
REPORT FOR: CABINET

Date of Meeting:	7 December 2017
Subject:	Introduction of New Enforcement Powers under the Housing and Planning Act 2016
Key Decision:	Yes
Responsible Officer:	Simon Baxter, Divisional Director of Environment and Culture
Portfolio Holder:	Councillor Graham Henson, Portfolio Holder for Environment
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix 1 – Fee Matrix Appendix 2 – Guide to Applying the Civil Penalties Fee Matrix Appendix 3 – EQIA

Section 1 – Summary and Recommendations

In April of this year The Housing Act 2004 was amended by the Housing and Planning Act 2016. The 2016 Act introduced a range of measures to crack down on rogue landlords including the introduction of civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

The use of civil penalties gives the Council another means to address those

landlords who seek to manipulate or ignore the legislation and provide substandard, non-compliant and / or unsafe residential properties.

The legislation requires that these civil penalties level charged is on a case by case basis rather than having a fixed fee. Harrow, in line with other Local Authorities introducing these penalties, intends to address this by creating a charging matrix.

Recommendations:

Cabinet is requested to:

1. Agree that the Council adopts the new enforcement powers against rogue landlords and Letting Agents contained within the Housing Act 2004 as amended by the Housing and Planning Act 2016
2. To agree the charge levels for the enforcement of Civil Penalty notices for relevant Housing Act 2004 offences as set out in Appendix 1
3. Agree that the revenue arising from Civil Penalties and Rent Repayment Orders will be reinvested within Community & Public Protection Service to further regulate and improve the private rented sector as set out in Regulation 4 of the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017
4. Agree the amended Private Sector Housing Enforcement Policy which now includes the new aspects introduced by the Housing and Planning Act 2016
5. Delegate to the Director of Environment and Culture, following consultation with the Portfolio Holder for Environment all powers to issue, use, amend and enforce civil penalties and all other enforcement powers under the Housing Act 2004 (as amended) and the Housing and Planning Act 2016 (and subsequent Regulations and Orders) as well as policies and procedures related thus.

Reason: (For recommendation)

To introduce new powers of the Housing Act 2004 as amended by the Housing and Planning Act 2016

Section 2 – Report

1. Background

Civil Penalties

- 1.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences.
- 1.2 The same criminal standard of proof is required for a civil penalty as for prosecution. Where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.
- 1.3 Before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.
- 1.4 The list of offences that that may be dealt with under the Housing Act 2004 by way of a financial penalty are as follows:
 - Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of Houses in Multiple Occupation (Part 2 section 72); this relates to mandatory Licensing that is currently undertaken in Harrow
 - Failure to Licence
 - Failure to comply with Licence conditions
 - Offences in relation to licensing of houses under Part 3 of the Act (section 95); relates to selective licensing not currently adopted in Cambridge)
 - Offences of contravention of an overcrowding notice (section 139)
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).
 - Breaching a Banning Order (section 23 of the Housing and Planning Act)
- 1.5 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.
- 1.6 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents when this made available for local authority use.

When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

- 1.7 When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made it very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.
- 1.8 In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:
- “[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000”
- “It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”
- In view of this the fee Matrix has been designed to allow for the worst offences or repeat offences to receive the maximum penalty. The Private Sector Housing Enforcement Policy has been updated to cover the use of Civil Penalties and the use of the Matrix
- 1.9 It is the responsibility of the individual authority to decide the financial penalty, the penalty must be relevant to the particular offence that has been committed meaning there will be variations and a single fee cannot be set. In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil Penalties under the Housing and Planning Act 2016
- 1.10 To ensure that there is clarity and the Council can demonstrate fairness within the process a Matrix system has been designed (**Appendix 1**) that will allow a penalty charge to be made in line with the level of the offence. In creating the Matrix levels of fines achieved during prosecution cases and costs to the Council awarded in these cases was taken into consideration. The Matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty the council must consider:
- Severity of the offence.
 - Culpability and track record of the offender
 - The harm caused to the tenant.
 - Punishment of the offender.
 - Deterring the offender from repeating the offence
 - Deterring others from committing similar offences.
 - Removing any financial benefit the offender may have obtained as a result of committing the offence.
- 1.11 The Matrix has been designed taking into account those used by other Local Authorities and in line with Statutory Guidance. This is to seek a consistent approach across Local Authorities
- 1.12 The introduction of imposing financial penalties as an alternative to prosecution will mean in suitable cases the process of enforcement action will be faster. The use of a Civil Penalty Notice does not prevent the council from carrying out works in default. A financial penalty notice cannot be served when enforcement action has been taken already for the offence. The Council may withdraw a civil penalty notice, but should one be issued and paid then prosecution cannot be taken for the same offence.
- 1.13 The guidance requires that we deter offenders from repeat offending. With this in mind the charge is doubled for a second offence and doubled again if more than one hazard, breach

of regulations or licence condition was on the notice or Management Regulations letter that had not been complied with.

- 1.14 If a third offence is committed the charge is set within an incremental range allowing for the most serious repeat offenders to receive the maximum fine of £30,000. Calculating the charge in this way takes into account the principals set out within the guidance and in line with the enforcement policy, whilst ensuring that it will always be a higher charge than for previous offences.

Banning Orders

- 1.15 Under the new powers, if a person is convicted of an offence that is set out within the legislation and guidance as applicable, a banning order can be sought in the First Tier Property Tribunal. A “Banning Order” prevents any person subject to a ban from letting housing and engaging in letting agency or management work in England. Banning orders should be considered for the most serious offenders.
- 1.16 The penalty for breaching a Banning Order, upon summary conviction, is either a fine, or possible imprisonment for a period not exceeding 51 weeks or both

Rent Repayment Orders

- 1.17 The Housing Act 2004 introduced Rent Repayment Orders (RRO) to recover Housing Benefit / Universal Credit that was paid to landlords convicted of running unlicensed properties. The Housing and Planning Act 2016 places a new obligation on Local Authorities to give consideration to seeking a RRO following conviction for certain offences and increases the number of offences this relates to. These offences include:
- Using violence for securing entry
 - Eviction or harassment of occupiers
 - Failure to comply with an improvement notice
 - Failure to comply with a prohibition notice
 - Failure to licence or be licensed in respect of an HMO
 - Failure to licence or be licensed in respect of the Landlords Selective Licensing Scheme
 - Breach of a Banning Order

Rogue Landlord Database

- 1.16 The Secretary of State is introducing a database to enable all Local Authorities to record information about, and target enforcement action against, any landlord or property agent who has:
- Received a banning order
 - Been convicted of a banning order offence
 - Received 2 or more civil penalties over a 12 month period
- 1.17 The legislation requires the Local Authority to place this information on the database
- 1.18 Harrow is currently part of a London Wide Greater London Authority (GLA) private rented housing enforcement group working to have a London database scheme sitting under the GLA that feeds into this national scheme.

- 1.19 Initially a date of October 2017 was set for the database to be live nationally, but it is still undergoing discussions and trials with certain local authorities.

Policy and Procedure

- 1.20 In line with the above new changes, the Private Rented Sector Housing Enforcement Policy will be amended to include reference to all the above aspects. This will be carried out through previous delegation issued by Cabinet on its introduction originally.
- 1.21 Consideration has been given to other Local Authorities who have introduced these schemes already and the guidance issued by them. Additionally, work through the GLA has contributed through the setting up of a private rented sector enforcement group, consisting of all London Boroughs, that enables the discussion of, and consistent approach to, enforcement matters..

2. Options considered

- 2.1 The introduction of the new powers will supplement and enhance the existing powers and, for example, the Council will retain the option to prosecute landlords for the worst offences. The new powers allow a more timely and visible sanction against those who have breached legislation. For this reason, and for the reasons outlined above, the introduction of the new Housing and Planning Act powers is the most appropriate option.

3. Consultation

- 5.1 The legislation does not require any consultation to take place to introduce the powers set out above

4. Implications of the Recommendation

Resources

- 4.1 There are no staffing issues identified from introducing these changes
- 4.2 The introduction of the civil penalties provides a further option to enforcement officers that can be more time and cost effective than prosecutions for those cases not deemed to be of such a serious nature or persistent to warrant prosecution.

Performance Issues

- 4.3 No performance issues identified

Environmental Implications

- 4.4 No Environmental implications

Risk Management Implications

- 4.5 This scheme does not feature in the Directorate or any other corporate risk register.

5. Legal Implications

- 5.1 Section 126 of the Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act
- 5.2 Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are as set out in paragraph 1.4
- 5.3 The Act also sets out a number of other steps that may be taken by the Council to tackling landlords who do not comply with the law and improving the private rented sector including Banning Orders, Rent Repayment Orders and the Rogue Landlord Database.

6. Financial Implications

- 6.1 Income received from a civil penalty can be retained by the local housing authority provided that it is used to further enhance the local authority's statutory function in relation to their enforcement activities covering the private rented sector, as specified in the Regulations.
- 6.2 As with any enforcement activity, no income target is to be set as the nature of enforcement is to change culture not to raise income. The income level is expected to reduce once the legislations are better complied with by landlords. Any income raised will be used to reduce the costs of enforcement within Public Protection Services.

7. Equalities implications / Public Sector Equality Duty

- 7.1 Pursuant to section 149 of the Equality Act 2010 ("the Act"), the council, in the exercise of its functions, has to have 'due regard' to (i) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (ii) advancing equality of opportunity between those with a relevant protected characteristic and those without; and (iii) fostering good relations between those who have a relevant protected characteristic and those without.
- 7.2 The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.
- 7.3 In line with this, an Equalities Impact Assessment (EqIA) has been conducted and took into account the consultation feedback. The EqIA can be found in **Appendix 3** and to summarise, found that no group would be adversely impacted by the introduction of this scheme.

8. Council Priorities

The Council's vision:

Working Together to Make a Difference for Harrow

The introduction of the powers under the Housing and Planning Act 2016, in particular the civil penalties, will aid in improving standards throughout the private rented sector in Harrow

Making a difference to communities:

Fundamentally links to improving the rented sector standards.

Making a difference to the most vulnerable:

By putting in place another approach to ensuring a minimum standard of housing, especially in terms of safety aspects, it aids in protecting those that may be considered vulnerable in the private sector housing market.

Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 27 November 2017		
Name: Isha Prince	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 27 November 2017		
Ward Councillors notified:	No	
EqIA carried out:	YES	
EqIA cleared by:	David Corby, DETG Chair Community Directorate	

Section 4 - Contact Details and Background Papers

Contact: Richard Le-Brun, Head of Community and Public Protection, 020 8424 6267, Richard.lebrun@harrow.gov.uk

Background Papers:

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

<https://www.gov.uk/government/news/tougher-measures-to-target-rogue-landlords>

**Call-In Waived by the
Chairman of Overview and
Scrutiny Committee**

NOT APPLICABLE

[Call-in applies]