for a greater range of enforcement tools that can be considered and applied to the worst offenders when informal and formal actions have failed.
- 2.11 It is the Council's intention to encourage landlords to meet their obligations without the need to impose a fine. However, the ability to impose such a fine is likely to be a deterrent and encourage compliance. Prosecution will remain the primary tool in dealing with most serious housing offences.
- 2.12 A penalty will only be imposed where the Council is satisfied that 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
- 2.13 The maximum amount of fine permitted is £30,000. There is no minimum penalty level. In setting the level of a penalty the Council must have regard to the Government Guidance and take into account the following:
- 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 or distress caused to a tenant;
  - punishment of the offender, to deter the offender from repeating the offence;
  - deter others from committing similar offences, and
  - remove any benefit the offender may have obtained as a result of committing the offence.
- 2.14 In determining the level of a CP, the matrix below has been developed to allow the spread of fines that reflect the severity of the offence and its consequence on a tenant. The table takes in to account the elements set out in government guidance linking culpability and harm criteria as outlined in the policy Appendix I. The starting point for each penalty will be midway of each band, this will allow it to be adjusted up or down after considering any aggravating or mitigating factors explained in the policy. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending.

Table 1. Financial Penalty Banding

<b>Culpability/Harm</b>	<b>Harm Level 4</b>	<b>Harm Level 3</b>	<b>Harm Level 2</b>	<b>Harm Level 1</b>
<b>Low culpability</b>	£500-£999	£1,000-£1,999	£2,000-£3,999	£4,000--£7,999
<b>Medium culpability</b>	£1,000-£1,999	£2,000-£3,999	£4,000-£7,999	£8,000–£15,999
<b>High culpability</b>	£2,000-£3,999	£4,000-£7,999	£8,000-£15,999	£16,000-£19,999
<b>Very High Culpability</b>	£4,000-£7,999	£8,000-£15,999	£16,000–£19,999	£20,000-£30,000

- 2.15 CP's are subject to appeal to the First Tier Property Tribunal (FTPT); therefore, it is important that the Council sets the penalty at reasonable level, which it can successfully defend upon appeal. This matrix will offer transparency, aid consistency in the enforcement process and assist in the defending of appeals.
- 2.16 The policy also makes provision for a 25% discount for early payment of a fine. An early acceptance of guilt is in the public interest. It saves public time and money.
- 2.17 It should be noted, that this proposed policy is an alternative action to prosecution and this authority has not needed to seek to prosecute a landlord for non-compliance since the introduction of the Housing Act 2004.

### **3 Proposals**

- 3.1 It is proposed that the council adopts policy and implements the use of Civil Penalties as an alternative to prosecution Appendix I
- 3.2 Delegate to the Head of Housing, Economy and Community Services all powers to issue, use and enforce civil penalties as detailed in the Housing and Planning Act 2016 and any regulations made there under, including deciding on the level of penalty and dealing with representations.
- 3.3 The Head of Housing, Economy and Community Services in consultation with the Cabinet Member for Housing and Safer Communities be delegated to make amendments to the policy, to maintain functionality and reflect changes in guidance or legislation.

## 4 Alternative Options

- 4.1 Do nothing. This is not recommended as this would provide no alternative to prosecution and no retention of any fines if imposed through prosecution in court.

## 5 Consultation Undertaken or Proposed

- 5.1 Legal Services were consulted and discussions held with other local authorities via Kent Private Sector Housing Group have taken place to assist in development of the policy.
- 5.2 The penalty charges and policy will be clearly advertised on the relevant pages of the Council's website. Along with the proposed implementation date of 1 April 2019.

## 6 Implications

Issue	Implications
Corporate Plan	The Civil Penalty Policy would contribute to the Council's Corporate Plan priorities 1 and 2 by providing additional enforcement tools to help improve the quality of housing and homes within the Borough.
Financial, Resource and Property	The Government published The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 that state the income from Civil Penalties can be retained by the Local Authority. The income must be used to cover the administration and legal costs and the expenses incurred in carrying out its private rented sector enforcement function. Any amount outside of that must be paid in to the Consolidated Fund. It is uncertain how often these powers will be used but they are not expected to provide a regular source of income.
Legal, Statutory and Procurement	The power to impose a civil penalty as an alternative to prosecution for offences was introduced by sections 23 and 126 and Schedule 1 and 9 of the Housing and Planning Act 2016. The act amended the Housing Act 2004 to allow for penalties to be issued.
Crime and Disorder	The adoption of additional enforcement powers as proposed would give the Council further tools with which to address poor housing standards and reduce associated crime and anti-social behaviour.
Environment and Sustainability	There are no implications resulting from use of this legislation.
Health and Wellbeing	Housing is one of the wider determinants of health. The introduction of civil penalties will provide an additional enforcement tool to help improve poor conditions in the private rented sector.
Risk Management and Health and	There are no additional risk management implications arising from adopting this policy.

Safety	
Equality and Diversity	The revised policy will assist officers in seeking to improve housing conditions. This will have a beneficial impact in improving the quality of life for many vulnerable people across the Borough.
Privacy and Data Protection	There are no changes or implications for the council's compliance with data protection legislation and individuals' expectation of privacy.

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Swale Borough Council Housing Enforcement - Civil Penalties Policy

## 8 Background Papers

Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities:

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