

This Report will be made public on 12 January 2020

Report Number **C/20/67**

To: Cabinet
Date: 20th January 2021
Status: Key Decision
Responsible Officer: Andy Blaszkwicz, Director- Housing and Operations
Cabinet Member: Cllr David Godfrey, Portfolio Holder for Housing, Transport and Special Projects

SUBJECT: PRIVATE SECTOR HOUSING ENFORCEMENT AND CIVIL PENALTY POLICY

SUMMARY: The Council currently has a generic enforcement policy which sets out the basic objectives and principles for each enforcement team. Since the Housing and Planning Act 2016 came into force, there have been many additions to the powers and duties of the Private Sector Housing Team, for which a more detailed policy is required.

This new policy amalgamates the principles from the current overarching policy with the new elements required including:-

- a civil penalties policy for specified housing offences
- a statement of principles for penalties associated with smoke and carbon monoxide alarm regulations (which was approved by the Council in 2016)
- a new penalties framework for breach of the minimum energy efficiency standards
- A statement about using the proposed civil penalties policy for offences committed under the new electrical safety regulations 2020.

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/20/67.**
- 2. To approve the principles set out in the enforcement policy and penalties policies in Appendix 3 and Annex 1 of the policy.**
- 3. To agree to the statement of principles approved in 2016 (appendix 2) to be incorporated into this policy document (unchanged).**
- 4. To agree to use the civil penalties policy for determining levels of fine for offences under the new electrical safety regulations.**
- 5. To delegate authority to the Assistant Director of Housing, in consultation with the Cabinet Member for Housing, Transport and Special Projects, to approve minor amendments to the policy when any minor changes or additions in legislation occur.**

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 came 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 CONSULTATION

- 2.1 The policy has been subject to an eight week informal consultation. The document was published on our website and invited comments and suggestions via a “survey monkey” questionnaire. The Policy was also sent to Landlord Associations (iHowze and National Residential Landlords Association) and the local Citizens’ Advice Bureau. Unfortunately no responses were received from these to date. The comments from the online survey were minimal but the results are below. Only four members of the public responded to the survey monkey. Two of the responses were anonymous, so we are unable to seek clarification regarding their answers.

Comment	Answer
A suggestion of giving mental health support to tenants.	No Action required. Although not mentioned in the policy, officers will always signpost to other organisations for assistance other than with housing conditions. This includes mental health support where needed. This forms part of an officer’s training and protocol they employ when investigating poor housing conditions.
An anonymous comment regarding always siding with the landlord.	No Action required. There is no evidence of this and the PSH team remain neutral when dealing with housing conditions complaints. They will always endeavor to work with the landlord and only use enforcement action where the landlord either refuses to engage or is not doing remedial work in a timely manner.
An anonymous comment about landlords lying for financial gain and a specific mention of a friend who is living in poor housing conditions.	No action required. As the comment was anonymous and without specific detail the PSH team cannot investigate these allegations further.

3.0 OPTIONS

Option 1	To adopt and implement the Private Sector Housing Policy and to allow minor amendments in consultation with the Assistant Director of Housing and the Portfolio Holder for Housing, Transport and Special Projects.
Option 2	To not adopt the policy – if this option is chosen we cannot operate effectively and charge penalties and deal rogue landlords in a methodical and transparent way.

4. RISK MANAGEMENT ISSUES

4.1 The risk management issues are as follows.

Perceived risk	Seriousness	Likelihood	Preventative action
Not adopting the policy would cause criticism in the event of attempting to enforce penalty charges without a clear method of determining their level. Any appeal may be upheld as a result, meaning that the council would not be able to enforce the penalty charge.	Medium	High	Adopt the policy so that enforcement can be evidenced as measured and considered in a methodical, reasonable and transparent way.

5.0 LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 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.

5.2 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.

5.3 Diversities and Equalities Implications

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.

6.0 CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Kerry Petts, Private Sector Housing Team Leader
Telephone: 01303 853520
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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)