

Report of	Meeting	Date
Director (Communities) (Introduced by Executive Member (Early Intervention))	Executive Cabinet	Thursday, 12 October 2023

Civil Penalties Policy

Is this report confidential?	No
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Is this decision key?	No
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Purpose of the Report

1. To consider the proposal to implement a Civil Penalties Policy. The ability to impose a civil penalty notice is contained within The Housing and Planning Act 2016 (part 2 Rogue Landlords and Property Agents in England).

Recommendations to Executive Cabinet

2. Agree the proposed Civil Penalty Policy and Guidance Matrix for the use of civil penalties (Appendix A) and its inclusion into the Environmental Health Enforcement Policy.

Reasons for recommendations

3. The use of these powers will support and complement the work that the Council continues to deliver to tackle rogue landlords. The civil penalties and extension of the use of rent repayment orders, could be a powerful deterrent to rogue landlords through the enforcement of significant financial penalties.
4. The Housing and Planning Act 2016 ("the Act") introduced a new financial penalty regime in April 2017, permitting local authorities to impose a Civil Penalty of up to £30,000.

Other options considered and rejected

5. To not implement the policy would continue to limit the enforcement options available to regulatory offers and reduce the deterrents available to improve the compliance of landlords and subsequently the housing standards within the borough.

Corporate priorities

6. The report relates to the following corporate priorities:

Housing where residents can live well	A green and sustainable borough
An enterprising economy with vibrant local centres in urban and rural areas	Healthy, safe and engaged communities

Background to the report

7. The Housing and Planning Act 2016 sets out a range of measures that were introduced, designed to tackle rogue landlords. These included powers for local authorities to administer enforcement powers such as; Civil Penalties, Banning Orders for rogue landlords, extension of Rent Repayment Orders and a Rogue Landlord database. A financial penalty regime introduced in April 2017, permits local authorities to impose a Civil Penalty of up to £30,000.
8. The use of these powers will support and complement the work that the Council continues to deliver to tackle rogue landlords. The civil penalties and extension of the use of rent repayment orders could be a powerful deterrent to rogue landlord behaviour through the enforcement of significant financial penalties.
9. Chorley Council therefore proposes to implement a Civil Penalty Policy and Guidance Matrix which sets out the procedures to be followed when dealing with housing related issues, matters which need to be considered when taking enforcement action, and details on how civil penalties will be calculated in each individual case should a decision be made to issue a Civil Penalty.
10. The draft Civil Penalty Policy and Guidance Matrix set out in appendix A have been produced in line with statutory guidance and discussions with a number of local authorities across the country.
11. The civil penalties would range from £500 to £30,000 (the maximum permitted by the Act) as an alternative to prosecution depending on the individual circumstances of each case. In order to issue a civil penalty the same burden of proof is required as for a criminal prosecution. The imposition of a civil penalty could provide a way to deal with offences in a more straightforward and efficient manner without the need for criminal proceedings. Criminal proceedings would still be considered where serious breaches of legislation have occurred or reoccur.
12. While the decision to impose a civil penalty would be the responsibility of the Director of Communities & Leisure, the decision would be made following consultation with the Council's legal team as to whether the civil penalty would be appropriate.

Implementation of the Civil Penalties Policy

13. The Housing and Planning Act 2016 introduced civil penalties of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004. These changes were introduced on the 6th April 2017. It is necessary for the Council to agree a policy to begin to use these penalties.
14. The following offences can now attract civil penalties:

- Failure to comply with an Improvement Notice;
- Failure to comply with a Remedial Notice;
- Offences in relation to the licensing of Houses in Multiple Occupation;
- Offences of contravention of an Overcrowding Notice;
- Offences in relation to licensing of houses under selective licensing;
- Failure to comply with management regulations in respect of Houses in Multiple Occupation;
- Breach of duty under Regulation 3 of Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020;
- Breach of duty in relation to Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022.

15. The imposition of a Civil Penalty precludes the Council from pursuing a prosecution for the same offence. However, this will not reduce the amount of investigatory work as the Secretary of States guidance states that the same burden of proof required for a criminal prosecution is required for a civil penalty. It is the intention of the Council to use civil penalties in preference to prosecution in all cases.

16. The guidance issued by the Secretary of State requires each local authority to have a policy in relation to when civil penalties will be used and what level of penalties will be imposed. It is expected that the maximum amount, of £30,000 will be reserved for the worst offenders. The actual amount levied in any case should reflect the severity of the offence as well as the landlord's previous record of offending.

17. Non-payment of the civil penalty may be enforced through the County or High Court. The offender has the right of appeal to the First Tier Tribunal (Residential Property Tribunal), which has the power to confirm, vary, increase or reduce the amount of the penalty or cancel the civil penalty.

18. Section 8.1 of the guidance issued by the Secretary of State requires that income from civil penalties can be retained by the local authority provided it is used for further local authority statutory functions in relation to their enforcement activities covering the private rented sector.

19. The Civil Penalty Policy and Guidance Matrix has been created as a guide for enforcement officers to assist them in determining the level of fine. This will offer transparency and promote consistency in the enforcement process. Once approved the policy and matrix will be added to the existing Environmental Health Enforcement Policy.

Climate change and air quality

20. The work noted in this report has no known impact on the Council's carbon emissions and the wider climate emergency and sustainability targets of the Council.

Equality and diversity

21. There are no known impacts on individuals who have protected characteristics or impacts relating to equality themes.

Risk

22. By not implementing the policy the following risk categories could be impacted:
- Financial – loss of recuperation of costs in relation to enforcement
 - Reputational – lack of suitable enforcement sanctions to deal with rogue landlords
 - Strategic – lack of suitable strategic mechanisms to regulate housing standards

Comments of the Statutory Finance Officer

23. Due to the one-off, non-recurring nature of these penalties it is not proposed to create an income budget. Any income received will be monitored and reflected within the quarterly Corporate Revenue Monitoring reports. Should income become regular enough to constitute a recurring income stream, creation of a budget will be considered in future years budget setting, or in further reports.

Comments of the Monitoring Officer

24. The legal framework for the adoption and implementation of Civil Penalties is set out in the body of the report. The proposed approach and policy is compliant with the legislation.

Background documents

- Housing Act 2004
- Planning and Housing Act 2016
- Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities
- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

Appendices

Appendix A - Civil Penalty Policy and Guidance Matrix

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This decision will come into force and may be implemented five working days after its publication date, subject to being called in in accordance with the Council's Constitution.