


‘A’ ITEM

	REPORT TO CABINET TO BE HELD ON 11 September 2018	
	Key Decision	NO
Corporate Aims People/Place/Prosperity/Council	Forward Plan Ref No	Insert here or put N/A
	Cabinet Portfolio Holder	Cllr's Bill Chatt, Cabinet Member for Housing and Public Health

REPORT OF: Director (NE) - 18/190

WARDS AFFECTED: All

SUBJECT: PRIVATE SECTOR HOUSING CIVIL PENALTIES POLICY

RECOMMENDATION (S):

Recommend to Council the adoption of a Civil Penalty Policy for use by the Residential Regulation Service

REASON FOR RECOMMENDATION (S):

New powers were given to local authorities (under the Housing and Planning Act 2016) to impose Civil Penalties up to £30,000 on private landlords for certain offences under the Housing Act.

This report and policy sets out the recommended approach to be adopted by the Council in relation to these new powers.

HIGHLIGHTED RISKS: See Risk Matrix

1. INTRODUCTION

- 1.1 The Government has pledged to crack down on rogue landlords and has introduced a number of measures, under the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords. The new powers introduced include:

Civil Penalties of up to £30K as an alternative to prosecution for certain specified offences.

Extension of Rent Repayment Orders so that they now cover illegal eviction, breach of a banning order, failure to comply with an Improvement Notice, and certain other specified offences.

Database of rogue landlords and agents who have been convicted of certain offences or received multiple civil penalties.

Banning Orders for the most serious and prolific offenders.

- 1.2 This report recommends a policy approach (**Appendix A**) regarding the use of Civil Penalties (and associated rent repayment orders). Under the Housing and Planning Act 2016, Local Housing Authorities are permitted to retain income that they receive from civil penalties and rent repayment orders and to use that income to fund their statutory functions in relation to enforcement actions in the private rented sector.
- 1.3 The report should be read within the context of the Councils existing policy regarding housing enforcement. See <https://democracy.scarborough.gov.uk/documents/s79505/ResidentialRegulationEnforcementPolicy.pdf>. That policy (adopted in 2017) sets out the Councils overall approach to housing enforcement more generally.

2. CORPORATE AIMS

- 2.1 The Councils approach to effective enforcement in residential accommodation supports the objectives within the Corporate Plan to ensure there is a choice of high quality, sustainable and affordable homes for all.

3. BACKGROUND AND ISSUES

3.1 Civil Penalties

- 3.1.1 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016.
- 3.1.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:

- Failure to comply with an Improvement Notice
 - Offences in relation to licensing of Houses in Multiple Occupation
 - Offences in relation to licensing of houses under Part 3 of the 2004 Act (e.g. Selective Licensing)
 - Offences in contravention of an overcrowding notice
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation.
- 3.1.3 The maximum civil penalty that can be imposed is £30,000 per offence although it is for the Council to determine the appropriate level of any civil penalty.
- 3.1.4 The same criminal standard of proof is required for a civil penalty as for a prosecution. This means that before taking any formal action, the Council must satisfy itself that, if the case was prosecuted in the magistrates court, there would be a realistic prospect of conviction. This means that the Council must be able to demonstrate beyond all reasonable doubt that an offence has been committed.
- 3.1.5 The Residential Regulation Service already has a robust enforcement policy and procedures in place to ensure compliance with this requirement and has taken forward a number of prosecutions in recent years.
- 3.2 Rent Repayment Orders:**
- 3.2.1 A rent repayment order is an order made by the First-Tier Tribunal requiring a landlord to repay a specified amount of rent which can be up to 12 months' rent in total.
- 3.2.2 The Housing Act 2004 originally introduced rent repayment orders to cover instances where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMO's.
- 3.2.3 Rent repayment orders have now been extended (under the Housing and Planning Act 2016) to cover a wider range of offences including failure to comply with an Improvement Notice (Section 30 of the HA 2004) and failure to comply with a Prohibition Order.
- 3.2.4 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid the rent themselves, then the rent must be repaid to the tenant but if it was paid through housing benefit, or Universal Credit, then it must be repaid to the local housing authority.
- 3.2.5 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only after the formal appeal process has passed. The Government has indicated that they expect local housing authorities to consider the option of applying for a rent repayment order whenever a civil penalty has been successfully imposed.

3.2.6 It is clearly in the financial interests of a local housing authority to make an application for a rent repayment order but they are also expected to offer advice, guidance and support to help tenants apply themselves where appropriate.

4. CONSULTATION

4.1 The introduction of the policy reflects the requirements of the Housing and Planning Act. Consultation has been undertaken with other Councils in the Yorkshire Region both to ensure a degree of consistency in approach and to share good practice.

5. ASSESSMENT

5.1 The introduction of Civil Penalties, together with the extension of rent repayment orders to include a wider range of offences, will help the Council to tackle criminal, rogue and irresponsible landlords and improve housing standards in the private sector.

5.2 The **Private Sector Housing Civil Penalties Policy (Appendix A)** contains information about civil penalties and how the Council is planning to use them. It takes account of statutory guidance issued by Government as well as discussions on best practice with regional and national colleagues.

5.3 The Policy proposes that, where offences are committed and the Council believes that it has a reasonable prospect of a conviction in a particular case, it will **always** consider a civil penalty in the first instance and only by exception will it seek alternative measures such as prosecution or formal cautions

5.4 Under the Policy the highest civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect, amongst other factors the severity of the offence, the harm caused and take account of the landlords' compliance history.

5.5 In line with national guidance, the Council will take account of the following factors when determining an appropriate penalty level:

- The severity of the offence
- The culpability and track record of the offender
- The harm caused to the tenant(s)
- The punishment of the offender
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.

5.6 The Policy adopts a four staged approach to calculating the level of civil penalty imposed. The stages are:

Stage 1

The Council will determine the level of penalty based on:

- a) the culpability and track record of an offender
- b) the level of harm to the tenants
- c) aggravating and mitigating factors

Stage 2

The Council shall calculate the costs associated with investigating, determining and applying a civil penalty and these shall be added to the initial punitive charge.

Stage 3

The Council will make adjustments to the determination of the level of penalty having regard to:

- a) Whether this acts as a deterrent and removes any gain.
- b) The totality of the fine(s)

Stage 4

The Council will adjust final determination should the offender provide written information/proof to demonstrate that the impact of the level fine would be unfair and disproportionate.

- 5.7 It is important to note that a landlord who has been issued with a civil penalty has a right of appeal to the First-Tier Tribunal and this will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued.
- 5.8 The policy also proposes that, after a person is the subject of a successful civil penalty the Council will subsequently always consider an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

6. IMPLICATIONS

6.1 Policy

This report recommends a new policy for adoption for Council. Whilst the power to levy civil penalties is set out in statute the Council needs a policy to determine the level of penalty to be imposed for specified offences.

The new policy should be read in within the context of the Councils adopted **Residential Regulation Enforcement Policy 2017**.

6.2 Legal

The power to impose Civil Penalties is set out with the Housing and Planning Act 2016.

The use of civil penalties does not reduce the amount of preparatory legal work undertaken by the Council. Before taking any formal action, the Council must satisfy itself that, if the case was prosecuted in the magistrates court, there would be a realistic prospect of conviction. This means that the Council must be able to demonstrate beyond all reasonable doubt that an offence has been committed.

Where fines are appealed then these appeals are heard by the First Tier Tribunal.

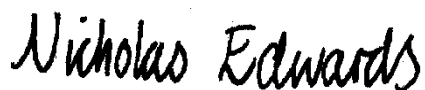
6.3 Financial

In the case of a criminal prosecution, fines are paid to the Courts. The use of Civil Penalties means that fines are paid directly to the Council. Their use opens the door to the imposition use of rent repayment orders.

The legislation requires that income from any fines is used to pay for private sector housing enforcement activity.

- 6.4 I have considered whether the following implications arise from this report and am satisfied that there is no identified implication that will arise from this decision.

Equalities and Diversity, Communications, Staffing, Planning, Crime and Disorder, Health and Safety, Environmental.



Nick Edwards
Director

Author: Andrew Rowe, Housing Manager
Telephone No: 01723 383598
E-mail address: andrew.rowe@scarborough.gov.uk

Background Papers:

<https://democracy.scarborough.gov.uk/documents/s79505/ResidentialRegulationEnforcementPolicy.pdf>

Please give details of all publicly accessible (non private) background papers applicable to the report.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR.

Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	Sept 2018	The Council does not adopt the policy	<p>The Council would be acting at odds with the expectation of the Government.</p> <p>The Council would lose the ability to impose a Civil Penalty and would continue to be reliant on prosecution through the Courts</p> <p>Income from Civil Penalties would be lost</p>	The Councils adopts the policy	A1	A1	Housing Manager	
2	Sept 2018	The Council is challenged via the First Tier Tribunal on the level of civil penalty imposed or the process the Council has gone through to determine the penalty.	<p>Where civil penalties are challenged then the appeal is heard by the First Tier Tribunal.</p> <p>This legislation is new. It will be up to the tribunal to determine whether the level of fine or process followed to set the level of fine is fair.</p>	The policy has been developed in line with national guidance, good practice models.	C3	C3	Housing Manager	
3	Sept 2018	Fines imposed are not paid	<p>The policy becomes meaningless.</p> <p>Loss of income to the Council.</p>	There are checks and balances within the policy to ensure that the level of fine is reasonable and proportionate.	C3	B3	Housing Manager/ Finance Manager	

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				<p>The Council has an adopted debt recovery procedure to recover fines where needed.</p> <p>As many offenders will be landlords who own one of more properties, it is likely they will have assets they can sell or borrow against. After taking into account any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.</p>				

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

- A = Very Low
- B = Not Likely
- C = Likely
- D = Very Likely
- E = Almost Certain

Impact

- 1 = Low
- 2 = Minor
- 3 = Medium
- 4 = Major
- 5 = Disaster