

REPORT TO EXECUTIVE



DATE	
PORTFOLIO	Housing and Environment
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The Housing and Planning Act 2016

PURPOSE

1. To implement the new enforcement powers contained in the Housing and Planning Act 2016 (Part 2 Rogue landlords and property agents in England) including the use of civil penalty notices.

RECOMMENDATION

2. To approve the Council's Policy and Matrix for the use of Civil Penalties (Appendix 1).
3. Delegate to the Head of Housing and Development Control all powers to issue, use and enforce civil penalties as detailed in the Housing and Planning Act 2016 (and any regulations made there under).
4. Delegate to the Head of Housing and Development Control all powers to issue, use and enforce rent repayment orders as detailed in the Housing and Planning Act 2016 (and any regulations made there under).
5. That the money received from the civil penalties returns to the housing revenue budget to fund further enforcement activity.

REASONS FOR RECOMMENDATION

6. The use of these new 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 or rent repayment orders could be a powerful deterrent to rogue landlord behaviour through the enforcement of significant financial penalties.

SUMMARY OF KEY POINTS

7. **Civil Penalty Notices**
The Housing and Planning Act 2016 introduces Civil Penalties of up to £30,000 as

an alternative to prosecution for certain offences under the Housing Act 2004 from the 6th April 2017. These offences include:

- Failure to comply with an Improvement Notice;
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs);
- Offences in relation to licensing of houses under selective licensing;
- Offences of contravention of an overcrowding notice;
- Failure to comply with management regulations in respect of HMOs;

8. It is important to note that if a civil penalty is imposed a prosecution cannot be pursued for the same offence. This will not however reduce the amount of investigatory work undertaken as the Secretary of State guidance states that the same burden of proof required for a criminal prosecution is required for a civil penalty.
9. The Secretary of State guidance requires each local authority to have a policy in relation to when civil penalties will be used and what level of penalty will be imposed. Generally 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 landlords previous record of offending.
10. 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, which has the power to confirm, vary, increase or reduce the size of the penalty or cancel the civil penalty.
11. The civil penalty policy and matrix (Appendix 1) has been created as a guide for enforcement officers when imposing 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 housing enforcement policy.
12. The policy has been agreed with the other Pennine Lancashire Authorities.
13. **Rent Repayment Orders**
The Housing Act 2004 introduced the sanction of rent repayment orders for circumstances where a landlord of a property, or of a HMO, has failed to obtain a licence for that premises. The Council already actively use this power in relation to selective licensing.
14. From the 1st April 2017 the Housing and Planning Act 2016 has extended this power to cover a much wider range of offences including:
 - Failure to comply with an Improvement Notice;
 - Offences in relation to licensing of HMOs;
 - Offences in relation to licensing of houses under selective licensing;
 - Offences of contravention of an overcrowding notice;
 - Failure to comply with management regulations in respect of HMOs;
 - Breaching of a Banning Order.
15. Where a landlord has been convicted of one of the offences listed above, if the rent was paid through Housing Benefit/Universal Credit the Council can apply to the

First Tier Tribunal for a rent repayment order. If the tribunal decides in favour of the local authority they must require the landlord to repay the rent to the local authority up to a maximum of 12 months.

16. Non - payment of a rent repayment order may be enforced through the County or High Court.

17. **Other Sanctions**

The Housing and Planning Act 2016 also details powers in relation to:

- Banning Orders, to stop the worst criminal landlords from operating in England or face imprisonment and a fine;
- The use of Rogue Landlord Databases to share enforcement information across England.

To date these powers have not been implemented.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

18. It is the intention to deliver this new legislation within the existing resources that are currently allocated to the Private Sector Housing Enforcement Service and therefore there is no proposal to increase staffing resource.

19. It is expected that the income generated from the use of the civil penalties and rent repayment orders will allow the Council to recover costs associated with implementing this new legislation.

20. If a successful civil penalty or rent repayment order is not paid by the respondent the Council have the option to enforce the debt via court action.

POLICY IMPLICATIONS

21. To update the Housing Enforcement Policy.

DETAILS OF CONSULTATION

22. Private Rented Sector Forum.

BACKGROUND PAPERS

23. None

FURTHER INFORMATION

PLEASE CONTACT: Clare Jackson

ALSO: Paul Gatrell