

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL
EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE
CABINET

Date 7th June 2017

REPORT TITLE Implementation of new provisions under the Planning and Housing Act 2016

Submitted by: Gill Taylor

Portfolio: Planning & Housing

Ward(s) affected: All

Purpose of the Report

To advise Cabinet of the opportunity to impose civil penalties for certain housing offences under the Housing and Planning Act 2016 and decide on the charging scheme.

Recommendations

- a) To adopt civil penalties for housing offences in appropriate circumstances.
- b) To approve the charging system set out in appendix A, which sets a civil penalty of £5000 for a first offence with multipliers of up to £30, 000 for serious offences and reductions for some special circumstances.
- c) Amend the scheme of delegation to “Power to authorise the institution / enforcement of civil proceedings under section 126 and Schedule 9 Housing and Planning Act 2016” to Head of Housing Regeneration and Assets and appropriately qualified housing officers.
- d) To approve the updated Housing Enforcement Guidance 2017, set out in Appendix B, to include use of civil penalties and rent repayment orders also introduced by the Housing and Planning Act 2016.

Reasons

To ensure full use of new provisions aimed at regularising landlords and property agents who do not provide homes which are free from hazards to safety and health.

1. **Background**

1.1 There is a strong private rented sector in the borough serving the housing needs of approximately 10% of our residents. The Council is responsible for ensuring good standards in the sector protecting the health, welfare and rights of tenants. This report discusses two new provisions in the Housing and Planning Act 2016. Imposing civil penalties on landlords who do not comply with certain provisions in the Housing Act 2004 and applying for rent repayment orders where certain offences have been committed.

2. **New Legislation – Housing and Planning Act 2016**

2.1 **Civil Penalties**

- 2.1.1 Non-compliance with certain housing act notices, regulations and licensing requirements can result in a prosecution case being instigated against the offender. Section 126 and schedule 9 of the Housing and Planning Act 2016 now adds an alternative option of allowing a civil penalty to be imposed by a local housing authority. The amount is to be determined by the local housing authority with a maximum set at £30,000. The Newcastle-under-Lyme proposed charging system is set out in appendix A. In determining the system regard has been had to government guidance and to ensuring consistency with other Staffordshire authorities.
- 2.1.3 A civil penalty is an alternative to prosecution so both cannot be applied. A civil penalty requires the same burden of proof as a prosecution so can only be embarked on when there would be a realistic prospect of conviction were it to go to court. Local Authorities are guided to consult the Crown Prosecution Service Code for Crown prosecutors for guidance on evidence. This includes two stages (i) the evidential stage ensuring there is sufficient reliable, credible evidence, and (ii) assessing that it is in the public interest to proceed.
- 2.1.4 Local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and decide on which option on a case-by-case basis. The Housing Enforcement Guidance has been updated to include these details and is attached as Appendix B for approval.
- 2.1.5 Recipients of a civil penalty have the right to appeal to the Residential Property Tribunal where the soundness of the decision to impose a civil penalty, the decision relating to the amount and deviations from the prescribed process can be rigorously reviewed.

2.2 Charging System

- 2.2.2 A civil penalty should not be seen as a lesser option compared to prosecution. It should be set sufficiently high to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- 2.2.3 The charging system therefore proposes a civil penalty of £5000 for a first offence going up to £30,000 depending on the circumstances of the case. Factors taken into account will be:
- severity of the offence
 - culpability and track record of the offender,
 - the harm caused to the tenant,
 - deterring the offender from repeating the offence,
 - deterring others committing similar offences,
 - removing any financial benefit the offender may have obtained as a result of committing the offence,
 - the financial means of the offender.
- The impact of these factors is set out in the table in Appendix A.

2.3 Process

- 2.3.1 There is a prescribed process for levying a fine which must be followed precisely, this is laid out in the Statutory Guidance to Local Authorities. There is also guidance on chasing the civil penalties if they are not paid.

2.4 Database of Rogue Landlords and Banning Orders

- 2.4.1 There are still times when Prosecution will be a preferred option to a civil penalty.

This will be when the authority is seeking to apply for a Banning Order. These were introduced under the Housing and Planning Act 2016 (scheduled to come into force on 1st October 2017) and prevent a landlord who is found guilty of certain offences in a Magistrates Court continuing to trade. Where it is considered that a banning order should be pursued prosecution rather than civil penalties will be undertaken.

2.4.2 Factors that will determine whether to prosecute or impose a civil penalty are the seriousness of an offence, history of previous offences, culpability i.e. planned or premeditated actions, likelihood of offences being continued, repeated or escalated, vulnerability of the tenant and the potential impact on the wider community. The policy on when to prosecute and when to issue a civil penalty is set out in the updated Housing Enforcement Guidance 2017 in Appendix B.

2.5 **Rent Repayment Orders**

2.5.1 Rent repayment orders can be applied for following offences of not complying with an improvement or prohibition notice under the Housing Act 2004 or offences relating to using violence to secure entry to a property or illegal eviction / harassment. An application is made to the First Tier Tribunal and if granted requires a landlord (person entitled to keep the rent) to repay a specified amount of rent, up to a maximum of 12 months. An application can be made by a tenant where they paid the rent themselves or a local housing authority if the rent was paid through Housing Benefit or the housing element of Universal Credit.

2.5.2 Similar to civil penalties the landlord does not have to have been found guilty of the offence but there must be evidence to satisfy the tribunal beyond reasonable doubt that the offence has been committed.

2.5.3 The updated Housing Enforcement Guidance sets out more information on their use. Following an offence to which rent repayment orders apply, the first consideration will be whether there is sufficient evidence to secure a conviction. If there is a decision will be made between a civil penalty or prosecution. Following that consideration will be given to applying for a rent repayment order or advising the tenant on applying. Further information on rent repayment orders is in the Housing Enforcement Guidance 2017 in Appendix B.

3. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

3.1 The adoption of these duties will contribute to:

- creating a healthy and active community by improving the safety of the private rented sector and enhancing tenants' rights;
- our Co-operative Council aims to protect the interests of our citizens and;
- demonstrate effective Partnership Working with neighbouring authorities.

4. **Legal and Statutory Implications**

4.1 The recommendations are brought about by the duty placed on local authorities to enforce relevant legislation. Section 126 and schedule 9 of the Housing and Planning Act 2016 comes into force on 6 April.

5. **Equality Impact Assessment**

5.1 There are no negative impacts that have been identified. The positive impacts will directly benefit tenants in the private rented sector.

6. **Financial and Resource Implications**

- 6.1 As civil penalties are an alternative to prosecution with the same burden of proof they should not create additional workload. However there will be additional administration with them and it is highly likely that a landlord receiving a civil penalty will apply to the Residential Property Tribunal.
- 6.2 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.

7. **Major Risks**

- 7.1 None identified from the recommendations identified in this report

8. **Key Decision Information**

- 8.1 This is a key decision as it could affect all wards.

9. **List of Appendices**

- 9.1 Appendix A Charging System
- 9.2 Appendix B Housing Enforcement Guidance 2017

10. **Background Documents**

- 10.1 Civil penalties under the Housing Act 2016. Statutory guidance for local authorities on the new powers on civil penalties
<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

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

Appendix A
Charging system for determining value of civil penalties imposed under Housing Act 2004 and Housing and Planning Act 2016

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|---------------------------------------------------------------------------------------------------------|-------|
| Failure to comply with an Improvement Notice (Section 30) <i>(note 1)</i> | £ |
| 1st offence | 5000 |
| 2nd offence by same person/company | 15000 |
| Subsequent offences by same person/company <i>(note 2)</i> | 25000 |
| Premiums (use all that apply) | |
| Large housing portfolio (10+ properties) <i>(note 3)</i> | +2500 |
| Multiple Category 1 or high Category 2 Hazards <i>(note 4)</i> | +2500 |
| Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i> | +2500 |
| Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i> | -50% |

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|----------------------------------------------------------------------------------------------------------|-------|
| Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72) <i>(note 1)</i> | £ |
| Failure to obtain property Licence (section 72(1)) | 10000 |
| subsequent offence by same person/company <i>(note 2)</i> | 20000 |
| Breach of Licence conditions - Section 72(2) and (3) - Per licence breach | |
| | 5000 |
| Premiums (use all that apply) | |
| Large housing portfolio (10+ properties) <i>(note 3)</i> | +2500 |
| Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i> | +2500 |
| Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i> | -50% |

| | |
|--------------------------------------------------------------------------------------------------|---|
| Offences in relation to licensing under Part 3 of the Act (Section 95) <i>(note 1)</i> | £ |
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| Failure to Licence - section 95(1) | 10000 |
| subsequent offence by same person/company (note 2) | 20000 |
| Breach of Licence conditions - Section 95(2) - Per licence breach | 5000 |
| Premiums (use all that apply) | |
| Large housing portfolio (10+ properties) (note 3) | +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 of contravention of an overcrowding notice - section 139 (note 1) | £ |
| 1st relevant offences | 2500 |
| subsequent offence by same person/company (note 2) | 10000 |
| Premiums (use all that apply) | |
| Large housing portfolio (10+ properties) (note 3) | +2500 |
| Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 5) | +2500 |
| Perpetrator demonstrates Income to be less than £440/week (note 6) | -50% |
| Knowingly breach of notice (note 7) | +2500 |

| | |
|---------------------------------------------------------------------------------------------------|-------|
| Failure to comply with management regulations in respect of HMOs (Section 234) (note 1) | £ |
| relevant offences (per regulation) | 1000 |
| subsequent offence by same person/company (note 2) | +2500 |
| Premiums (use all that apply) | |
| Large housing portfolio (10+ properties) (note 3) | +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% |
|-----------------------------------------------------------------------|------|

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 penalties 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 and 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+ properties)

The premium is applied where the perpetrator has control or manages of 10 or more residential properties. It is considered appropriate to set a higher penalty for landlords who operate a large number of properties as they are effectively operating a business and in failing to comply with statutory provisions are gaining a competitive advantage over law-abiding landlords.

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 D or E Category 2 hazards associated with different building deficiencies. Where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

The purpose of this premium is to reflect the severity of the offence, in that several defects have not been addressed, and to ensure there is no financial benefit in not complying with a notice with multiple works.

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied if the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions. A statement may be obtained from the tenant relating to harm caused.

A vulnerable person is someone who forms part of the identified vulnerable group for each hazard under the Housing Health and Safety Rating System. 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 to. The table below identifies the vulnerable group for each hazard.

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 .

| Hazard | Vulnerable age group (age of occupant) |
|--------|----------------------------------------|
|--------|----------------------------------------|

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|--------------------------------------------|---------------|
| 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 threshold for such a reduction was determined by reference to the Magistrates Courts sentencing guidelines and could be amended as necessary to take into account inflation etc.

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 - Knowingly breach of notice

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless manner in not complying with the overcrowding notice.

