

 Executive 29 November 2017		Agenda Item No. 5
Title	Civil Penalties Policy-Private Sector Housing	
For further information about this report please contact	Ken Bruno Housing Strategy and Development Manager Telephone: 01926 456044 Email: ken.bruno@warwickdc.gov.uk Mark Lingard Private Sector Housing Manager Telephone: 01926 456410 Email: mark.lingard@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers	Council's Enforcement Policy	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	Yes Ref: 908
Equality Impact Assessment Undertaken	Yes – Appendix 3

Officer/Councillor Approval		
Officer Approval	Date	Name
Deputy Chief Executive	6/11/17	Bill Hunt
Head of Service	3/11/17	Lisa Barker
CMT	6/11/17	Chris Elliott
Section 151 Officer	6/11/17	Mike Snow
Monitoring Officer	6/11/17	Andrew Jones
WCC Legal Services	9/11/17	Caroline Gutteridge
Finance	6/11/17	Andrew Rollins
Portfolio Holder(s)	7/11/17	Councillor Peter Phillips
Consultation & Community Engagement		
Presentation given to the Landlords Forum on 13 September 2017, including the likely scale of civil penalties.		
Final Decision?	No	
Suggested next steps (if not final decision please set out below)		
The recommendations will go to council should executive agree them.		

1. **Summary**

- 1.1 This report brings forward a policy to enable officers to use new powers contained in the Housing and Planning Act 2016 to apply civil penalties as an alternative to a prosecution in the Magistrates Court for various offences in private sector housing.

2. **Recommendations**

- 2.1 That the Executive recommends to council that:
- a) A policy of using civil penalties as set out in this report be adopted;
 - b) The process for imposing a civil penalty set out in appendix two be approved.
 - c) The schedule of civil penalties listed in appendix one be approved.
 - d) Delegated authority be given to the Head of Housing Services to make decisions about imposing civil penalties in individual cases.

3. **Reasons for the Recommendations**

- 3.1 The Housing & Planning Act 2016 gives local authorities the power to apply civil penalties for a range of offences in connection with private sector housing that have previously required action to be taken in the Magistrates' Court.
- 3.2 Although the powers are set out in legislation, for officers to use them the council must formally adopt a policy to do so, within which it has the discretion to set a schedule of penalties for the various offences.
- 3.3 The schedules in appendices one and two have been worked up by Warwick District Council's Private Sector Housing Team in partnership with colleagues in the West Midlands, including Warwickshire, with the intention of having a consistent framework across the region for the introduction of these civil penalties in terms of both the level of the penalties and the process for applying them.
- 3.4 So that the policy can be applied quickly and efficiently once adopted it is proposed that the Head of Housing Services should be granted the authority to decide on the use of penalties in individual cases.

4. **Policy Framework**

4.1 **Fit for the Future (FFF)**

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

FFF Strands		
People	Services	Money
External		
Health, Homes, Communities	Green, Clean, Safe	Infrastructure, Enterprise, Employment
<u>Intended outcomes:</u> Improved health for all. Housing needs for all met. Impressive cultural and sports activities. Cohesive and active communities.	<u>Intended outcomes:</u> Area has well looked after public spaces. All communities have access to decent open space. Improved air quality. Low levels of crime and ASB.	<u>Intended outcomes:</u> Dynamic and diverse local economy. Vibrant town centres. Improved performance/productivity of local economy. Increased employment and income levels.
Impacts of Proposal		
This proposal provides another tool to use in ensuring that private sector housing is suitable for its occupiers, meeting their needs and contributing to their health and well-being.	None.	None.
Internal		
Effective Staff	Maintain or Improve Services	Firm Financial Footing over the Longer Term
<u>Intended outcomes:</u> All staff are properly trained. All staff have the appropriate tools. All staff are engaged, empowered and supported. The right people are in the right job with the right skills and right behaviours.	<u>Intended outcomes:</u> Focusing on our customers' needs. Continuously improve our processes. Increase the digital provision of services.	<u>Intended outcomes:</u> Better return/use of our assets. Full Cost accounting. Continued cost management. Maximise income earning opportunities. Seek best value for money.
Impacts of Proposal		
None.	In providing a new option in enforcement work the proposal helps to improve services to occupiers in private sector housing.	While not an objective of the proposal, the charging regime does have the potential to generate new income for the council.

4.2 Supporting Strategies

Each strand of the FFF Strategy has several supporting strategies. Improving housing standards in residents' homes directly and positively contributes to the Housing and Health-and-Wellbeing priorities within the Council's Sustainable Community Strategy. It also contributes to the Housing and Homelessness

Strategy objective of improving the management and maintenance of existing housing.

4.3 Changes to Existing Policies

This report does not change existing policies but introduces a new policy that enables use to be made of an additional option in carrying out private sector housing enforcement work.

4.4 Impact Assessments – An impact assessment has been completed and is attached as appendix three to the report. No adverse or negative impact has been identified for any particular group as a result of the proposed policy.

5. Budgetary Framework

5.1 Private sector enforcement work is undertaken by the Private Sector Housing Team and is already budgeted for. It is not envisaged that introducing the new penalties will increase workloads or require new budgetary provision to be made.

5.2 Unlike prosecutions in the Magistrates' Court the council will be able to retain the income from civil penalties. In the medium term therefore this could generate a small new revenue stream for the authority although this can only be used for private sector housing regulation work.

6. Risks

6.1 The introduction of a new scheme brings the risks of legal challenges and increased bureaucracy in the early days of implementation. This has been mitigated by working with other authorities across the West Midlands, ensuring a wider range of knowledge, skills and experience has been brought to bear in developing the procedure and penalty schedule.

7. Alternative Option(s) considered

7.1 Proposing a different charging structure: this would undermine the work to establish a clear and consistent approach across Warwickshire and the West Midlands region. This would create the risk of increased legal challenges, increased cost and require additional officer resources to implement.

7.2 Not adopting a civil penalties policy: this would limit the Council's options in its role as a regulator of private sector housing. It could also affect community confidence in the Council's ability and ambition to deal with poor management and to raise housing standards.

8. Background

8.1 The number of people housed in private rented accommodation now exceeds the number of people housed in socially rented properties both nationally and locally. The government is in the process of giving more powers to local authorities to tackle rogue landlords through the Housing & Planning Act 2016 (HPA).

8.2 It was originally expected that the bulk of the measures in the HPA would be commenced together, along with detailed regulations. However work in central

government was delayed by the General Election and this is not now expected this year.

- 8.3 Nevertheless, in April 2017 civil penalties of up to £30,000 became available as an alternative to prosecution for certain specified offences as follows:
- a) Failure to comply with Improvement Notice (Housing Act 2004 Section 30)
 - b) Failure to license an HMO under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)(mandatory licensing)
 - c) Failure to license houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)(selective licensing)
 - d) Failure to comply with an Overcrowding Notice, (Housing Act 2004 Section 139(7))
 - e) Breach of Management Regulations in respect of HMOs. (Housing Act 2004 Section 234)
- 8.4 A criminal standard of evidence is required to establish beyond reasonable doubt that an offence has been committed, and landlords do have a right of appeal.
- 8.5 Since April work has been undertaken with the West Midlands Enforcement Group and the District and Borough Councils in Warwickshire to produce a consistent charging framework and process.
- 8.6 Our intention had been to bring forward a policy on all of the new powers, indeed this was placed on the Forward Plan (ref 880) some time ago. However, because the government timescale for implementation of other HPA measures is currently unclear and this piece of work is now complete, it was felt appropriate to bring it forward on its own.
- 8.7 Advantages of the proposal include:
- There will be greater consistency in that the financial penalty will match the seriousness of the offence. (The Private Sector Housing Team's experience is that there can be a wide variation in the financial penalties imposed by the Magistrates' Court for similar offences.)
 - It will act as a deterrent to rogue landlords.
 - It will help the Council defend any potential appeals to the First Tier Tribunal.
 - Despite the right of appeal, it is not expected to be as resource intensive as a prosecution in the Magistrates' Court.

Charging Table for Determining the Value of Civil Penalties

Failure to comply with an Improvement Notice (Section 30)	£
First offence (note 1)	5000
Subsequent second offence by same person/company (note 2)	15000
Further subsequent offences by same person/company (note 7)	25000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability (note 8)	+2500
Large housing portfolio (10+ units of accommodation) (note 3)	+2500
Multiple Category 1 or high Category 2 Hazards (note 4)	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)	+2500
Perpetrator demonstrates their income to be less than £440 per week (note 6)	-50%

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)	£
Failure to obtain property licence (section 72(1)) (note 1)	10000
Subsequent second offence by same person/company (note 2)	30000
Perpetrator demonstrates their income to be less than £440 per week (note 6)	-50%
Breach of licence conditions (Section 72(2) and (3)) - per licence breach	
	5000
Perpetrator demonstrates their income to be less than £440 per week (note 6)	-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)	£
Failure to licence (section 95(1)) (note 1)	10000
Subsequent second offence by same person/company (note 2)	30000
Perpetrator demonstrates their income to be less than £440 per week (note 6)	-50%
Breach of licence conditions (Section 95(2)) - per licence breach	5000
Perpetrator demonstrates their income to be less than £440 per week (note 6)	-50%

Offences of contravention of an overcrowding notice (section 139)	£
First relevant offences (note 1)	5000
Subsequent second offence by same person/company (note 2)	15000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability (note 8)	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3)	+2500
Perpetrator demonstrates their income to be less than £440 per week	-50%

<i>week</i>	<i>(note 6)</i>	
Failure to comply with management regulations in respect of HMOs (Section 234)		£
<i>First relevant offence (note1)</i>		1000/ offence
<i>Subsequent second offence by same person/company for the same offence</i>		3000/ offence
Premiums (use all that apply)		
<i>Acts or omissions demonstrating high culpability</i>	<i>(note 8)</i>	+2500
<i>Large housing portfolio (10+ units of accommodation)</i>	<i>(note 3)</i>	+2500
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions</i>	<i>(note 5)</i>	+2500
<i>Perpetrator demonstrates their income to be less than £440 per week</i>	<i>(note 6)</i>	-50%

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

- The starting point for a civil penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.
- After the starting point has been determined, relevant premiums are added to the starting amount to determine the full civil penalty to be imposed
- No single civil penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - Subsequent second offence by same person/company

- The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

- The premium is applied where the perpetrator has control or manages 10 or more units of accommodation.
- For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

- This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or three or more high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.
- For the purpose of this premium, a high scoring Category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

- This premium will be applied once, if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.
- For the purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm to which the perpetrator ought to have had regard.
- For the purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess cold	65 or over
Excess heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal hygiene, sanitation and drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
Falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates their income to be less than £440/week

- This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall civil penalty by 50%.
- To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.
- The figure of £440 per week is to be calculated after omission of income tax and national insurance.
- The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

- This premium is applied where there has been more than one conviction or imposition of a financial penalty for the same type of offence in the previous four years.
- The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability

- This premium will be applied where, the person to which the civil penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Process for Imposing Civil Penalties

- 1.0 The implementation of civil penalties would need to follow the general principles set out in the Regulators Code, which have been included in the Council's Enforcement Policy.
- 1.1 Where it has been determined that a civil penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the process set out below:
- 1.2 A "Notice of Intent" shall be served on the person suspected of committing the offence. The Notice shall specify:
 - The amount of any proposed civil penalty
 - The reasons for proposing the civil penalty
 - Information about the right to make representation to the Council.
- 1.3 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 civil penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 1.4 Following the 28 day period the Council will decide:
 - Whether to impose a civil penalty on the person
 - The value of any such penalty imposed.
- 1.5 If the Council decides to impose a civil penalty, a Final Notice shall be issued imposing that penalty. The Final Notice will specify:
 - The amount of the financial penalty
 - The reasons for imposing the penalty
 - Information about how to pay the penalty
 - The period for payment of the penalty
 - Information about rights of appeal to the First Tier Tribunal
 - The consequences of failure to comply with the Notice
- 1.6 Civil 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.
- 1.7 The Council may, at any time:
 - Withdraw a Notice of Intent or Final Notice
 - Reduce the amount specified in a Notice of Intent or Final Notice
- 1.8 Where the Council decides to take either action, it will write to the person to whom the Notice was given.

Consequences of non-compliance

- 2.1 If, after any appeal has been finally determined or withdrawn, a person receiving a civil 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 costs incurred in taking this action from the person to which the civil penalty relates.