

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 20th November 2017

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WARD(S): All

PORTFOLIO: Councillor Mohammed Nazir, Cabinet Member for Housing

PART I **KEY DECISION**

FINANCIAL PENALTIES AS AN ALTERNATIVE TO PROSECUTION FOR CERTAIN OFFENCES UNDER THE HOUSING ACT 2004- SECTION 126 OF THE HOUSING AND PLANNING ACT 2016

1 Purpose of Report

The report sets out the details of the above legislation which gives Local Authorities the discretion to issue Financial Penalties as an alternative to prosecution for specific offences under the Housing Act 2004. The report seeks authorisation of officers to implement the new legislation and approval on the policy and protocol for deciding the level of penalty charges to be imposed in each case. The new legislation will allow the local authority to be more flexible in their approach to dealing with breaches of Housing Legislation and provides an alternative sanction to the resource intensive process of criminal prosecutions.

2 Recommendation(s)/Proposed Action

The Cabinet is requested to resolve that:

- (a) The Neighbourhood Services Lead, Resilience and Enforcement Neighbourhood Manager, Housing Regulation Manager and Housing Regulation Officers be given delegated authority to implement the new legislative provisions within Section 126 and Schedule 9 of the Housing and Planning Act 2016
- (b) The Policy and Protocol for issuing civil penalties up to a maximum of £30,000 for offences under the Housing Act 2004 be approved. The Policy is required by paragraphs 3.3 and 3.5 of the Government's Statutory Guidance 'Civil Penalties under the housing Act- Guidance for Local Authorities' and sets out how the Local Authority will determine whether to issue a civil penalty or prosecute for relevant offences; as well as how the level of civil penalty will be determined.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The Department of Health publication; "*Improving outcomes and supporting transparency*" entitled¹: **Part 1A: A public health outcomes framework for England, 2013-2016** has recognised housing as a key determinant of health. This

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https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiP7JPu2_nLAhWHWhQKHT6hBLwQFgghMAA&url=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F263658%2F2901502_PHOF_Improving_Outcomes_PT1A_v1_1

document and subsequent policy directives compel Local Housing Authorities to improve health and wellbeing through better housing. There is a general consensus that through better housing significant savings will be achieved in health and social care costs.

The 2016 JSNA highlighted a number of areas where the health of people in Slough is worse than the UK average. A number of these areas have been linked to inadequate or poor housing conditions. These areas include:

- Early deaths from stroke and heart disease- damp and cold homes have been linked to an increased risk from respiratory and cardiac conditions and in turn to excess winter deaths.
- Rate of hip fractures- Falls are most likely to occur in the home. Disrepair in residential properties for example to floors, stairs and handrails can increase the risk of falls on level surfaces, stairs and those associated with baths and showers
- Rates of T.B. which are almost 4 times the UK average- TB and other infectious diseases can spread more easily where conditions are overcrowded and/ or unsanitary.

Utilising the power to issue civil penalties will allow the Local Authority to contribute to addressing these inequalities by increasing the financial risk to landlords of not maintaining their properties and ultimately an improvement in housing conditions across the borough.

3a. **Slough Joint Wellbeing Strategy Priorities**

Housing is one of the 4 priority areas in the Joint wellbeing strategy. It states ‘the links between housing and wellbeing are well documented – where people live can have a significant impact on the quality of their lives. There are strong evidential links between the quality of someone’s home and their life chances – including educational attainment for children and young people, employment prospects, social participation and sense of belonging to a local community’

The Joint Wellbeing strategy for Slough specifically mentions damp and mould, lack of heating and overcrowding as key issues affecting the physical and psychological health of the residents of Slough. All of these matters are hazards which can be addressed using the Housing Health and Safety Rating System and the enforcement tools within the Housing Act 2004. Where a landlord fails to comply with an Improvement Notice requiring any of these hazards to be addressed they can be issued with a civil penalty under the new powers.

Through the use of civil penalties the Local Authority can therefore incentivise landlords to improve their properties by ensuring that it is always cheaper and more beneficial to maintain and improve their properties than it is to fail to comply with legal requirements.

3b Five Year Plan Outcomes

Using civil penalties to encourage landlords to maintain and manage their properties is consistent with objective four of Slough's Five Year Plan which states 'Our residents will have access to good quality homes'.

The Five year plan refers to 'robust regulation of the private sector' as a key action in achieving this objective. The power to issue civil penalties for certain Housing Act offences provides the Local Authority with an additional regulatory tool to hold irresponsible and rogue landlords to account.

The power to issue civil penalties gives the Local Authority the flexibility to ensure that the sanction imposed on the offender reflects the severity of the offence committed and that it removes any benefit the landlord may have achieved by failing to comply. It should not be cheaper to offend than to ensure a property is well maintained and managed.

By improving the management of privately rented accommodation and therefore reducing the associated crime and anti-social behaviour associated with poorly managed properties, the use of civil penalties will also contribute to objective 3 of the five year plan.

4 Other Implications

(a) Financial

Civil penalties are an alternative to prosecution with the same burden of proof and therefore they should not create a significant additional workload. However, there will be an additional administrative burden associated with issuing with the penalties and dealing with the representations arising from them. Furthermore, landlords are highly likely to appeal to the Residential Property Tribunal which will create an additional demand on resources.

Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

(b) Risk Management

Risk	Mitigating action	Opportunities
Legal: No specific risk but may increase the need for legal support as a result of appeals against the Civil penalties.	The level of penalty charge would cover the cost of implementing the legislation. Implementation of the legislation and the accompanying policy will be kept under review to ensure it remains effective.	To divert resources away from time consuming and expensive Criminal Prosecution cases. To improve overall compliance of Private Sector Landlords with relevant Act's and Statutory Instruments therefore improving conditions in private sector accommodation.

Property: N/A	None	Improve conditions within the private rented sector (PRS)
Human Rights: N/A	None	None
Health and Safety: N/A	None	To improve health and Safety of private tenants
Employment Issues: None	None	None
Equalities Issues: N/A	None	None
Community Support: N/A	None	None
Communications: Lack or inadequate communication will pose some risk of an adverse impact on the success rate / outputs.	To work with Customer Service or Corporate Comms to develop an effective communication strategy	To reach private landlords and tenants and deliver information and awareness on their Rights and Responsibilities
Community Safety: No risk; in fact it will improve the community safety	None	To improve community safety and the communities perception of their area by tackling poor management of privately rented housing which is often associated with anti-social behaviour.
Financial : Low risk as described above	Ensure that staff are adequately trained on the policy and protocol so that the power is used proportionately and consistently thus reducing the risk of successful appeals against the penalties.	Income received from civil penalties can be retained by the Local Authority and used to further the Local authority's statutory functions in relation to their enforcement activity covering the private rented sector.
Timetable for delivery: Delay in implementation of Legislation that came into force in April 2017		To prepare an effective proactive programme to improve PRS
Project Capacity: Insufficient capacity poses a significant risk of the Council failing to meet its statutory obligations.	Income from the penalties can be reinvested into the Housing Regulation Team to expand the Team's current capacity.	To build on the overall Housing Regulation capacity and capability to improve PRS which houses £30% of Slough's residents
Other: None	None	None

(c) Human Rights Act and Other Legal Implications

The Legislation will be implemented in line with the Statutory Guidance for Local Authorities, Council's Enforcement Policy and the code of conduct which conform to the Human Rights Act.

The legal implications of implementing the civil penalty power is explained in more detail in the attached policy and protocol.

(d) Equalities Impact Assessment

These proposals affect the entire private rented sector in all wards and are aimed at improving safety within rented homes for the protection of the public as a whole. As such no equality issues arising from the implementation of the regulations have been identified.

5. Supporting Information

5.1. The power to impose civil penalties of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004 was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016 which came into force on 1st April 2017

5.2. The Council may consider issuing a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to Comply with an Improvement Notice under Section 30 of the Housing Act 2004
- Offences relating to Licensing of HMOs under Section 72 of the Housing Act 2004;
- Offences relating to Licensing of Houses under Part 3 of the Act (Selective Licensing);
- Offence of contravening an overcrowding notice under Section 139 of the Housing Act 2004;
- Failure to comply with management regulations in respect of HMOs under Section 234 of the Housing Act 2004

5.3. A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit the Council to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the Council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct.

5.4. The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

5.5. Anyone issued with a civil penalty under the Housing and Planning Act 2016 can appeal to the Residential Property Tribunal (RPT). The RPT may revoke, vary or confirm the penalty.

- 5.6. The Government has published statutory guidance which requires Local Housing Authorities to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case by case basis in line with policy.
- 5.7. Similarly, the guidance requires local housing authorities to develop and document their own policy on determining the appropriate level of civil penalty in a particular case.
- 5.8. **Appendix A** contains The Housing Regulation Team's draft policy and protocol for issuing civil penalties under the Housing Act 2004. The Policy was devised having regard to the legislation and statutory guidance.
- 5.9. The procedure for the issuing of civil penalties is prescribed in Schedule 9 to the Housing and Planning Act 2016. The Policy and Protocol contained within **Appendix A** to this report describes the procedure in detail.

Option Considered

- 5.10. The Housing and Planning Act 2016 confers a power but not a statutory duty on the Council to issue civil penalties as an alternative to prosecution for relevant Housing Act offences. However, Magistrates may legitimately question when presented with a prosecution case, why the Council did not consider issuing a penalty as an alternative sanction.
- 5.11. The principal risk associated with issuing civil penalties is the resource pressure that may arise within the Housing Regulation Team from administering the penalties and dealing with appeals to the Residential Property Tribunal. This risk can be mitigated to a certain extent by the retention of the income from the civil penalties within the Housing Regulation Team so that the resource within the team can be improved and enhanced.
- 5.12. The maximum penalty of £30,000 could constitute a significant financial burden for Landlords. However, this must be balanced against the risk to public health and safety that can arise from a landlord's failure to comply with their legal obligations. One of the key principles underpinning the legislation and guidance concerning civil penalties is that any penalty issued should remove any financial benefit the offender may have obtained as a result of committing the offence.
- 5.13. The draft policy and protocol contained within **Appendix A** outlines how the Council will ensure that the power to issue penalties is used in a proportionate and consistent manner, ensuring that the level of penalty imposed reflects the severity of the offence committed. The policy and protocol allows the financial means of landlords to be considered in deciding the level of penalty to be imposed.

6 Comments of Other Committees

There are no other comments of other committees

7 Conclusion

The Council has been given a new statutory power which as explained above will allow the Council to deal more swiftly and effectively with negligent and rogue landlords, therefore improving conditions in the private rented sector.

The policy and protocol is flexible enough to allow the Council to take a balanced and proportionate approach, ensuring that the sanctions imposed on landlords are proportionate to the severity of their offending, with the worst offences attracting the highest penalties.

We therefore recommend Members approve the policy and protocol in **Appendix A** to enable the Council to begin using the power with immediate effect.

8 **Appendices Attached**

- A. Housing Regulation Policy and Protocol for issuing Civil Penalties under the Housing and Planning Act 2016

9 **Background Papers**

- 1 Department for Communities and Local Government (DCLG) April 2017 'Civil Penalties under the Housing Act 2016- guidance for Local Authorities