

Cabinet – 12 February 2020

Financial Penalties Policy Relating to Housing and Planning Act 2016 - Update

Portfolio: Councillor Adrian Andrew
Deputy Leader
Regeneration

Service: Money Home Job – Housing Standards & Improvement

Wards: Borough wide

Key decision: No

Forward plan: No

1. Aim

To ensure that the council's Financial Penalties Policy relating to Housing and Planning Act 2016 remains appropriate in light of recent First Tier Tribunal cases. The proposed addition to the Policy of the ability to apply mitigating factors and reductions to fines is in line with the council's existing published Housing Enforcement Policy.

2. Summary

- 2.1 The existing Financial Penalties Policy Relating to Housing and Planning Act 2016 which covers both Civil Penalty Notices (CPNs) and Rent Repayment Orders (RROs) was approved by cabinet in October 2018
- 2.2 This report seeks Cabinet authority to add a set of 'mitigating factors' and matters relating to early repayment of fines (contained in Appendix 1) to the existing policy.

3. Recommendations

- 3.1 That Cabinet approve a set of mitigating factors and matters relating to early repayment of fines (contained in Appendix 1) as part of the approved Financial Penalties Policy relating to the Housing and Planning Act 2016.
- 3.2 That Cabinet delegates authority to make any future minor amendments to the policy, if and when required, to the Executive Director Resources and Transformation in consultation with the Portfolio Holder for Regeneration.

4.1 Report Detail – Know

Cabinet approved a financial penalties policy for CPNs and RRO. This policy is published online and has been used since October 2018.

Officers have reviewed:

- a range of other councils published policies on this matter and;
- ongoing appeal decisions at the First Tier Tribunal against similar penalties imposed by other Local Authorities.

It is noted that there have been decisions which have reduced the level of fines imposed on landlords. Two key areas that have been noted are:

- Tribunals determining that fines should be reduced due to mitigating factors.
- A range of Local Authorities offering a discount (a reduction) in the sum sought if the fine is paid early.

Officers consider that both of these have merit and propose amendments as contained in Appendix 1 to cover these and related matters.

4.2 Council Corporate Plan priorities

As highlighted to Cabinet in October 2018, the use of a Policy for financial penalties relating to housing offences has the ability to meet Corporate Plan 2018-21 priorities as summarised below. The current proposal continues this.

Focus	Priority	How Priority is met
Children	Have the best possible start and are safe from harm, happy, healthy and learning well	The Policy will help to enforce against rogue landlords and as a result tackle both poor housing and management practices experienced by households including those with children.
Communities	Are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion	
Internal Focus	All council services are efficient and effective	CPNs are more cost effective in most cases than prosecutions and CPNs can directly bring income to off-set enforcement costs associated with the private rented sector

4.3 Risk management

The key risk relates to the council seeking to pursue a CPN and or a RRO case against a landlord without reference to an adopted CPN/RRO Policy. The proposal to add the contents in Appendix 1 to the current adopted Policy will continue to remediate this risk.

4.4 Financial Implications

Costs relating to enforcement action are provided for within the budget for Housing Standards and Improvement.

The existing Housing Enforcement Policy contains provisions to make enforcement action as cost neutral as possible including by securing civil penalty fines.

CPNs can be up to £30,000 on an individual case and income secured via a rent repayment order is additional to this. For illustration, based on a rent of £3,120 per annum for a unit in a 6 bed HMO this could for example result in an additional £18,720 through an RRO if rent for all units has been paid by housing benefit and or Universal Credit payments.

CPNs are not intended as an income generator for the Council but rather a deterrent to rogue landlords and for poor management practices. As per the guidance and legislation, all income received from a CPNs can be retained by the Local Authority and ring fenced for housing enforcement purposes.

The proposal to encourage payments that are more prompt by allowing an early payment discount and to consider mitigating circumstances has the potential to reduce the income received. Any reduction is however likely to be offset by the reduced cost of staff time that needs to be spent on appeals to First Tier Tribunals. Any income received however will be directed in line with legislation at additional housing enforcement activities.

4.5 Legal implications

The Policy is in line with the Housing and Planning Act 2016 and in accordance with the updated Regulators Compliance Code and other relevant national guidance. The Policy is in full accordance with the Council's existing published and adopted Housing Enforcement Policy 2017.

The objective of an application for a RRO is not only to ensure that rogue landlords do not benefit financially from non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

As noted previously, the current proposal is considered an appropriate method of allowing landlords to provide relevant mitigation for their alleged breaches under this legislation.

The amendments to this policy do not and are not intended to affect the right of the landlord to appeal the fine to the First Tier Tribunal.

4.6 Procurement Implications / Social Value

There are no procurement implications from this proposal.

4.7 Property Implications

This proposal relates to non-council buildings.

4.8 Health and Wellbeing Implications

The Policy has a positive impact on securing improvements in residents' health through improving housing conditions within the borough.

4.9 Staffing

The delivery of this policy will continue to assist officers within the Housing Standards Team to undertake statutory enforcement against private landlords who fail to adhere to key legislation. The proposal is expected to reduce the number of

appeals by landlords to the First Tier Tribunal and consequently reduce the staff time required to defend such cases.

Income secured by the Council from CPNs and RROs must only be used to assist with statutory duties related to housing enforcement of the private rented sector and as such can contribute towards both existing and future staff costs.

4.10 Reducing Inequalities

The implications for reducing inequalities have been taken into account.

The Policy tackles rogue private landlords and agents and as a result makes it more difficult for them to rent properties in the borough that have the potential to cause harm to residents (including vulnerable households). The policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed and the current addition of Appendix 1 gives clear areas for mitigation.

Based on an assessment of the proposal, no Equality Impact Assessment is considered to be required for these amendments.

4.11 Consultation

A direct consultation has not been considered necessary as it is assumed that the proposed amendments make the existing policy fairer and will be welcomed by all landlords. A copy of the updated Policy will be available on-line and shared with estate agents and members of the recognised Landlord Accreditation Schemes.

Background papers

Civil penalties under the Housing and Planning Act 2016 – Ministry of Housing, communities and Local Government (April 2018).

Rent Repayment Orders under the Housing and Planning Act 2016 – Ministry of Housing, communities and Local Government (April 2017).

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Helen Paterson
Chief Executive
4 February 2020



Councillor A. Andrew
Portfolio Holder for Regeneration
4 February 2020

Appendix 1

Addition to existing Financial Penalties Policy Relating to Housing and Planning Act 2016

Section A.

Mitigating factors that may be considered by the council and may reduce the level of a final penalty notice.

The council in considering written representation against Civil Penalty Notices will consider the information provided, if any, by the landlord (including from their agent). Where the council is satisfied that this provides mitigation in line with one or more of the following, the council may reduce the fine levied by a rate as stated in brackets.

The decision to apply a 'Mitigating reduction' in Final Penalty Notice fine rests with the council. The council's decision will be based on the landlord's written statement and any accompanying documents provided by them. It is their duty to provide their full evidence in support of their representation and not for the council to seek it out on their behalf.

1. Voluntary steps to mitigate the offence(s) (up to 25% reduction in fine)

This will include but not be limited to:

- Submission of valid HMO licence application including making the relevant fee. Where an incomplete and or invalid or partial application is made this will not be considered sufficient to provide mitigation (25% reduction in fine).
- Completion of all (not part only) remedial works that were required under the Improvement Notice:
 - Outside the Improvement Notice specified period but within the Notice of Intent Period (15% reduction in fine). This is only applicable where all the specified improvement works have been completed to the satisfaction of the council including providing certificates where relevant. The onus is on the landlord to enable the inspection of completed works within the relevant Intention Notice period of 28 days.
 - Outside the Improvement Notice specified period and outside the Notice of Intent Period (10% reduction in fine) but before the Final Notice is issued. This is only applicable where all the specified improvement works have been completed to the satisfaction of the council and relevant certificates provided. The onus is on the landlord to enable inspection of completed works within relevant times.

2. Full written acceptance of guilt for the offence(s) (10% reduction in fine)

This is only applicable where landlord accepts guilt for all offences that have been listed within the Notice of Intention

3. Written evidence from the landlord showing that the breach of the statutory requirements was by virtue of an omission and or an extenuating circumstance (up to 10% reduction in fine)

An example would be where the council has advised a landlord of their duty to apply for an HMO licence and the landlord has been unable to apply within a reasonable time period due to them having a serious and documented medical condition (evidenced by a medical practitioner).

Other situations

The council is aware that in some situations the landlord and their contractors may not be able to undertake the necessary repairs within the specified period of the Improvement Notice as a result of a circumstance beyond their normal control. This may for example, be due to the tenant not giving access to them or their contractors to provide estimates for or to undertake the specified works. The council will only accept this as a mitigation where the landlord has given the tenant the required 24 hours notice of their intention in writing but the tenant has failed to give them access. In most instances, one unsuccessful attempt will not be considered as mitigation. In these and other circumstances, the landlord must provide the council with sufficient evidence for consideration. The council in these cases may choose to:

- Extend the time for the landlord to secure compliance or
- Either not issue or suspend the issue of a Final Notice (therefore levy no fine at the time) or
- If the council is not satisfied with the evidence they will ordinarily continue to issue the Final notice.

It is the landlords responsibility to provide evidence of why they have been unable to undertake the works. Statement(s) to this effect must be signed by the respondent and or their contractor. Respondents may wish to submit copies of letters / emails sent by them to their tenant seeking appropriate access to undertake the works and any responses from their tenant to the same.

Section B

Minimum fine

The decision to manage private rented properties (which is ultimately a business decision) is a choice and landlords who are unable to do this appropriately themselves are able to appoint suitably qualified and registered agents to manage their properties on their behalf.

Civil penalties are issued where the council considers that an offence has occurred. A guiding principle in the level of fine that is used by the council is that,

*The civil penalty will be **fair and proportionate** but in all circumstances will **act as a deterrent and remove any gain** as a result of the offence(s).*

For this reason the council has set minimum fine levels as listed in Table 1 below:

Table 1: Minimum Fines for first offences after considering mitigating factor(s)	New Rates
Failure to comply with an Improvement Notice - Housing Act 2004 (Section 30). Normal penalty £5,000	£2,500
Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 of the Housing Act 2004 (Section 72) Failure to obtain Property Licence (section 72(1)) Normal penalty £10,000	£5,000
Breach of Licence conditions under Part 2 and 3 of the Housing Act 2004 (Section 72(2) and (3)) Normal penalty £5,000	£2,500
Offences in relation to licensing of HMOs under Part 2 and Part 3 of the Housing Act 2004 (Section 95)	
Failure to Licence (section 95(1)) Normal penalty £10,000	£5,000
Breach of Licence conditions (Section 95(2)) Normal penalty £5,000	£2,500
Offences of contravention of an overcrowding notice Housing Act 2004 (section 139) Normal penalty £5,000	£2,500
Failure to comply with management regulations in respect of Houses in Multiple Occupation (HMOs) under the Housing Act 2004 (Section 234) Normal penalty £1,000 per offence	£500 per offence

Whilst mitigation factors may be considered and agreed by the council (see section A) these will not in any situation individually or combined reduce a civil penalty notice fine below the minimum fine level shown in Table 1.

Section C

Early Settlement of Final Penalty Notice Fine / Invoice

The council offers a 25% discount for prompt payment of fines / invoices relating to Housing legislation.

Final penalty notices are accompanied by invoices from the Council. If a person served with a final penalty notice makes a payment as follows to the council the remaining 'balance' of fine will be 'written off' i.e. not sought. All conditions must be complied with:

- The payment must be made electronically (BACs only) within 14 days of the fine and invoice being issued;
- The payment must be to a total of 75% (rounded to the nearest whole pound) of the fine / invoice.

Section D

Calculation of total reduction in fine due to mitigation and early payment

The council will add all relevant mitigation discounts together and then deduct the resultant percentage from the original fine level.

As an example,

The council advises a landlord that a fine of £10,000 is proposed under a Notice of Intent for a landlord who fails to licence a licensable HMO where no premiums are applicable.

The landlord makes written representation as follows:

- A) Mitigation of action – submits a valid HMO application with relevant fee within the representation period of 28 days of service of the Notice of Intent.
- B) Makes a written statement that they admit their guilt and the offence of not previously securing a HMO licence

The council duly considers the above and applies mitigation reductions as follows:

For A) 25% and B) 10% the council applies this in total as a 35% reduction in the final civil penalty notice. The final civil penalty notice is issued at £6,500 rather than the original £10,000. As this is above the minimum fine level (Table 1) it is considered appropriate.

The landlord makes payment in line with the council's early payment reduction initiative (i.e. electronically within 14 days of the notice) and therefore makes a payment of £4,875 (i.e. 75% of the £6,500). Therefore by making a prompt payment, they have reduced their fine below the normal minimum fine level for this type of offence.