

## **Executive Cabinet**

Thursday, 12th October 2023, 6.30 pm

Council Chamber, Town Hall, Chorley, and [YouTube](#)

### Agenda

#### **Apologies for absence**

- 1 **Minutes of meeting Wednesday, 13 September 2023 of Executive Cabinet**

(Pages 3 - 8)

- 2 **Declarations of Any Interests**

Members are reminded of their responsibility to declare any pecuniary interest in respect of matters contained in this agenda.

If you have a pecuniary interest you must withdraw from the meeting. Normally you should leave the room before the business starts to be discussed. You do, however, have the same right to speak as a member of the public and may remain in the room to enable you to exercise that right and then leave immediately. In either case you must not seek to improperly influence a decision on the matter.

- 3 **Public Questions**

Members of the public who have requested the opportunity to ask a question(s) on an item(s) on the agenda will have three minutes to put their question(s) to the respective Executive Member(s). Each member of the public will be allowed to ask one short supplementary question.

#### **Items of Executive Member (Early Intervention) (Introduced by Councillor Bev Murray)**

- 4 **Holiday Activities and Food Provision 2024-25 Procurement**

(Pages 9 - 16)

To receive and consider the report of the Director of Communities.

- 5 **Civil Penalties Policy**

(Pages 17 - 28)

To receive and consider the report of the Director of Communities.

- 6 **Any urgent business previously agreed with the Chair**

Chris Sinnott  
Chief Executive

Electronic agendas sent to Members of the Executive Cabinet Councillor Alistair Bradley (Chair), Councillor Peter Wilson (Vice-Chair) and Councillors Beverley Murray, Terry Howarth, Alistair Morwood, Margaret France and Adrian Lowe.

If you need this information in a different format, such as larger print or translation, please get in touch on 515151 or [chorley.gov.uk](http://chorley.gov.uk)

[To view the procedure for public questions/ speaking click here and scroll to page 119](#)

[To view the procedure for “call-in” of Executive Decisions click here](#)



as such the revised forecast outturn is for an overspend of £0.688m. The Council's Medium-Term Financial Strategy reported that the minimum level of general fund reserves should be maintained at £4.0m to cushion against any potential, future financial risks that may face the Council. Based on the above forecast overspend, the level of general fund balances as at 31 March 2024 will be £3.583m.

Members noted the challenges the council faces in relation to the 50% increase in utility costs and the overall implications of the pay award for 2023/24. Members queried the impact the additional support for Leisure Services could have on the general fund reserve if agreed at Council. It was agreed that this information would be provided to Members.

**Decision:**

- 1. To note the 2023/24 forecast outturn for revenue and the level of reserves, based on the position as at 31st July 2023.**
- 2. To note the virements made to and from the revenue budget during the period, as detailed in Appendix 2 of the report.**

**Reasons for recommendations:**

To ensure the Council's budgetary targets are achieved.

**Other options considered and rejected:**

None.

**23.EC.21 Capital and Balance Sheet Monitoring Report Q1**

Councillor Peter Wilson, Executive Member for Resources presented the report of the Director of Finance which outlines the outturn financial position of the Council in respect of the capital programme at 31 July 2023, highlighting key issues and explaining key variances, and to provide an overview of various elements of the Council's Balance Sheet at 31 July 2023.

The capital budget for 2023/24 was set at £21.103m at Council in February 2023. This was increased following approval of the 2022/23 outturn to £22.998m. Members noted the total cost of the Council's capital investment programme for 2023/24 has decreased since the 2022/23 outturn report approved by Executive Cabinet, from £22.998m to £18.191m as at 31st July 2023. Budgets variations approved since the last monitoring report have resulted in a total increase of £5.580m to the capital programme.

**Decision:**

- 1. To approve the revised capital programme as attached at Appendix A, which includes an amendment to the programme of £5.684m, as detailed at point 11 of this report.**
- 2. To note the variations to the programme (which are detailed by scheme at Appendix B and referenced within the body of the report);**
- 3. To note the position in the Balance Sheet monitoring section of the report, in respect of cash, investment and loan balances and debtors, at 31st July 2023.**

**Reasons for recommendations:**

To ensure the Council's Capital Programme is monitored effectively.

**Other options considered and rejected:**

None.

**23.EC.22 Chorley Quarter One Performance Monitoring Report 2023-24**

Councillor Peter Wilson, Executive Member for Resources presented the report of the Chief Executive which sets out the performance against the delivery of the Corporate Strategy and key performance indicators during the first quarter of 2023/24, covering 1 April 2023 to 30 June 2023.

The overall performance of the Corporate Strategy projects is excellent with 95% (18) classified as complete or green, meaning they are progressing according to schedule. One project (5%) has been rated amber, which provides an early warning sign of potential delays. An action plan for this project is contained within this report. Performance of the Corporate Strategy indicators and key service delivery measures continues to be closely monitored with 75% of Corporate Strategy measures and 100% of key service delivery measure performing on or above target within the 5% threshold.

With regards to the Leisure Centres, the Executive Cabinet recognised the work achieved by the council so far and were advised that the five-year plan was being reviewed given the significant challenges faced. Members welcomed proposals for the Overview and Scrutiny Committee to consider the Leisure Centres to ensure they are accessible and affordable for residents.

The Executive Cabinet also recognised the need to address issues with the number of young people not in education, employment, or training, which included working with partners.

**Decision:**

**That the report be noted.**

**Reasons for recommendations:**

To ensure the effective performance monitoring of the Corporate Strategy and safeguard its delivery across 2023/24.

**Other options considered and rejected:**

No other options have been considered or rejected. This is because the report does not present any items for decision.

**23.EC.23 Queens Road Car Park Enhancement Scheme - Procurement Strategy**

Councillor Peter Wilson, Executive Member for Resources presented the report of the Interim Deputy Chief Executive which seeks approval for the procurement strategy and delegate contract award for the Queens Road car park enhancement scheme.

Members noted that the procurement of the contract is being undertaken in accordance with Chorley Councils procurement regulations for high value contracts. The procurement and evaluation criteria proposed comprise a single stage open tender with suitability questionnaire 60% cost, 25% quality and 15% Social Value split.

Members welcomed the proposals and recognised the need for the improvement works to the car park, as well as protecting the local environment and enhancing the green space.

**Decision:**

- 1. To approve the procurement strategy and evaluation criteria for the enhancement works.**
- 2. To delegate the award of the contract for the Queens Road car park scheme to the Executive Member for Resources.**

**Reasons for recommendations:**

To provide a modern car parking facility for members of the public which maximises the use of space whilst providing an improved experience for visitors.

**Other options considered and rejected:**

To carry out no enhancement works and undertake essential maintenance such as patch repairing. This option was rejected due to the requirement for improved parking facilities, wider parking bays and current on-site hazards.

### **23.EC.24 Climate Change Business Accreditation**

Councillor Adrian Lowe, Executive Member for Customer, Streetscene and Environment presented the report of the Interim Deputy Chief Executive which provides an overview of the proposed climate change business accreditation scheme, including information on the financial costs and the feedback provided by the Climate Change Working Group. The report also seeks approval of the climate change business and accreditation scheme for publication and execution.

Members noted that the formation of a Climate Change Business Accreditation Scheme was an original action from Overview and Scrutiny Task Group. The accreditation scheme, to be titled 'Chorley Business Pathway to Net-Zero Accreditation' has been devised to allow all businesses to enter without focus on specific sectors or business size.

To ensure the scheme remains competitive and meaningful, only ten accreditations will be awarded per year. These will be awarded by an independent panel of five judges from different sectors and locations of employment. The current proposal for the scheme will allow for annual release and is currently estimated to have a low expenditure cost of ~£2000 per scheme run. The Executive Cabinet welcomed the proposals.

**Decision:**

**To approve the scheme for public release, associated spend and supported documentation.**

**Reasons for recommendations:**

As an additional method for the Council to support and raise awareness of businesses in the borough who are working above the expectation of their field to support in the mitigation of climate change and thus the council's overall ambitious goal to be net zero by 2030.

**Other options considered or rejected:**

To reject the scheme as it stands for review and changes.

**23.EC.25 Exclusion of the Public and Press**

**Decision: To exclude the press and public for the following items of business on the grounds they involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.**

**23.EC.26 Bengal St Depot Relocation - Procurement Strategy**

Councillor Peter Wilson, Executive Member for resources presented the confidential report of the Interim Deputy Chief Executive which provides an overview on the procurement requirements for enabling the progression of the Bengal Street Depot Relocation Project. The report also seeks approval of the procurement strategy and evaluation criteria and delegates the contract awards to the Executive Member for approval.

**Decision:**

- 1. To note and approve the procurement of the professional design team and contractor to deliver the new depot facility works at Common Bank (Ackhurst).**
- 2. To note and approve the procurement of demolition and remediation contractor for the Bengal Street Depot site.**
- 3. To delegate the approval of the procurement strategies to the Director of Governance for recommendation 2 & 3.**
- 4. To delegate the contract award decision for both the design team and contractors on both sites to the Executive Member for approval.**

**Reasons for recommendations:**

1. To ensure that the milestones and outputs on which the Brownfield Land Release Fund (BRLF) grant is secured are met.
2. To mitigate any risk to funding clawback on the Brownfield Land Release Fund.
3. To maintain progress with the development of the Bengal Street depot as a key gateway development site.
4. To future proof and provide an appropriate location for the Council's Streetscene depot.

**Other options considered and rejected:**

1. Do nothing – rejected as this will not deliver the Council's corporate objectives and put the BRLF funding to remediate the Bengal Street site for residential development at risk.
2. Several sites have been considered to re-locate the Bengal Street Depot site, but these have been dismissed on grounds that the sites are not suitable to facilitate all the requirements of a new facility.

Chair

Date

This page is intentionally left blank





Report of	Meeting	Date
Director (Communities) (Introduced by Executive Member (Early Intervention))	Executive Cabinet	12 <sup>th</sup> October 2023

**Holiday Activity and Food Programme 2023/24 Procurement**

Is this report confidential?	No
------------------------------	----

Is this decision key?	Yes
-----------------------	-----

<b>Savings or expenditure amounting to greater than £100,000</b>	Significant impact on 2 or more council wards
--	---

**Purpose of the Report**

1. To request approval to commence a procurement exercise for a contract to manage delivery of the HAF programme from 2024-25 and for up to 3 years (subject to funds being secured).
2. To request approval to receive funding from LCC and undertake the delivery of HAF 2024-25 following a successful procurement exercise.
3. To outline proposed service specifications of the contract.
4. To request approval for delegated authority pending the commencement of the procurement exercise that the Executive Member for Early Intervention be able to authorise the evaluation and awards criteria employed in the procurement exercise.
5. To request approval for delegated authority following the completion of the procurement exercise that the Executive Member for Early Intervention be able to authorise the award of the contract to the successful bidder.

**Recommendations to Executive Cabinet**

6. To approve the commencement of a procurement exercise for the management of the HAF programme from 2024-25, and for the following 2 years, subject to funding being secured for each year.
7. To grant approval to receive funding from LCC to undertake the delivery of HAF 2024-25 following a successful procurement exercise.
8. To accept the proposed service specifications and make any relevant recommendations.

- 9. To grant approval for delegated authority that the Executive Member for Early Intervention be able to authorise the evaluation and awards criteria employed in the procurement exercise.
- 10. To grant approval for delegated authority following the completion of the procurement exercise that the Executive Member for Early Intervention be able to authorise the award of the contract to the successful bidder.

**Reasons for recommendations**

- 11. Completing this procurement exercise will ensure that delivery of the HAF programme complies with the Council’s statutory procurement responsibilities.
- 12. Completing this procurement exercise will add value (as outlined within the report) for Chorley residents to the delivery of the HAF programme for up to 3 years.
- 13. Granting delegated authority for the Executive Member for Early Intervention to be able to authorise the evaluation and awards criteria pending the procurement exercise, and award of the contract to the successful bidder following a successful procurement exercise complies with the Council’s Contracts Procedure Rules (5.4 – 5.6).
- 14. Granting delegated authority for the Executive Member for Early Intervention to be able to authorise the award of the contract to the successful bidder will expedite the approvals process and enable contract mobilisation to begin.

**Other options considered and rejected**

- 15. To not complete a procurement exercise would put the HAF programme delivery 2024/25 at risk of non-compliance with the council’s statutory procurement responsibilities.

**Corporate priorities**

- 16. 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	<b>Healthy, safe and engaged communities</b>

**Background to the report**

- 17. The HAF programme was rolled out to upper-tier local authorities in 2021 to provide children eligible for free school meals (and other identified vulnerabilities) access to support through the school holiday periods.
- 18. Cost of living challenges make these children less likely to have access to nutritious meals, organised activity and social inclusion activity. The programme aims to provide structured, consistent and easy to access to enriching activity that includes access to a nutritious meal.

**Rationale**

19. Chorley has 2,727 children aged 4-16 receiving free school meals. The HAF programme helps to address child food poverty by providing free activity and meals for children during the school holidays, supporting many families who struggle during this time.
20. In line with national HAF requirements, 2024-25 delivery of activities will be one week during Easter holidays, four weeks over the summer holidays and one week at Christmas. The funding will cover a minimum of four hours of activities each day, four days a week. Food must be provided for all children and young people who participate.
21. The intended outcomes for the Lancashire HAF activities are for children who attend the provision to:
  - Eat more healthily over the school holidays
  - Be more active during the school holidays
  - Take part in engaging and enriching activities which support the development of resilience, character, and wellbeing along with their wider educational attainment
  - Be safe and not socially isolated
  - Have a greater knowledge of health and nutrition
  - Be more engaged with school and other local services.
22. The target for the programme in 2023-24 is to support 25% of the borough's 2,727 children on benefits-related, free school meals (FSM) per day, 682 in total. A discretionary 15% of these places can be allocated to children who are not FSM eligible but are identified by their education setting as having additional vulnerabilities or needs.
23. HAF 2023-24 summer delivery has been successfully completed. The total HAF funded attendees engaged over the summer holiday period is 1,409 (this total does not take into account how many sessions these individuals accessed each). There were 10,896 places secured for this delivery period, of which 10,728 spaces were booked and 8,819 places were filled (i.e. the booking was attended). This is an attendance rate of 82% and underscores a very successful delivery period.
24. Chorley Council has managed delivery of the HAF programme in 2022-23 and 2023-24. A model has been employed that has commissioned Chorley Inspire Youth Zone to coordinate the day-to-day delivery of the programme. Chorley Inspire Youth Zone have been instrumental in the success of the programme; forging stronger links with schools and families, applying their knowledge and relationships within youth provision networks, and utilising their existing infrastructure to respond to emerging demands.
25. Where the benefit of commissioning Chorley Inspire Youth Zone to coordinate the delivery of the HAF programme is clear, it has been identified as the programme has progressed that there is scope to provide additional value to Chorley residents, the VCFS sector and wider economy. By contracting a provider to undertake full management of the HAF programme - encompassing additional responsibilities, allocating specific resource, and committing to developing the programme beyond the DfE programme standards, the successful provider can contribute to the delivery key council priorities for its residents.

- 26. Council resource will then be allocated to oversee and manage this contract through regular contract management meetings with the successful provider to ensure deliverables are being met.
- 27. Completing this procurement exercise will ensure that delivery of the HAF programme complies with the Council’s statutory procurement responsibilities.

**Proposed Approach**

- 28. Where there are specific outputs and outcomes that will need to be included within the contract specifications to ensure programme delivery is aligned with DfE programme standards, opportunities have emerged over preceding years of HAF delivery to add additional value to the programme. These considerations have been captured in the table below:

Measure	Benefit
Developing the booking system to introduce booking codes	Develop a commitment to safeguarding spaces for eligible children (FSM eligible, identified vulnerabilities, SEND) to allow the programme to be communicated confidently across the schools’ network, and exploring other engagement opportunities, to ensure maximised reach across eligible households.
Invest in recruitment of a Chorley HAF Programme Coordinator	Coordination costs will not be absorbed into existing staffing costs to ensure an appropriate level of resource is allocated to programme delivery.
Better links to wider support	HAF provides a tangible link to families that could benefit from additional support through a broad range of support pathways. Partnerships could be developed (supported by Chorley Council) to create opportunities for parents to explore and engage with these support pathways.
Community embedded delivery structure	The successful provider must work in partnership with local charities, CICs, social enterprises and businesses to deliver a programme that is well embedded in the communities it services and benefits the wider local economy.
Demonstrate prior knowledge	A successful provider that has prior knowledge of local young people and family’s networks, partnerships, provision and education settings will be much better situated to mobilise delivery of the programme in an agile manner and provide the best experience for Chorley residents.
Green delivery	The food and drink element particularly of the HAF programme generates a lot of plastic waste. The successful providers will be required to consider alternative solutions to provide the food and drink element of the programme in a more sustainable and responsible way.
Volunteering and Time Credits	Embedding volunteering and time credits into the programme provides opportunity for young people and their families who may be experiencing multiple vulnerabilities to benefit from the virtuous cycle of

	volunteering, and the health and wellbeing improving opportunities that earning time credits can provide. The successful provider should have demonstrable experience of managing high quality volunteering programmes.
--	---

### Finance

29. While the level of funding for 2024-25 has not yet been confirmed it is expected to be similar to the level of funding for 2023-24, £288,622, meaning the potential value of the contract over a possible 3 years would be likely to exceed £865,866. Of the total amount of funding allocated for Chorley HAF in 2023/24, 10% of this is allocated to resource the council's coordination of the programme, with 90% used for delivery, as per the grant agreement. It is proposed that this 10% continue to be allocated to Chorley Council to support the continued management of the contract, subject to the grant agreement with LCC.
30. Following approval at Executive Cabinet, a high value procurement exercise will be employed with the intention to secure a successful provider by February 2024, for mobilisation of the contract and delivery of the HAF programme in April 2024.
31. Following approval at SSMT on 20<sup>th</sup> September 2023, approval will be sought by Council to receive funds for the HAF 2024-25 programme.

### Climate change and air quality

32. The work noted in this report has an overall positive impact on the Councils Carbon emissions and the wider Climate Emergency and sustainability targets of the Council.
33. In particular the report impacts on the following activities:
  - a. net carbon zero by 2030,
  - b. energy use / renewable energy sources
  - c. **waste and the use of single use plastics**,
  - d. sustainable forms of transport,
  - e. air quality,
  - f. flooding risks,
  - g. green areas and biodiversity.
34. The following mitigation measures have been undertaken to limit the environmental impact: the successful provider will be contractually obligated to consider alternative approaches to delivery of the food and drink element of the HAF programme with specific intent to reduce or remove single use plastics.

### Equality and diversity

35. Under the contract and in the delivery of the service, the Council will require the successful provider's compliance with its policies and statutory requirements including Equality and Diversity.

### Risk

36. Completing this procurement exercise will ensure that delivery of the HAF programme complies with the Council's statutory procurement responsibilities.

37. The terms of the contract will stipulate that delivery timescale of the contract is subject to funding being secured from LCC.
38. The contract will stipulate that the successful provider will have financial reserves to a minimum of £300,000 to ensure the programme can be delivered should funding be delayed.
39. The contract will be managed by an allocated officer to ensure deliverables are being met and to safeguard against reputational harm to the council.
40. Below are some of the risks that are associated with the programme. However, as we have delivered the programme successfully in 2022 and 2023, commencement of the procurement exercise will take place in a timely manner following approvals, and the contract specifications have been written by, and will be managed by allocated officers with HAF programme delivery experience, these risks have been managed appropriately:
  - Ability to deliver Easter programme if all approvals, contracts, and agreements do not stay within planned timescales to allow for contract mobilisation to take place.
  - Activity delivery partners capacity diminishes due to unforeseen circumstances within their organisations.
  - Poor uptake on the programme from FSM children
  - Programme will provide activity provision for approx. 25% of FSM children – additional support may be required depending on uptake and need (although we do have very strong support networks in place in relation to emergency food provision)

#### **Comments of the Statutory Finance Officer**

41. This report seeks approval to undertake a procurement exercise for a contract to manage the HAF delivery programme in 2024/25, and potentially for 2025/26 and 2026/27, depending on confirmation of funding.
42. The HAF grant allocation for 2023/24 is £288,622 and it is anticipated that the grant allocation from 2024/25 through to 2026/27 will be similar. It is to be noted that HAF funding beyond 2023/24 has not been confirmed; if funding is not confirmed then the contract will not proceed.

#### **Comments of the Monitoring Officer**

43. The proposal is to seek authority to commence a compliant procurement exercise for the delivery of the HAF programme for 3 years commencing 2024/2025 (this is subject to the requisite funds coming through). Clearly it makes great practical sense to try and sort out a partner for this scheme for the next three years. There are no concerns with what is proposed from a Monitoring Officer perspective.

#### **Background documents**

There are no background papers to this report

#### **Appendices**

There are no Appendices for this report.

Report Author:	Email:	Telephone:	Date:
Laura Hendi (Senior Community Engagement Officer)	Laura.Hendi@chorley.gov.uk		

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.

This page is intentionally left blank





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
------------------------------	----

Is this decision key?	No
-----------------------	----

### 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:

<b>Housing where residents can live well</b>	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

Report Author:	Email:	Telephone:	Date:
Laura-Jean Taylor (Head of Public Protection)	Laura-Jean.Taylor@chorley.gov.uk		26.09.23

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.

**Appendix A - Civil Penalty Policy and Guidance Matrix****Policy and Matrix for the use of Civil Penalties****Introduction**

The Housing and Planning Act 2016 introduces Civil Penalties of up to £30,000 as an alternative to prosecution for certain Housing Act 2004 offences from 6th April 2017.

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

These are:

- Section 30 failure to comply with an Improvement Notice
- Section 72 offences in relation to licensing of Houses in Multiple Occupation (HMO)
- Section 95 offences in relation to licensing of houses under part 3 (Selective Licensing)
- Section 139(7) failure to comply with an overcrowding notice
- Section 123 failure to comply with a Remedial Notice in relation to electrical safety standards
- Section 234 Management Regulations in respect of HMOs

Furthermore:

- 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

In determining the Civil Penalty amount the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and the Civil Penalty Matrix developed by the Department for Communities and Local Government.

**Burden of Proof**

The criminal burden of proof, beyond all reasonable doubt, must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Local Housing Authority must satisfy itself that there would be a realistic prospect of conviction, applied objectively, to the evidence available.

In assessing the evidence regard must be given to the Code for Crown Prosecutors and when deciding whether there is sufficient evidence to prosecute consideration must be given as to whether the evidence can be used and is reliable.

Due regard must be given to any potential defences available and in certain circumstances the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

### **Factors to consider when determining to prosecute or issue a civil penalty**

Each case will be determined on its own merits taking into account all available evidence.

Prosecution is likely to be the most appropriate action where the offence is particularly serious and/or where the landlord has a history of non-compliance in relation to property condition or property management.

The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty:

- The offender has no evidence of previous non-compliance with appropriate legislation
- The offender has no previous convictions recorded
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- The offender's co-operation is beyond what would be expected
- The offender took prompt action to remedy the deficiency i.e. excessive follow up not required.

### **Factors to consider when determining the level of civil penalty**

The actual amount levied in each individual case should reflect the severity of the offence, as well as the landlord's previous record of offending.

The Council should consider the following factors to help ensure the civil penalty is set at an appropriate level:

- Severity of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- Punishment of the offender for the offence
- The deterrent from repeating the offence
- The deterrent for others committing similar offences
- Removing any financial benefit obtained from committing the offence

These factors are reflected in the financial penalty matrix which helps officers to determine the level of fine that should be imposed by creating a score and band for each case.

**Financial Penalty Matrix**

Officers should first determine the severity of the offence by consulting and determining the harm and culpability categories.

**Examples of Harm Categories**

The table below contains factors relating to both actual harm and risk of harm.

<p>Category 1 - High</p>	<p>Serious adverse effect on individuals and/or having a widespread impact.</p> <p>High risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Housing defect giving rise to the offence poses an imminent or serious and substantial risk of harm to the occupants and/or visitors, for example Housing Health and Safety Rating System (HHSRS) imminent category 1 hazards such as danger of electrocution, carbon monoxide poisoning, serious fire safety risk or excess cold with vulnerable resident.</p>
<p>Category 2 - Medium</p>	<p>Adverse effect on individuals</p> <p>Medium risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Tenant misled/disadvantaged by the failing.</p> <p>The housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example HHSRS category 1 hazards, multiple high category 2 hazards such as falls between levels, excess cold, asbestos exposure.</p>
<p>Category 3 - Low</p>	<p>Low risk of an adverse effect on individuals</p> <p>The housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors, for example low category 2 hazards under the HHSRS, localised damp and mould.</p>



**Examples of Culpability Categories**

<p>Very High (Deliberate Act)</p>	<p>Where the offender intentionally breached, or flagrantly disregarded, the law.</p> <p>For example, the offender has ignored reminders to apply for a property or HMO licence. Failure to comply with a correctly served improvement notice. No attempt made to contact the local authority to discuss breaches.</p>
<p>High (Reckless Act)</p>	<p>Actual foresight of or wilful blindness to the risk of offending but risks nevertheless taken by the landlord or property agent, for example failure to comply with HMO Management Regulations.</p>
<p>Medium (Negligent Act)</p>	<p>Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems that prevent the offence being committed, for example part compliance with a schedule of works but failure to fully complete all schedule items within notice timescale, Another example would be partially completed licensing application forms.</p>
<p>Low (Low or no culpability)</p>	<p>Offence committed with little or no fault on the part of the landlord or property agent, for example significant efforts were made to address the risk but they were obstructed by the tenant to allow contractor access or damage caused by tenants. Failings were minor and occurred as an isolated incident such as low category 2 hazards under the HHSRS found in one property from a large portfolio.</p>

Having determined the category, the Officers should refer to the following starting points to reach a penalty band. Officers should then consider whether further adjustments should be made for aggravating and mitigating features.

**Starting points**

Culpability	Harm category 1	Harm category 2	Harm category 3
Very high	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

**Banding Levels**

Band 1	£0 to £4,999
Band 2	£5,000 to £9,999
Band 3	£10,000 to £14,999
Band 4	£15,000 to £19,999
Band 5	£20,000 to £24,999
Band 6	£25,000 to £30,000

The starting point for each band will be the mid-point e.g. for Band 1 the mid-point will be £2,500.

An offender will be assumed to be able to pay any financial penalty imposed unless they can demonstrate otherwise.

**Aggravating Factors**

The penalty can be increased by £1000 for each aggravating factor up to a maximum of £5000.

The factors listed below are a non-exhaustive list of factual elements that should result in an upward adjustment from the starting point:

- Relevant previous conviction/civil penalties
- Motivated by financial gain
- Failure to respond to warning
- Deliberate concealment of illegal nature of activity
- Obstruction of investigation
- Falsification of documentation
- Targeting vulnerable groups
- Poor housing record

**Mitigating Factors**

The penalty can be decreased by £1000 for each mitigating factor up to a maximum of £5000.

The factors listed below are a non-exhaustive list of factual elements that should result in a downward adjustment from the starting point:

- No previous relevant convictions or no relevant housing enforcement history.
- Evidence of steps taken voluntarily to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good housing record
- Self-reporting, co-operation and acceptance of responsibility.

This page is intentionally left blank