

<b>Report to:</b>	<b>Leader of the Council</b>
<b>Date:</b>	<b>09 July 2019</b>
<b>Title:</b>	<b>Civil Penalties Policy</b>
<b>Report of:</b>	<b>Director of Service Delivery</b>
<b>Cabinet member:</b>	<b>Councillor David Tutt</b>
<b>Ward(s):</b>	<b>All</b>
<b>Purpose of report:</b>	<b>To note and agree to the use of the new powers allowing the Council to impose civil penalties as summarised in Section 2 of this report.</b>
<b>Decision type:</b>	<b>Non-key decision</b>
<b>Officer recommendation(s):</b>	<p><b>(1) To approve the Civil Penalties Policy attached as Appendix 1</b></p> <p><b>(2) Delegate authority to the Senior Specialist Advisor (Housing Standards) in consultation with Legal Services to agree the sum of civil penalties to be issued on a case by case basis in accordance with the proposed policy with the reviewing Officer to be the Housing Needs and Standards Lead.</b></p>
<b>Reasons for recommendations:</b>	<b>The recommendations will enable the Council to utilise additional legislative powers as an alternative to prosecution for certain private housing offences. The Penalties are a quick, easy, cost effective sanction and a useful tool in driving up management standards within the private rented sector as well as income generating for the team.</b>
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## **1 Introduction**

- 1.1** The Housing and Planning Act 2016 has introduced legislation enabling local authorities to pursue civil penalties as an alternative to prosecution for a number of specified offences under the Housing Act 2004. This report seeks approval to use civil penalties as laid out in the Council's Civil Penalties Policy as a further

tool to assist the Council in improving standards within the private rented sector.

1.2 The legislation gives local authorities the power to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice
- Contravention of an Overcrowding Notice
- Failure to comply with HMO Management Regulations
- Having control of or managing a HMO which is required to be licensed but is not so licensed
- Having control of or managing a HMO and knowingly permitting the property to be occupied by more households or persons than authorised by the licence
- Failure to comply with any condition of the HMO licence

1.3 The maximum civil penalty which may be imposed per an offence is £30,000

## **2.0 Civil Penalties Policy**

The legislation requires that a local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in relation to the issuing of civil penalties. The guidance states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty, and the option a local authority wishes to pursue will be decided on a case-by-case basis in line with that policy.

The Local Authority will then decide on what is the appropriate level of civil penalty on a local level.

2.1 The Senior Specialist Advisor, Housing Standards in consultation with Legal Services will determine on a case by case basis whether to issue a Civil Penalty Notice or instigate a prosecution. Where a Civil Penalty is to be issued the level of penalty imposed will be set in accordance with the Policy and statutory guidance

2.2 The guidance also sets out the factors which a local housing authority should take into account when deciding the appropriate level of penalty. These factors are:

- The severity of the offence
- The culpability and track record of the offender
- The harm caused or likely to be caused as a consequence of committing the offence
- Punishing the offender and deterring them from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained as a result of committing the offence
- The landlord/letting agents assets and income

- 2.3 Where a landlord and a letting/managing/property agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution. The amount of penalty may differ depending on the circumstances of each party's involvement. In addition a landlord can be given one civil penalty for each individual offence. So if a landlord did not comply with an improvement notice, received an overcrowding notice and was operating an unlicensed HMO he could receive three separate civil penalties for a maximum of £90,000 in total without having to go to Court.
- 2.4 Deciding the Amount of Penalty - If it has been determined that the use of a civil penalty is appropriate, section 3.5 of "Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities" sets out factors that should be considered in setting the penalty set out in 2.2 above.

In determining the level of a civil penalty, officers will have regard to the matrix set out in table one below, which is to be read in conjunction with the attached Policy. The matrix is intended to provide an indicative scale under the various offence categories, with the final level of the civil penalty being adjusted in each case to take into account other relevant mitigating and/or aggravating factors.

**Table One: Determination of civil penalty level**

	Level of harm/effect		
Level of culpability	High	Medium	Low
High	£30,000	£15,000	£7,500
Medium	£15,000	£10,000	£5,000
Low	£7,500	£5,000	£2,500

### 3 Financial Appraisal

- 3.1 The Council has the discretion to determine the size of civil penalty to be issued. Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

Local Authorities are able to keep the financial penalty unlike the fines in criminal cases which are simply passed to the treasury, thus enabling housing standards enforcement to become increasingly self-funding.

Consideration does need to be given to the use of the money raised as it can only be used for certain purposes, as set out in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017. These restrict the use of funds to matters related to enforcement of standards in the Private Rented Sector. Local authorities will need to make sure they have calculated those figures to justify the allocation of funds.

Whilst the enforcement activity is expected to generate an income for the Council, the amount it is likely to generate is difficult to predict as it is entirely

dependent on the circumstances of each case. However given that the number of prosecutions taken annually for private sector housing is low, the income generated is also likely to be low i.e. less than £10,000 per annum. No provision has been made in the 2019/20 Budget in respect of Civil Penalties Policy income.

#### **4 Legal Implications**

Legal Services reviewed this Report and the attached Policy on 8 July 2019. IKEN 8380-EBC-MW.

#### **5 Risk Management Implications**

No new risks will arise if the recommendations are implemented. If the Council wish to use Civil Penalties they must have a Policy that is transparent, accountable, proportionate and consistent.

#### **6 Equality Screening**

The Equality Impact Assessment available on request.

#### **7 Background Papers**

- “Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities”

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606653/Civil\\_Penalties\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf)

- Crown Prosecution Service Code for Crown Prosecutors, when establishing whether there is sufficient evidence to secure a conviction:

[https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

#### **8 Appendix**

Draft Civil Penalties Policy