

## **Cabinet – 24 October 2018**

### **Financial Penalties Policy relating to Housing and Planning Act 2016**

**Portfolio:** Councillor A Andrew - Deputy Leader and Portfolio Holder Regeneration

**Related portfolios:**

**Service:** Housing Standards, Money Home Job

**Wards:** All

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Summary**

- 1.1 This report recommends a new policy to cover the use of Civil Penalty Notices (CPNs) and Rent Repayment Orders (RROs) related to housing. It is in full accordance with the Council's existing published Housing Enforcement Policy.
- 1.2 When introducing CPN's through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly and up to the maximum of £30,000, as a way of clamping down on rogue landlords. The Council after issuing a CPN or securing prosecution has a duty to consider securing RRO.
- 1.3 The proposed Policy sets out when CPNs and RROs will be used and the level of financial (civil) penalty to be sought.
- 1.4 Upon securing a CPN (or a prosecution) the Council also has a duty to consider securing a Rent Repayment Order from the landlord.

#### **2. Recommendations**

- 2.1 That Cabinet approve the Financial Penalties relating to Housing and Planning Act 2016 Policy (contained in Appendix 1 and 2).

#### **3. Report detail**

- 3.1 The Government broadened the remit of CPNs and the fines that could be secured as a direct approach to tackle rogue landlords. CPNs are in some situations an alternative to prosecutions, which they recognised could be costly and time consuming for councils to bring. In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated: *'[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000' ..... because a smaller fine may not be significant enough for landlords*

*who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants’.*

- 3.2 The Government issued Guidance on Civil Penalties in April 2018 and the Policy recommended in Appendix 1 and 2 for adoption by the Council is in full compliance with this. The Policy covers use of CPNs as opposed to prosecution and in Appendix 2 the level of fine being sought under a CPN
- 3.3 The Council has been very pro-active (since early 2018) in publicising the new legislation for Houses in Multiple Occupation which came into effect on 1 October 2018 which expands the number of properties that require a statutory licence. The number of landlords who have chosen to apply is low and it is expected that there will be many for whom either a CPN or prosecution will be required over the coming months.
- 3.4 Upon securing a CPN (or prosecution) the Council has a duty to consider securing a Rent Repayment Order (RRO) against the landlord. This can require a landlord to return any housing benefit or Universal credit (housing related) payments that have been made for a period of up to 12 months. A tenant additionally has the right to pursue their landlord via an RRO.

#### **4. Council Corporate Plan Priorities**

- 4.1 The table below identifies how Corporate Plan priorities will be met through this new Policy.

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 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 prosecution and CPNs can directly bring income to off-set enforcement costs associated with the private rented sector

#### **5. Risk management**

- 5.1 The key risk relates to the Council seeking to pursue a CPN and or RRO case against a landlord without reference to an adopted CPN / RRO Policy. The

recommended adoption of the Policy in Appendix 1 and 2 will fully remediate this risk.

## **6. Financial implications**

- 6.1 Costs relating to enforcement action are provided for within the budget for Housing Standards and Improvement.
- 6.2 The existing Housing Enforcement Policy contains provisions to make enforcement action as cost neutral as possible through including securing civil penalty fines.
- 6.3 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.
- 6.4 CPNs are not intended as an income generator for the Council but rather a deterrent to rogue landlords and rogue behaviour. As per the guidance and legislation all income received from a CPN can be retained by the local housing authority. At this stage no estimates of income generated from CPN and or RRO annually can be made. Any income received however will be directed in line with legislation at additional housing enforcement activities.

## **7. Legal implications**

- 7.1 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.
- 7.2 The objective of an application for a RRO is not only to issue a punishment as a consequence of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

## **8. Procurement implications/Social Value**

- 8.1 There are no procurement implications from this proposal.

## **9. Property implications**

- 9.1 The policy relates to non-council dwellings.

## **10. Health and wellbeing implications**

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

## 11. Staffing implications

- 11.1 The delivery of this policy will assist officers within the Housing Standards Team to undertake statutory enforcement against private landlords who fail to adhere to key legislation.
- 11.2 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 staff costs and new roles in this field.

## 12. Reducing inequalities

- 12.1 The implications for reducing inequalities have been taken into account.
- 12.2 The Policy proposes is intended to tackle rogue private landlords and as a result make it more difficult for them to rent properties in the borough that have the potential to cause risk or harm to residents (including vulnerable households). The policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed.
- 12.3 Based on an assessment of the proposal no Equality Impact Assessment is considered to be required for this proposal.

## 13. Consultation

- 13.1 A copy of the Policy will be available on-line and local estate agents and members of the Midland Landlord Accreditation Scheme will be advised of its adoption.

### 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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## Appendix 1

### **Financial Penalties relating to Housing and Planning Act 2016 Policy**

#### **1.0 Introduction**

- 1.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution of housing offences. These are known as Civil Penalty Notices (CPNs).
- 1.2 The value of the civil penalties, set by the Council and based on national guidance and legislation and a risk based process, can range from £25 to £30,000, per offence, dependent upon harm and culpability.
- 1.3 Importantly, once an individual is subject to a civil penalty, the Council must consider a Rent Repayment Order (RRO) to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 1.4 This policy is supplementary to the Council's published Housing Enforcement Policy, which was approved by Cabinet in October 2017.
- 1.5 The purpose of this Policy is to set out the framework within which decisions will normally be made to applying for a Rent Repayment Order and to issuing civil penalties in relevant cases. This policy may be departed from where the circumstances so justify. Each case will be dealt with on its own merits, having regard to its particular circumstances.

This policy is designed to ensure transparency, consistency and fairness in how and when CPN are imposed and RRO are pursued.

- 1.6 The list of offences under the Housing Act 2004 that that can currently be dealt with by way of a financial penalty are as follows:
  - Failure to comply with
    - improvement notice (Section 30)
    - with overcrowding notice, (Section 139(7))
  - Licensing of HMOs under Housing Act 2004 Part 2 (Section 72)
  - Licensing of houses under Housing Act 2004 Part 3 (Section 95)
  - Management regulations in respect of HMOs (Section 234)
- 1.7 If new legislation is introduced that permits the use of CPNs and or RROs this Policy will be used (in consultation with the relevant Portfolio Holder).

#### **2.0 Determining the appropriate course of action**

- 2.1 When the Council is satisfied that a relevant offence has been committed and that it is in the Public interest to proceed formally it must decide whether to prosecute or issue a civil penalty. This will be determined on a case-by-case basis but whilst not an exhaustive list, the following factors are some of the issues that will be considered in determining if a civil penalty or prosecution should be applied to an individual offence:

- The severity of the offence and the resulting potential harm
- The offending history of the alleged offender
- If the offence was committed by mistake or with knowledge
- The health and capacity of the alleged offender
- The public interest in taking the alleged offender into court where the offence will be publicised and the individual held to account in public.
- The likely impact of Court action verses a civil penalty, in deterring further offending.

2.2 The following are situations where a prosecution may be appropriate;

- The offence was serious, for example breach of a Prohibition Order or where there was imminent risk of serious injury or loss of life;
- The offender has been prosecuted for similar Housing Act offences

2.3 The following factors, whilst not exhaustive, are situations where the issuing of a civil penalty may be appropriate;

- No history of previous non-compliance with relevant legislation
- No previous convictions of relevant offences
- The offence was committed as a result of a genuine mistake or misunderstanding. This must be balanced against the seriousness of the offence.
- Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

### **3.0 Financial Penalties**

3.1 The law currently allows a maximum financial penalty of £30,000 to be imposed per offence. The Government recommends that, to ensure that the civil penalty is set at an appropriate level, the local housing authority produce its own Policy to ensure fair and transparent application of penalties.

3.2 In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and the Code for Crown Prosecutors. Due regard will also be given to any potential defences which will be considered by way of the representation received following the service of the 'Notice of Intent' to serve a CPN.

3.3 In certain circumstances, it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore the defences but this will be entirely a decision for the Council. In total, we consider the procedure for issuing these penalties to be robust enough in way of providing fairness for the respondent.

3.4 In particular the factors set out in 3.6 of the Government Guidance on Civil penalties under the Housing and Planning Act 2016 has been incorporated into the charging table adjustments set out in Appendix 2.

3.5 In determining the amount of penalty the Council will use the Financial Penalty Matrix (contained in Appendix 2) which takes into account relevant matters including, but not limited to:

- The penalty should act as a deterrent to repeating the offence ,and to others from committing similar offences;
- The penalty should remove any financial benefit obtained as a result of the commission of the offence;
- The severity and seriousness of the offence;
- The culpability and past history of the offender;
- The harm ,or potential harm, caused to the tenant and the impact on the wider community;

3.6 In determining the financial value of an imposed penalty, this Council shall have regard to the charging table and guidance notes in Appendix 2.

#### **4.0 Process for imposing penalty charges**

4.1 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.

4.2 A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:

- a. The amount of any proposed financial penalty
- b. The reasons for proposing the financial penalty
- c. Information about the right to make representation to the Council.

4.3 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 financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.

4.4 Following the 28 day period the Council will decide:

- a. Whether to impose a financial penalty on the person, and
- b. The value of any such penalty imposed.

4.5 If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:

- a. the amount of the financial penalty,
- b. the reasons for imposing the penalty,
- c. information about how to pay the penalty,
- d. the period for payment of the penalty,
- e. information about rights of appeal to the First tier Tribunal
- f. the consequences of failure to comply with the notice.

#### **5.0 Consequences of non-compliance and miscellaneous provisions**

5.1 If, after any appeal has been finally determined or withdrawn, a person receiving a financial 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 financial penalty relates.

- 5.2 Financial 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.
- 5.3 The Council may, at any time:
- a. Withdraw a notice of intent or final notice
  - b. reduce the amount specified in a notice of intent or final notice
- Where the Council decides to take either of these actions, it will write to the person to whom the notice was given.
- 5.4 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.



## Appendix 2

### **Charging Table for determining value of Financial Penalties imposed under Housing and Planning Act 2016 and explanatory notes.**

**NOTES:** The following notes relate specifically to the following tables of charges.

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

The starting point for a financial 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 financial penalty to be imposed. More than one premium can be added, where relevant.

No single financial 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 - 2nd subsequent offence by same person/company**

The Council will take into account any such convictions or financial penalties secured irrespective of the locality (including outside of Walsall) to which the offence relates.

#### **Note 3 - Housing portfolio of 10 or more 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 high scoring Category 2 hazards (under the Housing Health and Safety Rating System) 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 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 that the perpetrator ought to have had regard.

For 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. At the time of publication of this Policy, this document can be found at [www.gov.uk](http://www.gov.uk) and a summary table is below.

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 Income to be less than £440/week**

This premium (acts as a reduction) will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by up to 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of their income to the Council. Where the property is managed by a company then they will need to provide evidence relating to the company income. The responsibility to do this rests with the person served with the notice.

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 by the person served with the Notice, and where this is incomplete or not sufficiently evidenced may determine that the premium / reduction in financial penalty should not be applied. This decision rests with the Council.

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

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four (4) 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 financial penalty applies, acted in the opinion of the Council in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice. This premium may also be added where the Council considers that the person / company has also sought to mislead the Council in the exercise of its statutory duties.

#### Tables of Civil Penalty Notice – Financial Level of Notices to be applied

<b>A. Failure to comply with an Improvement Notice - Housing Act 2004 (Section 30)</b>		
1st offence	<i>(note 1)</i>	£5,000
2nd subsequent offence by same person/company	<i>(note 2)</i>	£15,000
Subsequent offences by same person/company	<i>(note 7)</i>	£25,000
<b>Premiums</b>		
<b>The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Housing portfolio of 10 or more units of accommodation	<i>(note 3)</i>	+£2,500
Multiple Category 1 or high Category 2 Hazards	<i>(note 4)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week	<i>(note 6)</i>	-50% of overall charge

<b>B. Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 of the Housing Act 2004 (Section 72)</b>		
<b>Failure to obtain Property Licence (section 72(1))</b>	<i>(note 1)</i>	£10,000
2nd subsequent offence by same person/company and any subsequent offences	<i>(note 2)</i>	£30,000
<b>Premiums</b>		
<b>The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Housing portfolio of 10 or more units of accommodation	<i>(note 3)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week	<i>(note 6)</i>	-50% of overall charge

<b>Breach of Licence conditions under Part 2 and 3 of the Housing Act 2004 (Section 72(2) and (3))</b>		£5,000 per licence breach
<b>Premiums</b>		
<b>The following additional charges will be added to the charges above. All relevant charges will be applied.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week	<i>(note 6)</i>	-50% of overall charge

<b>Offences in relation to licensing of HMOs under Part 2 and Part 3 of the Housing Act 2004 (Section 95)</b>		
<b>Failure to Licence (section 95(1))</b>	<i>(note 1)</i>	£10,000
2nd subsequent offence by same person/company	<i>(note 2)</i>	£30,000
<b>Premiums</b>		
<b>The following additional charges will be added to the charges above. All relevant charges will be applied.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Housing portfolio of 10 or more units of accommodation	<i>(note 3)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates Income to be less than £440 per week	<i>(note 6)</i>	-50%
<b>Breach of Licence conditions (Section 95(2)) -</b>		£5,000 Per licence breach
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week	<i>(note 6)</i>	-50% of overall charge

<b>Offences of contravention of an overcrowding notice Housing Act 2004 (section 139)</b>		
1st relevant offence	<i>(note 1)</i>	£5,000
2nd subsequent offence by same person/company	<i>(note 2)</i>	£15,000
Subsequent offences by same person/company	<i>(note 7)</i>	£30,000
<b>Premiums (use all that apply)</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	£2,500
Vulnerable occupant and/or significant harm occurred as result of overcrowding	<i>(note 3)</i>	£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week	<i>(note 6)</i>	-50% of overall charge

<b>Failure to comply with management regulations in respect of Houses in Multiple Occupation (HMOs) under the Housing Act 2004 (Section 234)</b>		
1 <sup>st</sup> relevant offences	<i>(note 1)</i>	£1,000 per offence
Second subsequent offences by same person/company for the same offence		£3,000 per offence
All subsequent offences by same person/company for the same offence		£5,000 per offence
<b>Premiums (use all that apply)</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Housing portfolio of 10 or more units of accommodation	<i>(note 3)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £440 per week	<i>(note 6)</i>	-50% of overall charge