

Communities Cabinet Advisory Board

03/10/2018

Is the final decision on the recommendations in this report to be made at this meeting?

No

Civil penalty as an alternative to prosecution

Final Decision-Maker	Cabinet
Portfolio Holder(s)	Lynne Weatherly – Portfolio Holder for Communities and Wellbeing
Lead Director	Paul Taylor – Director of Change and Communities
Head of Service	Gary Stevenson – Head of Housing, Health and Environment
Lead Officer/Author	Claire Pickering – Environmental Health Officer
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

1. To adopt the use of civil penalties under the Housing and Planning Act 2016
2. To agree the delegation of all enforcement powers under the Act (and subsequent regulations)

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- The introduction of civil penalties will help the Council to address poor living conditions in the private rented sector. This relates to a well borough by improving social and health inequalities.

Timetable

Meeting	Date
Management Board	12/09/2018
Discussion with Portfolio Holder	TBC
Communities Cabinet Advisory Board	03/10/2018
Cabinet	25/10/2018

Tunbridge Wells Committee Report, version: June 2018

Civil penalty as an alternative to prosecution

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out how the Council will implement new enforcement powers contained in the Housing and Planning Act (2016), which allows financial penalties to be imposed as an alternative to prosecution for certain housing offences.
 - 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. Income received from civil penalties will be retained by the Council.
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2. INTRODUCTION AND 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 and Planning Act 2016 amends the Housing Act 2004 to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain housing offences (as detailed in Appendix A).
- 2.3 The benefit of implementing these new powers is that income received from a civil penalty can be retained by the Council provided it is used to further the local authority's statutory functions in relation to enforcement activities covering the private rented sector. It is uncertain how often these powers will be used but they are not expected to provide a regular source of income. Private Sector Housing has carried out two prosecutions in the last ten years.
- 2.4 Officers will assess each case carefully to identify and apply the appropriate sanction dependant on the severity of the offence and circumstances. These will include a civil penalty or undertaking other enforcement interventions, such as prosecution or offering a simple caution. It is important to note if a civil penalty is imposed a prosecution cannot be sought for the same offence.
- 2.5 The use of civil penalties will not reduce the amount of investigation work for officers in the Private Sector Housing team. The guidance for local housing authorities states the same criminal standard of proof is required for a civil penalty as for a criminal prosecution. This means that before taking formal action to issue a penalty, the local housing authority must be satisfied that if the case were to be prosecuted in the Magistrates Court there would be a 'realistic prospect of conviction'. In order to achieve a conviction the local authority would need to be able to demonstrate 'beyond reasonable doubt' that an offence was committed. Similarly, where a civil penalty is imposed and an appeal is lodged at the First Tier Property Tribunal (FTPT), the local authority

will need to demonstrate 'beyond reasonable doubt' an offence has been committed.

- 2.6 The Council's policy will be that in the most serious cases and when proportionate to do so, Private Sector Housing will seek to issue the maximum penalty. It is intended that, in treating each case on its merits, this will help achieve the maximum deterrent for criminal landlord behaviour. To really drive sustainable landlord behaviour change, the fine needs to be at a level that is appropriate to the offence committed.
- 2.7 The Ministry of Housing, Communities & Local Government have published the following document: Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities. This is statutory guidance to which local authorities must have regard. It recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.
- 2.8 A civil penalty matrix has been created for officers to use as a guideline to determine the most appropriate penalty which can be imposed up to a maximum of £30,000 (see Appendix B). The Council will determine the offence category using a number of factors including culpability of the offender, risk of harm and actual harm. This matrix will also be used to offer transparency, aid consistency in the enforcement process and also assist in the defending of appeals in the FTPT.

3. AVAILABLE OPTIONS

- 3.1 **Option1** - Adopt the use of civil penalties under the Housing and Planning Act 2016. This will provide an additional enforcement tool to be used in appropriate cases. Any income received from civil penalties will be retained by the Council.
- 3.2 **Option 2** – Do nothing. This would provide no alternative to prosecution and no retention of any fines imposed by the Court.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 1 is the preferred option. This option will provide Private Sector Housing with the power to issue civil penalties for offences where landlords fail to repair, manage or improve their properties when required to do so by the Council.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Other Kent authorities have been consulted via the Private Sector Housing Technical Group and Private Sector Managers Group. The civil penalty matrix (Appendix B) was developed after discussion with Newham and with reference

to Bristol City Council's policy on deciding the financial penalty amount for civil penalties. Both of these authorities were early implementers of the use of civil penalties.

RECOMMENDATION FROM CABINET ADVISORY BOARD


- 5.2 The Communities Cabinet Advisory Board will be consulted on this decision on 03 October 2018.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The introduction of civil penalties would be publicised via the website, a press release, Local magazine and at landlord forums.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	The statutory authority for introducing the proposed civil remedies is set out in the body of the report and in Appendix A to the report. The relevant statutory guidance is referred to in the report. There are no consequences arising from the recommendation that adversely affect or interfere with individuals' rights and freedoms as set out in the Human Rights Act 1998.	Keith Trowell Senior Lawyer – Contentious and Deputy Monitoring Officer 7.9.18
Finance and other resources	Income received from civil penalties can be retained by the Council, provided it is used for statutory enforcement purposes in the private rented sector. It is uncertain how often these powers will be used but they are not expected to provide a regular source of income.	[Full Name] [Job Title] [Date signed]
Staffing establishment	No relevant considerations	Claire Pickering Environmental Health Officer 24.8.18
Risk management	No relevant considerations	Claire Pickering Environmental Health Officer

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Data Protection	No relevant considerations	Claire Pickering Environmental Health Officer 24.8.18
Environment and sustainability	No relevant considerations	Claire Pickering Environmental Health Officer 24.8.18
Community safety	No relevant considerations	Claire Pickering Environmental Health Officer 24.8.18
Health and Safety	No relevant considerations	Claire Pickering Environmental Health Officer 24.8.18
Health and wellbeing	<p>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.</p> 	Claire Pickering Environmental Health Officer 24.8.18
Equalities	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.	Claire Pickering Environmental Health Officer 24.8.18

8. REPORT APPENDICES

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

- Appendix A: Offences where civil penalties can be imposed as an alternative to prosecution
 - Appendix B: Civil Penalty Matrix
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9. 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