

Report of:	Head of Environment and Healthy Lifestyles
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Key Decision:	No
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CABINET
14 JUNE 2018
PRIVATE SECTOR HOUSING – FINANCIAL PENALTIES AND RENT REPAYMENT ORDERS

1 Purpose of Report

- 1.1 To inform Cabinet of the introduction of the Housing and Planning Act 2016 which empowers officers to issue Financial Penalties and apply to the First Tier Tribunal (Property Chamber) for Rent Repayment Orders in relation to certain housing offences.
- 1.2 To seek Cabinet approval for the proposed charging scheme set out in Appendix 1.
- 1.3 To advise Cabinet of the extension to the existing rent repayment orders.

2 Recommendations

- 2.1 That Cabinet adopts the introduction of the Financial Penalty charging scheme and system, set out in Appendix 1, which sets a penalty of £5,000 for a first offence with additional costs for serious offences up to £30,000 and reductions for some special circumstances.
- 2.2 That Cabinet amends the scheme of delegation to 'Power to authorise the institution/enforcement of civil proceedings under section 126 and schedule 9 of the Housing and Planning Act 2016' to Head of Environment and Healthy Lifestyles and appropriately qualified Environmental Health Officers and Housing officers.

3 Key Issues and Reasons for Recommendation

- 3.1 To ensure full use of these new provisions made by the Housing and Planning Act 2016 to sanction those landlords and letting agents who rent properties

which are hazardous to safety and health and to act as a deterrent to others from doing the same.

- 3.2 The Housing and Planning Act 2016 provides for the income from financial penalties to be retained by local authorities for carrying out statutory functions in relation to enforcement of standards in the private rented sector.

4 Relationship to Corporate Priorities

- 4.1 This report supports the service aim to “raise standards in the private rented sector” which forms part of the Customers and Corporate Priority Delivery Plan for 2018.

5 Report Detail

5.1 Background

- 5.1.1 The private rented sector has doubled within the last ten years and it is now the second largest type of tenure after owner occupation.
- 5.1.2 Whilst there are good quality and safe homes provided within the private rented sector, the latest English House Condition Survey reports that one third of private rented homes fail the decent home standard and one fifth contain a category 1 hazard, which means they present a significant risk to safety and health.
- 5.1.3 Hazards commonly found in private rented housing include excess cold; dampness and mould growth; falling hazards and gas, electrical and fire safety hazards. Environmental Health Officers use a nationally agreed approach called the Housing Health and Safety Rating System to evaluate the potential risks to health and safety from any deficiencies identified in dwellings. The system is not concerned with quality, comfort or convenience.
- 5.1.4 In 2016/2017 there were 199 requests for service received by the Private Sector Housing Team at Cannock Chase Council. Of the properties that went on to be inspected, 40% were found to have category 1 hazards present. It is estimated that 20% of the properties subject to complaint do not go on to get inspected due to the tenant’s fear of being evicted for making a complaint (known as retaliatory eviction).
- 5.1.5 Some landlords are ignorant of their responsibilities, others choose to ignore them. In-line with the Council’s enforcement policy, where informal requests for improvements and repairs are ignored, enforcement action is pursued under the Housing Act 2004.
- 5.1.6 The Localism Act 2011 introduced a fundamental reform of the social housing tenure: the ability for councils to discharge their homelessness duty to the private sector. This duty requires that the local authority ensures any

accommodation used for this purpose is free from significant hazards and that the risks of harm or illness to occupants or visitors are minimised.

5.2 Housing and Planning Act 2016

5.2.1 The Housing & Planning Act 2016 introduced a new range of measures to tackle rogue landlords:

- Financial penalties of up to £30,000 as an alternative to prosecution for certain specified offences. This is currently enforceable.
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences. This is currently enforceable and does not require adoption or consideration for approval.
- Database of rogue landlords and property agents convicted of certain offences which comes into force from 6th April 2018.
- Banning orders for the most serious and prolific offenders which also comes into force from 6th April 2018.

5.2.2 The Housing Act 2004 was amended by section 129 and schedule 9 of the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences:

- Failure to comply with improvement notice (Housing Act 2004 Section 30)
- Licensing of HMOs under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)
- Licensing of houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)
- Failure to comply with overcrowding notice, (Housing Act 2004 Section 139(7))
- Management regulations in respect of HMOs. (Housing Act 2004 Section 234)

5.2.3 Although the financial penalty is an alternative to prosecution, the same burden of proof applies, so can only be issued where there would be a realistic prospect of conviction. Local authorities should consult the Crown Prosecution Service Code for Crown Prosecutors for guidance on whether there is sufficient, reliable and credible evidence and also to determine whether it is in the public interest to proceed.

5.2.4 Local housing authorities are expected to determine and develop a policy with regards to when a prosecution or when a financial penalty should be instigated and to be able to decide upon this course of action on a case by case basis. The Environmental Health Enforcement Policy will be updated to amend this should the recommendations within this report be adopted.

5.2.5 There is a right of appeal against the issue of a financial penalty to the First Tier Tribunal (Property Chamber). The Tribunal can examine the decision to issue the financial penalty, the level of charge made and any deviations from the prescribed process as set out in the Act.

5.3 The Charging System

5.3.1 Ministers have made it very clear that the financial penalty powers are to be used robustly as a way of clamping down on rogue landlords.

5.2.2 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 “¹

“It is important [to] raise the level of civil penalty to £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”

5.3.3 The Act allows the local housing authority to determine a charging scheme and the maximum per offence is set at £30,000. Appendix 1 sets out the charging system and this has been developed with regard to government guidance, the Magistrates Court sentencing guide and in consultation with other Staffordshire housing authorities to ensure consistency. It has also been largely accepted by the wider West Midlands housing authorities and it is under consultation for adoption by authorities across the UK.

5.3.4 The system proposes a financial penalty of £5,000 for a first offence, increasing to a maximum of £30,000 depending on whether there are any circumstances which should be taken into account such as:

- The severity of the offence
- Culpability and track record of the offender
- Harm caused to the tenant and other occupants
- Deterring the offender from carrying out repeat offences
- Deterring others from carrying out similar offences
- Removing any financial benefit to the offender having committed the offence.
- The financial circumstances of the offender.

Details of the charges associated with these circumstances are contained in the table in Appendix 1.

5.4 Prescribed Process

5.4.1 The Statutory Guidance to Local Authorities prescribes a process which must be followed when issuing a financial penalty. This is detailed in Appendix 2. The guidance also contains information concerning pursuing financial penalties if they are not paid.

5.5 Database of Rogue Landlords and Banning Orders

5.5.1 The Housing and Planning Act 2016 also introduces a database for rogue

landlords and banning orders and these came into force on the 6th April 2018. A prosecution is the necessary course of action where a banning order is to be pursued. A banning order would prohibit a landlord from letting properties where he or she has been found guilty of certain offences in a Magistrates' Court.

5.5.2 The decision as to whether a prosecution is taken rather than issuing a financial penalty depends on factors such as the seriousness of the offence, historical offences, culpability, likelihood of continuing, repeated or escalating offences taking place, vulnerability of the tenant and the potential impact on the wider community.

5.6 Rent Repayment Orders

5.6.1 Further to failure to comply with an improvement or prohibition notice under the Housing Act 2004, a rent repayment order can be applied for to the First Tier Tribunal and, if granted, a landlord can be ordered to repay a specified amount of rent up to a maximum of 12 months. Where a tenant paid the rent for themselves, they can make the application, but where the rent was paid by Housing Benefit or the housing element of Universal Credit, the housing authority can make the application.

5.6.2 The application for a rent repayment order does not have to be made after a prosecution, but there must be evidence beyond reasonable doubt, as with the financial penalties, that an offence has been committed.

5.6.3 Following an alleged offence to which the application for a rent repayment order could be made, a decision will have to be made as to whether or not there is sufficient evidence to secure a conviction and whether a financial penalty or a prosecution will be pursued. After that, consideration will be given to applying for a rent repayment order or advising the tenant on making an application.

6 Implications

6.1 Financial

Local housing authorities can retain the income from financial penalties provided it is used to further their statutory functions in relation to private rented housing enforcement activities.

6.2 Legal

6.2.1 Section 126 and schedule 9 of the Housing and Planning Act 2016 make the provision for the recommendations in this report and this came into force on the 6th April 2017. The Council has a statutory duty as a local housing authority to enforce relevant housing legislation.

6.2.2 Information sharing between neighbouring authorities will be key to setting the correct charge for the financial penalty due to the possibility of landlords committing offences outside of the district. Discussions between the

Staffordshire and West Midlands housing authorities have taken place about ensuring a consistent approach.

- 6.2.3 The same burden of proof is required to issue a financial penalty compared to instigating a prosecution and therefore additional costs should not be incurred in that respect. Staffordshire housing authorities have worked together to produce the documentation necessary to follow the prescribed process. However, there will be some minor administration costs involved in issuing them and it is anticipated that appeals to the First Tier Tribunal will be likely.
- 6.2.4 Advice will be sought from Legal Services and statutory guidance will be taken into account when determining the course of action when a relevant offence has been confirmed.
- 6.2.5 If the recommendations in this report are not accepted, a pre-determined level of financial penalty could be set and issued for every offence, however this could be open to legal challenge.
- 6.2.6 The Environmental Health Enforcement Policy will be amended upon acceptance of the recommendations proposed by this report.

6.3 **Human Resources**

None

6.4 **Section 17 (Crime Prevention)**

The introduction of the financial penalties will provide another measure in the toolkit for tackling rogue landlords and reducing the number of properties subject to hazardous conditions.

6.5 **Human Rights Act**

None

6.6 **Data Protection**

None

6.7 **Risk Management**

None

6.8 **Equality & Diversity**

None

6.9 **Best Value**

None

7 Appendices to the Report

Appendix A: Charging system

Appendix B: Prescribed Process for imposing penalty charges

Previous Consideration

None.

Background Papers

Civil Penalties under the Housing Act 2016. Statutory guidance for local authorities on the new powers on civil penalties.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf

Section 126 and schedule 9 of the Housing and Planning Act 2016.

References

1. <https://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160105/debtext/160105-0004.htm>

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Appendix 1**Charging table for determining value of Financial Penalties**

Failure to comply with an Improvement Notice (Section 30)		£
1st offence	(note 1)	5000
2nd subsequent offence by same person/company	(note 2)	15000
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 Income to be less than £440/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
2nd subsequent offence by same person/company	(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach		
Perpetrator demonstrates Income to be less than £440/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
2nd subsequent offence by same person/company	(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach		
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences of contravention of an overcrowding notice (section 139)		£
1st relevant offences	(note 1)	5000
2nd subsequent 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 Income to be less than £440/week	(note 6)	-50%

Failure to comply with management regulations in respect of HMOs (Section 234)		£
<i>1st relevant offences</i>	<i>(note 1)</i>	<i>1000/offence</i>
<i>Second subsequent offences by same person/company for the same offence</i>		<i>3000/offence</i>
Premiums (use all that apply)		
<i>Acts or omissions demonstrating high culpability</i>	<i>(note 8)</i>	<i>+2500</i>
<i>Large housing portfolio (10+ units of accommodation)</i>	<i>(note 3)</i>	<i>+2500</i>
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions</i>	<i>(note 5)</i>	<i>+2500</i>
<i>Perpetrator demonstrates Income to be less than £440/week</i>	<i>(note 6)</i>	<i>-50%</i>

NOTES

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. 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 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 of 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 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 this document can be found at 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 will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial 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/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 a 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 financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Appendix 2

Prescribed Process for imposing penalty charges

- 1.0 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.
- 1.1 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.
- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 Consequences of non-compliance and miscellaneous provisions**
 - 1.5.1 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.
 - 1.5.2 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

1.5.3 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 action, it will write to the person to whom the notice was given.

1.5.4 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.