

## REPORT TO CABINET

<b>Open</b>		Would any decisions proposed :				
<b>Any especially affected Wards</b>	Mandatory and Discretionary elements	(a) Be entirely within cabinet's powers to decide NO (b) Need to be recommendations to Council		YES		
Key Decision: No						
Lead Member: Cllr Adrian Lawrence E-mail: <a href="mailto:cllr.adrian.lawrence@west-norfolk.gov.uk">cllr.adrian.lawrence@west-norfolk.gov.uk</a>		Other Cabinet Members consulted:				
		Other Members consulted:				
Lead Officer: Duncan Hall E-mail: <a href="mailto:Duncan.hall@west-norfolk.gov.uk">Duncan.hall@west-norfolk.gov.uk</a> Direct Dial: 01553 616445		Other Officers consulted: Lyn Ibbetson, Gordon Jackson Hopps, Ray Harding,				
Financial Implications <b>YES</b>	Policy/Personnel Implications <b>No</b>	Statutory Implications <b>YES</b>	Equal Impact Assessment NO If YES: Pre-screening/ Full Assessment	Risk Management Implications <b>YES</b>		

Date of meeting: 6 February 2018

## **CIVIL PENALTIES AND RENT REPAYMENT ORDERS – HOUSING AND PLANNING ACT 2016, HOUSING ACT 2004**

### **Summary**

The Housing and Planning Act 2016 introduced powers for the Council, as a local housing authority, to impose civil penalties as an alternative to prosecution for certain housing offences and extended the scope of rent repayment orders. This report outlines these powers and sets out proposals to use these powers as part of the Council's regulatory role.

### **Recommendation**

1. Cabinet recommend the approval of a Policy Statement in relation to civil penalties as an alternative to prosecution for certain housing offences (by virtue of the Housing and Planning Act 2016) as detailed in this report and **Appendix A** to Council
2. Cabinet recommend the use of rent repayment orders (Housing Act 2004 and Housing and Planning Act 2016) as detailed in the report to Council
3. The Corporate Enforcement Policy be amended to incorporate these changes
4. A Housing Regulation Policy incorporating Council decisions and the use of all housing duties and powers be brought forward in due course
5. To delegate to the Chief Executive in conjunction with the Portfolio Holder for Community responsibility to agree any necessary changes to the approach used in the exercise of these powers – within the constraints of the Housing and Planning Act 2016.

## **Reason for Decision**

To note the new powers placed upon the Council and adopt a Policy in relation to the power to impose penalty charges and rent repayment orders. The new powers in relation to penalty charges offer an alternative to lengthy and expensive prosecutions.

## **1 Background**

1.1 The Housing and Planning Act 2016 brought forward powers for the Council, as local housing authority, to impose civil penalties as an alternative to prosecution for certain housing offences. It also extended the use of rent repayment orders. When powers were introduced in the Housing and Planning Act 2016, Ministers made very clear they expected powers to be used robustly as a way of addressing issues caused by 'rogue landlords'.

1.2 Guidance has been issued by Department for Communities and Local Government about implementation. In order to implement charges, the Council must adopt a policy that has regard to Government Guidance.

1.3 Adopting a Policy Statement on Civil Penalties and the use of Rent Repayment Orders will mean additional enforcement options are available to the Council to help protect occupants and help ensure residents can live in safe homes.

1.4 The Council has previously adopted a policy to impose penalty charges in relation to smoke detectors and carbon monoxide alarms (12 January 2016)

1.5 In the overwhelming majority of cases, the Council has no need to intervene in relation to housing conditions in the private rented sector and matters are resolved between the tenant, landlord or lettings agent.

1.6 In a small minority of cases action is taken by the Council ranging from informal advice, service of a formal notice, undertaking works to remedy defects to prosecuting landlords.

1.7 The proposed introduction of the use of Civil Penalties and Rent Repayment Orders is not intended to increase the level of enforcement activity but to allow a greater range of enforcement tools that can be considered and applied to the worst offenders when informal and formal actions have failed to achieve compliance. There will be no negative impact on compliant landlords.

1.8 It is the Council's intention to encourage landlords to meet their obligations without the need to impose a Penalty Charge or Rent Repayment Order. However, the ability to impose such Charges is likely to be a deterrent and encourage compliance. It is intended that the use of penalty charges will provide greater certainty and speed than a prosecution route in dealing with serious housing offences.

## **2 Civil penalties**

2.1 The Council will be able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004 subject to adoption of a formal policy

- Failure to comply with a Statutory Improvement Notice (s30)

- A licence has not been obtained for a licensable House in Multiple Occupation (s72)
- Offences in relation to licensing of houses under Part 3 of the Act (s95) (if the Council adopted selective or additional licencing in the future)
- Contravention of an overcrowding notice (s139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (s234)

2.2 A penalty will only be imposed where the Council is satisfied that where there would be a realistic prospect of a conviction if we proceeded to prosecution. The criminal burden of proof, beyond all reasonable doubt, must be satisfied.

2.3 Where both a landlord and a letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution

2.4 The maximum penalty is £30,000. There is no minimum penalty level. In setting the level of a civil penalty the Council must have regard to Government Guidance and take into account the severity of the offence, culpability and track record of the offender, harm or potential harm caused to the tenant e.g. physical injury, damage to health, distress, punishment of the offender, to deter the offender from repeating the offence and/or to deter others from committing similar offences

2.5 The proposed Policy Statement in **Appendix A**, has been drafted having regard to the Corporate Enforcement Policy and the public interest considerations that govern the Regulatory Framework.

### **3 Use of Rent Repayment Orders**

3.1 Both the Council and tenants are able to apply to the First Tier Residential Property Tribunal for a Rent Repayment Order which can require a landlord to repay a specified amount of rent to the tenant or the Council (if Housing Benefit has been paid).

3.2 This power was introduced in Housing Act 2004 in relation to failing to obtain a licence for property that was required to be licenced and specific offences relating to the licensing of Houses in Multiple Occupation. The Housing and Planning Act 2016 has extended this to include failure to comply with an Improvement Notice, failure to comply with a Prohibition Order, breach of a Banning Order (yet to be introduced), use of violence to secure entry to a property and illegal eviction or harassment of the occupiers of a rental property

### **4 Appeals**

4.1 Landlords/ agents will have the right to oppose and appeal any Civil Penalty and Rent Repayment Orders through the independent external First Tier Residential Property Tribunal. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence or that the Courts have convicted the landlord of a relevant offence.

### **5 Policy Implications**

5.1 To impose a penalty charge the Council must prepare and adopt a formal policy. This is explained in the report and a proposed Policy Statement is included at

**Appendix A.** The Council must also approve the use of Rent Repayment Orders and the Corporate Enforcement Policy be amended to incorporate this.

5.2 A policy document needs to convey in what circumstances respective powers will be used. Each case should be decided individually.

5.3 A new housing regulation policy is under development and will cover the use of all housing enforcement options in one umbrella document. This policy will have regard to previous decisions of the Council and set out the Council's approach across the range of housing regulation in order to promote understanding and transparency.

## **6 Financial Implications**

6.1 Normal cost recovery mechanisms will be used.

6.2 The Council is permitted to retain any revenue from penalty charges with use being ring fenced to the Council's statutory functions in relation to private rented enforcement activities.

6.3 If Rent Repayment Orders are made, the rent may be paid to the tenant or the local housing authority. If the tenant paid the rent themselves then the rent may be repaid to the tenant. If rent was paid through Housing Benefit or through the Housing Element of Universal Credit, then the rent must be repaid to the local housing authority. If part benefit, part tenant payment, rent is paid on an equivalent basis. Any revenue paid to the Council must be used in statutory functions in relation to private rented enforcement activities.

## **7 Staffing Implications**

None.

## **8 Statutory Considerations**

8.1 The report relates to the introduction new powers introduced by the Housing and Planning Act 2016.

## **9 Equality Impact Assessment (EIA)**

9.1 The new regulations do not impact on any particular equality group in the West Norfolk area as they apply to all tenants in privately rented properties covered by the regulations.

## **10 Risk Management**

10.1 The Council could fail to deliver its regulatory role effectively if it didn't utilise powers designed to assist this function.

## **11 Background Papers**

- Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Authorities
- Rent repayment orders under the Housing and Planning Act 2016- Guidance for Local Authorities



## Pre-Screening Equality Impact Assessment

Name of policy/service/function	Civil Penalties and Rent Re-payment Orders				
Is this a new or existing policy/ service/function?	New				
Brief summary/description of the main aims of the policy/service/function being screened.  Please state if this policy/service rigidly constrained by statutory obligations	This policy is about the use of new powers to deter landlords from failing to meet minimum standards. The Council's role in housing regulation is primarily concerned with public protection.				
<b>Question</b>	<b>Answer</b>				
<p><b>1.</b> Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups <b>according to their different protected characteristic</b>, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
		Age		✓	
		Disability		✓	
		Gender		✓	
		Gender Re-assignment		✓	
		Marriage/civil partnership		✓	
		Pregnancy & maternity		✓	
		Race		✓	
		Religion or belief		✓	
		Sexual orientation		✓	
Other (eg low income)		✓			
<b>Question</b>	<b>Answer</b>	<b>Comments</b>			
<b>2.</b> Is the proposed policy/service likely to affect relations between certain equality communities or to damage relations between the equality communities and the Council, for example because it is seen as favouring a particular community or denying opportunities to another?	No				
<b>3.</b> Could this policy/service be perceived as impacting on communities differently?	No				
<b>4.</b> Is the policy/service specifically designed to tackle evidence of disadvantage or potential discrimination?	No				
<b>5.</b> Are any impacts identified above minor and if so, can these be eliminated or reduced by minor actions?  If yes, please agree actions with a member of the Corporate Equalities Working Group and list agreed actions in the comments section	No	<b>Actions:</b>			
		<b>Actions agreed by EWG member:</b> .....			
<b>Assessment completed by:</b> Name Duncan Hall					
Job title Housing Services Manager	Date				

**Please Note:** If there are any positive or negative impacts identified in question 1, or there any 'yes' responses to questions 2 – 4 a full impact assessment will be required.

## **Appendix A**

### **Civil penalties – Housing and Planning Act 2016**

#### **Policy Statement**

##### **1. Introduction**

This statement sets out the policy that the Borough Council of King's Lynn and West Norfolk (the council) will apply in exercising powers to impose a civil penalty as detailed in Housing and Planning Act 2016.

In line with the purpose of these new powers the Council will seek to use financial penalties as an alternative to a prosecution to avoid delay and legal costs. A case for prosecution could still be considered, however, it is likely in limited circumstances – for example in extreme cases, where the Courts can now impose unlimited fines.

The Act extended powers in relation to the use of Rent Repayment Orders, however, as any Rent Repayment Order (RRO) will need to be sought from a Residential Property Tribunal the first consideration will be the use of a civil penalty to avoid delay and uncertainty. The effectiveness of RRO will be monitored and their potential value to the authority kept under review.

##### **2. The Council's power to impose financial penalties.**

The Housing and Planning Act 2016 provides the enforcing authority, the Council, with a power to impose and charge a financial penalty in prescribed circumstances.

##### **3. The Scope of the document**

Government guidance requires the Council to prepare and publish a policy which it proposes to follow in determining the amount of a penalty charge.

This policy statement has been prepared in order to publish the principles that will be adopted in any circumstance that permits the imposition of a financial penalty.

The Council may revise its statement of principles and, where it does so, it will publish the revised statement.

Where a financial penalty is charged the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty.

##### **4. General principles applied to the imposition of a financial penalty.**

The primary purpose of the council's exercise of its regulatory powers is to protect the interests of the public.

The primary aim of any financial penalty will therefore be to:

- Change the behaviour of the landlord concerned.
- Deter future non-compliance by landlords.
- Eliminate any financial gain or benefit from non-compliance with the regulations.
- Be proportionate to the nature of the breach of the Regulations and the potential harm outcomes.

- Reimburse the cost incurred by the Council in undertaking work in default
- and, fulfilling its enforcement duties.

In determining the amount of any financial penalty to be charged the Council will consider:

- The extent to which the non-compliance was the result of direct acts or omissions of the landlord.
- Whether the non-compliance was deliberate or resulted from a matter of which the landlord should reasonably be aware.
- Whether any other body has or is likely to apply sanctions associated with the non-compliance.
- The level of cooperation provided by the landlord concerned.
- Any history of previous contraventions of the Regulations.
- The level of financial gain achieved by the non-compliance.
- The level of risk created by the non-compliance.
- The degree of responsibility held by the landlord for the noncompliance
- The cost incurred by the Council in enforcing the relevant provision.
- Any additional aggravating or mitigating factors that may warrant an increase or decrease in the financial penalty.

### **Level of Penalty**

The Council considers that in the interests of proportionality, a lesser penalty will be merited on the occasion of a first breach.

Having considered proportionality, the Corporate Enforcement Policy and the interests of better regulation, the Council considers that repeated breaches should attract a progressively higher penalty in light of a landlords continuing disregard for the legal requirements and tenant safety.

It is the Council's intention to encourage landlords to meet their obligations without the need to impose a Penalty Charge. However, the ability to impose such a Penalty Charge is likely to be a deterrent and encourage compliance.

Landlords can seek a review of a penalty charge notice. The Council will refer to this Policy Statement in these circumstances, and the review will be conducted by an officer not directly involved in the service of the original notice.

A penalty charge will be recoverable on the order of a court, as if payable under a court order.

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the Council review the penalty charge notice.

The Council must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice.

A landlord who is served with a notice confirming or varying a penalty charge notice may then appeal to the First Tier Tribunal against the local housing authority's decision.

### **Charging matrix for determining value of civil penalties**

The matrix set out below has been prepared in line with Government guidance, and will be used to help determine the value of the civil penalty

**APPENDIX 1- Financial Penalty Notice Matrix**

Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	Total
<b>1 - Deterrence &amp; Prevention (Pick only one box to the right)</b>	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrence.	Medium confidence that a financial penalty will deter repeat offending. Anonymised media communication will be required for mild deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender). Anonymised media communication will be required to prevent similar offending in the landlord community.	Little confidence that a financial penalty will deter repeat offending. Anonymised media communication will be required to prevent similar offending in the landlord community.	Very little confidence that a financial penalty will deter repeat offending. Anonymised media communication will be required to prevent similar offending in the landlord community.	
<b>2 - Removal of Financial Incentive (Pick only one box to the right)</b>	No significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender by committing the offence.	Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.	
<b>3 - Offence &amp; History (Pick only one box to the right)</b>	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offence of moderate to large severity or a single instance of a severe offence.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.	
<b>4 - Harm to Tenant(s) (Weighting x 2) (Pick only one box to the right)</b>	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	Likely some low level health/harm risk(s) to occupant. Tenant provides poor quality information on impact.	Likely moderate level health /harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants	Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants	Double score

	impact.	primary or secondary evidence.	more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.	exposed. Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).
<b>Final Total</b>				Add total of above here

Score Range	Fee
1 – 5	£250
6 – 10	£500
11 – 20	£750
21 – 30	£1,000
31 – 40	£2,500
41 – 50	£5,000
51 – 60	£10,000
61 – 70	£15,000
71 – 80	£20,000
81 – 90	£25,000
91 – 100	£30,000

Scoring regime –

- Each row should be scored in order with only one option being chosen for each row.
- All rows MUST be scored.
- Note the score in the Total column.
- Factor 4 - Harm to Tenants has an additional weighting, which will double the selected score.
  - In the final cell at the bottom of this column insert the final total.
  - The score should then be compared to the sliding scale of enforcement fee to be levied.