

This Report will be made public on 28 August 2020

Report Number **OS/20/07**

**To:** Overview and Scrutiny Committee  
**Date:** 8<sup>th</sup> September 2020  
**Status:** Key Decision  
**Responsible Officer:** Andy Blaszkwicz, Director- Housing and Operations  
**Cabinet Member:** Councillor David Godfrey, Cabinet Member for Housing, Transport and Special Projects

**SUBJECT:** Private Sector Housing Enforcement and Civil Penalties Policy

**SUMMARY:**

This report sets out details of the Private Sector Housing Enforcement Policy and methodology and principles for determining the level of penalty charge for housing offences. It is proposed that the policy will be made available for an eight week consultation period before being presented to Cabinet.

**REASONS FOR RECOMMENDATIONS:**

- 1) The council uses a wide range of statutory powers to ensure that those responsible for residential premises take the actions needed to prevent harm from occurring to occupants and visitors. For fairness and transparency, it is important that the council sets out how it conducts itself by publishing an enforcement policy. This is a requirement of the Enforcement Concordat and the Regulators' Code.
- 2) Section 126 and Schedule 9 of the Housing and Planning Act 2016 amended the Housing Act 2004 to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences. Financial penalties of up to £30,000 may be imposed under section 249A of the Housing Act 2004. Local housing authorities are required to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty, and the level of financial penalty it should impose in each case.

**RECOMMENDATIONS:**

1. To receive and note report C/20/07.
2. Overview and Scrutiny are invited to comment on the draft Private Sector Housing Policy and civil penalties policy.

## **1.0 BACKGROUND**

- 1.1 The Council's current Corporate Enforcement Policy is a document which is overarching and covers the general principles of enforcement for all of the teams who have enforcement duties. The current policy will still be relevant to the PSH team. However, a more detailed policy for PSH enforcement is required in order to set out how we will deal with criminal landlords and to describe the new types of housing enforcement powers and duties we have been given since the publication of the general policy.
- 1.2 The Housing & Planning Act 2016 has brought in more powers and duties to enable us to tackle what the government term "Rogue Landlords". This includes the power to charge civil penalties as an alternative to prosecution. Since this Act came into force, further regulations have been made and in view of these changes we now need to review our enforcement policy to ensure it is fully fit for purpose.
- 1.3 The Smoke and Carbon Monoxide Alarm Statement of Principles in Appendix 2 was approved by the Council in 2016 and it is proposed that no changes are made to this statement of principles but that it is brought into the full policy document as an appendix. The levels of fines for offences under these regulations are set by the government and we only have the discretion to charge a reduced penalty where we feel it is appropriate to do so. The framework was formulated in consultation with all of the other Kent Local authorities in order to provide consistency across Kent.
- 1.4 The penalties imposed for breaching the minimum energy efficiency standards (which fully came into force in April 2020) are set at a statutory maximum but with leniency built in for first time offenders and those who pay the fine early (see Appendix 3 in the policy). These again were devised after consultation with all Kent Local Authorities and follow the consensus in order to provide consistency for the landlords who have multiple district property portfolios.
- 1.5 The Electrical Safety Regulations come into force in July 2020 for new specified tenancies and April 2021 for all existing specified tenancies. It will be an offence to let a property that does not have a satisfactory electrical safety certificate in place. The government have given guidance on setting penalties for offences under these regulations and suggest the use of the civil penalties policies for other specified housing offences. It is therefore proposed that the council will determine the level of fine for these offences using the proposed civil penalty policy at Annex 1 to the Enforcement Policy.
- 1.6 As determined by the legislation, the income received from any penalty charges imposed must be ring-fenced for housing enforcement activities only.

- 1.7 The main message of the Enforcement Policy is that enforcement is the last resort. The PSH team take pride in engaging with landlords in a positive way and achieving remedial works through informal dialogue and building good working relationships. The number of properties improved in recent years is testament to this approach being successful. In 2019/20 the PSH team improved 199 homes through liaising and negotiating with landlords. Since 2016 we have only taken one prosecution and have two prosecutions pending. The policy sets out the enforcement measures we will use where necessary to tackle criminal (“rogue”) landlords.
- 1.8 The civil penalties policy at Annex 1 is similar to several other Kent Local Authorities’ Policies in order to provide consistency across the county and to ensure that we adopt best practice.

## **2.0 The Proposed Way Forward**

- 2.1 It proposed that the draft policy be made available for an eight week consultation period. Following this, the document will be presented to Cabinet along with a summary of the consultation feedback.

## **3.0 LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

### **3.1 Legal Officer’s Comments (NE)**

The Housing and Planning Act 2016 introduced a new financial penalty regime which took effect from 6 April 2017. This enables the Council to impose a civil penalty up to £30,000.

The legal basis for these powers is contained in section 126 and Schedule 9 of the Housing and Planning Act 2016, which allows financial penalties to be given as an alternative to prosecution.

The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. In determining an appropriate level of penalty, local housing authorities should have regard to:-

- Severity of the offence;
- Culpability and track record of the offender;
- The harm caused to the tenant;
- Punishment of the offender;
- Deter the offender from repeating the offence;
- Deter others from committing similar offences;
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004.

A civil penalty can be imposed as an alternative to prosecution. The legislation does not permit local authorities to impose a civil penalty and prosecute for the same offence.

A civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation Management Regulations.

When looking at imposing a civil penalty the council must have in mind the same criminal standard of proof is required as for prosecution. Therefore, the council must satisfy itself that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

Local authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy.

Failure to have an up to date Private Sector Housing Enforcement Policy is likely to attract criticism and have an adverse effect on the reputation of the Council.

### **3.2 Finance Officer's Comments (SB)**

As stated at item 1.7, the main message of the report is that enforcement is the last resort; positive engagement and dialogue with landlords is the most effective way of maintaining adherence to the regulations. However, the updated penalty charge schedule and enforcement powers for the PSH officers will hopefully be a further deterrent for landlords that fail to meet the required housing standards. Currently prosecutions are rare, therefore increased penalty charge income, which should be ring-fenced for housing enforcement activities only, may not be of significant value in the immediate future. For future budget preparation exercises estimated income will need to be considered and the revised penalty charges added to the published Fees and Charges schedule.

### **3.3 Diversities and Equalities Implications (AH)**

Persons from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poor quality privately rented accommodation. Consequently, the council's enforcement activities often involves safeguarding the health, safety and welfare of persons with the protected characteristics of age and disability. Therefore, the enhanced enforcement capabilities provided by financial penalties will help to minimise disadvantage and contribute to the needs of many residents with protected characteristics.

## **4. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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The following background documents have been relied upon in the preparation of this report:

**Appendices**

Appendix 1: The Private Sector Housing Enforcement Policy (including the Civil Penalties Policy)