

Birmingham City Council

Report to Cabinet

22 January 2019



Subject: Private Rented Sector Enforcement Policy – Amendment of Civil Penalties Charging

Report of: Acting Corporate Director - Place

Relevant Cabinet Member: Councillor Sharon Thompson, Cabinet Member Homes and Neighbourhoods

Relevant O &S Chair(s): Councillor Penny Holbrook, Housing and Neighbourhoods Overview and Scrutiny Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 005461/2018		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 This report proposes an amended Enforcement Policy for the Regulation of the Housing Standards in the Private Rented Sector (PRS) and for the Licensing of Houses in Multiple Occupation (HMO), including an amended Civil Penalty Charging Policy for private landlords and property agents.

2 Recommendations

- 2.1 The Cabinet approves the updated policy for Enforcement (Appendix 1)

- 2.2 That Cabinet receive a further report in 12 months on the use of the amended Enforcement and Civil Penalties policy, including consideration of the level of financial penalty.

3 Background – Enforcement

- 3.1 The purpose of this Enforcement Policy is to set out the principles that will be applied by Birmingham City Council when considering what, if any, enforcement action to take under its jurisdiction for the regulation of housing standards in the PRS and for the licensing of HMOs.
- 3.2 Where the law has been contravened, there are a range of enforcement options available to ensure compliance. As listed below, these range from taking no action through to prosecution:
- No Action
 - Informal Action And Advice
 - Formal Notices And Orders
 - Default
 - Injunctive Actions
 - Simple Cautions
 - Civil Penalty
 - Prosecution
- 3.3 The policy outlines the procedures, principles and delegations which have built up over a number of years in relation to changes to legislation within the PRS. The report consolidates the existing policy, procedures and delegations and updates those policies in line with current working practices.
- 3.4 See appendix 1 for the full Enforcement Policy.

Civil Penalties

- 3.5 The Council has developed a PRS enforcement policy which sets out how statutory powers will be used to improve standards in the PRS. Under the Housing and Planning Act 2016, the Government introduced powers for local authorities to use Civil Penalties as an alternative to prosecution.
- 3.6 Civil Penalties can be used for the following offences under the Housing Act 2004:
1. Failure to comply with an improvement notice (section 30).
 2. Offences in relation to licensing of HMOs (section 72);
 3. Offences in relation to licensing of houses under Part 3 of the Act (section 95);
 4. Offences of contravention of an overcrowding notice (section 139(7))
 5. Failure to comply with management regulations in respect of HMOs (section 234).

- 3.7 The policy sets out the updated principles to be adopted when using this power. The City Council will seek to use this power to impose a penalty as an alternative to prosecution for the above offences in line with its Enforcement Policy.

4 Consultation

Internal

Officers have consulted on the framework for Civil Penalties with other local authorities in the West Midlands and through national groups including the Houses in Multiple Occupation Network and Private Sector Housing Officer Group. This was completed in the original proposal to Cabinet on 29 November 2017. The amendments proposed in this report have been discussed with the relevant staff within the PRS Team and with Legal Services. The Enforcement Policy has also gone through consultation with staff in the PRS team, legal services and Counsel has also advised on the report.

External

The original Civil Penalties policy was subject to discussion with other local authorities and the Department of Communities and Local Government (DCLG), who issued guidance (Civil penalties under the Housing and Planning Act 2016). The proposal to introduce a policy on use of Civil Penalties has been discussed with the Birmingham Landlord Forum Steering Group (LFSG). The LFSG was supportive of proposals to tackle irresponsible landlords in order to improve standards in the PRS.

5 Compliance Issues:

5.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

The proposal is consistent with the Council Plan priority 'Birmingham is a great city to live in' and directly contributes to the objectives of the City Councils Housing Strategy in regard to improving standards in the PRS.

Council Plan Outcome 4, Priority 2: We will have appropriate housing to meet the needs of our citizens measured through:

Number of properties improved in the Private Rented Sector as a result of Local Authority intervention.

5.2 Legal Implications

The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to use enforcement powers and impose a financial penalty as an alternative to prosecution for certain housing offences. The law allows a maximum financial penalty of £30,000 to be imposed per offence. The use of Civil

Penalties is restricted to tackling irresponsible private rented sector landlords and agents.

5.3 Financial Implications

The use of Civil Penalties will result in the Council imposing a financial penalty on Private Landlords or property agents. Based on the current level of legal action against irresponsible landlords and the potential increase in HMO licensing, from 1 October 2018 it is estimated the level of activity on Civil Penalties would not exceed 20-30 cases per year. Experience suggests that most cases would fall within the minor/medium category so it is estimated that penalties imposed would not exceed a total of £100,000 per year. This will be re-invested into the PRS service.

Landlords or property agents can appeal against a Civil Penalty to the First Tier tribunal. Where the landlord or agent fails to pay a civil penalty, the local housing authority may refer the case to the county court for a Court Order. If necessary, the local housing authority can use county court bailiffs to enforce the order and recover the debt. These processes will incur costs and so will reduce the amount secured.

5.4 Procurement Implications (if required)

Not applicable

5.5 Human Resources Implications (if required)

Not applicable

5.6 Public Sector Equality Duty

An Equality Assessment was completed for the full report in November 2017, the outcomes of which have not been affected by the proposed amendments to the charging policy.

6 Background Documents

Appendix 1. Full Enforcement Policy