

Cabinet Member Report

Decision Maker:	Councillor Rachael Robathan, Cabinet Member for Housing
Date:	28 th March 2018
Classification:	General Release
Title:	Private Sector Housing Enforcement Policy
Wards Affected:	All
Key Decision:	Yes
Financial Summary:	<p>The Housing and Planning Act 2016 introduced a new financial penalty regime in April 2017, permitting local authorities to impose a civil penalty of up to £30,000. The proposed civil penalties matrix to be adopted is set out in the appendices to this report.</p> <p>The financial impact arising from these changes will be closely monitored upon introduction.</p>
Report of:	Ian Hennessy, Head of Residential Service Kirsty Munro, Principal Policy Officer

1.0 Executive Summary

- 1.1 Private housing plays a significant part in the housing provision within Westminster and we recognise that the majority of this housing is in good condition and well managed, however nationally the conditions in the private rented sector (PRS) tend to be less satisfactory than any other occupancy type. We have a responsibility to deal with unsatisfactory housing that presents health & safety hazards to the occupiers. This enforcement policy outlines our approach to securing that standards are met, seeks to ensure that good practice is maintained, and all properties let as residential dwellings, those in private ownership, and properties under registered provider control, throughout Westminster are of good quality and are well managed.
- 1.2 The policy summarises the types of enforcement and legislation most commonly applied by the Residential Services Team, ranging from verbal warnings,

statutory notices, and legal action including prosecution. It is not an exhaustive list and is not intended to be a definitive interpretation of the legislation, nor provide a full statement of the law. Instead, the policy clearly sets out our approach to enforcement and is designed to be both fair to responsible landlords but capable of dealing with uninformed or rogue landlords in order to maintain and improve conditions within this sector. This directly supports the council's Private Sector Commitments under the City for All objectives.

1.3 In recent years' changes to legislation have granted local authorities the power to enforce penalty charges as a tool to tackle non-compliance in some cases, and as an alternative to prosecution under the following legislation:

- **Housing and Planning Act 2016:** The provisions contained under this legislation allow local authorities to impose a civil penalty of up to £30,000 for certain offences, including overcrowding, failure to licence and HMO or breach of improvement notices etc. Before the use of penalty charges permitted under this legislation can come into effect, local authorities are required to produce a penalties matrix, that clearly sets out the relevant considerations as to the level of the penalty for particular offences. Our penalty matrix demonstrates the minimum tariff for a particular offence and charges are proportionately higher for 'professional landlords' who manage larger property portfolios, than they are for less experienced landlords (Appendix 2)
- **Smoke and CO Alarm Regulations:** These penalty charges are already in use by the Residential Services team having previously been approved by the Cabinet Member on 20th March 2017. They have been included in this policy to ensure transparency of all powers and penalty charges issued by this team in a singular reference tool (Appendix 3).

1.4 Any income generated from the issue of civil penalties is able to be retained by the local authority and will be spent on improving our private sector housing working practices.

2.0 Recommendations

- (i) That the Cabinet Member for Housing approves the Private Sector Housing Enforcement Policy, and accompanying civil penalties matrix (appendix 2 & 3)
- (ii) That the Private Sector Housing Enforcement Policy, and accompanying civil penalties matrix (appendix 2 & 3) be uploaded to the website and included in publication lists for the authority.
- (iii) That the Private Sector Housing Enforcement Policy, and accompanying civil penalties matrix (appendix 2 & 3) is reviewed on a regular basis or as the need arises from factors such as changes to legislation.

- (iv) That delegated authority is given to the Director of Public Protection and Licensing to approve minor modifications and updates to the policy.
- (v) That delegated authority to carry out enforcement and issue penalty notices arising from the Housing and Planning Act 2016 is given to an Officer authorised by the Executive Director of Growth, Planning and Housing.
- (vi) That recommendations, if approved, will be implemented from the 19th March 2018.

3.0 Reasons for Decision

3.1 Under the City for All Objectives, Residential Services committed to tighten up enforcement processes and respond to new legislation. We have therefore developed a Private Sector Housing Enforcement Policy which outlines the enforcement approach and the available enforcement powers we have at our disposal to manage non-compliance with the law within a private housing setting.

3.2 The policy seeks to:

- clearly set out in one place our approach to enforcement and the range of enforcement options available to officers under multiple pieces of legislation
- ensure our enforcement is consistent and transparent
- ensure all new legislation is incorporated and acted on within working practices. This includes clearly stating what monetary amounts will be charged if a civil penalty is issued - The Housing and Planning Act 2016 introduced a new financial penalty regime in April 2017, permitting local authorities to impose a civil penalty of up to £30,000

4.0 Background, including Policy Context

4.1 Enforcement Approach

The type of enforcement taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In other cases, officers have the ability to use informal action as a first option when appropriate through working with landlords and residents and others offering advice, information and assistance to aid them to reach compliance with housing related legislation.

4.2 Where an informal approach fails to achieve the desired result, or a failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to

protect those at risk. In the most serious contraventions possible action will include prosecution.

4.3 The type of enforcement action pursued is always considered on a case by case basis. Following consideration of the specific circumstances of the particular case the most appropriate enforcement option will be applied accordingly. In every case enforcement seeks to:

- Promote and achieve sustained compliance with the law
- Ensure that landlords take action to deal immediately with serious risks
- Ensure that landlords who breach legislative requirements are held to account

4.4 The use of penalty charges

Historically the use of penalty charges within a private housing setting were not permitted. Recently however legislation has changed to allow local authorities to issue penalty notices in defined circumstances. Financial penalties for non-compliance within a private housing setting can now be imposed under the following Acts and Regulations:

- **Housing and Planning Act 2016** (*came into force in April 2017*): Penalty charges can be imposed for offences including overcrowding, failure to licence an HMO, breach of licensing conditions, breach of banning order etc. In determining the level of a civil penalty, officers will have regard to the matrix set out below. For each of the various offence categories, officers have defined the band and severity of offence which provides the indicative penalty charge amount payable. The minimum charge within that band will be payable, however this can be adjusted to a higher amount within the band range to take into account other relevant or aggravating factors such as previous warnings.

Band	Severity of Offence	Band Range (£)
1	Moderate	0-4,999
2		5,000-9,999
3	Serious	10,000-14,999
4		15,000-19,999
5	Severe	20,000-24,999
6		25,000-30,000

The maximum civil penalty that could be imposed is £30,000 and we have demonstrated a graduated range of penalties for particular offences to avoid a disproportionate response. This includes charging more experienced landlords with larger portfolio's more than less experienced landlords with only one or two properties.

- **Smoke and CO Alarm Regulations 2015** (*came into force October 2015*): Penalty charges can be imposed for failing to meet minimum Smoke and Carbon Monoxide requirements. Private sector landlords are required to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance. The regulations also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy. (To note that the Smoke and Co Alarm Regulations Penalty Matrix (appendix 3) has previously been approved by the Cabinet Member on 20th March 2017).

- 4.5 Before penalty charges can be issued however, local authorities are required to have a defined matrix of the level of charge and how they will be imposed - which this policy seeks to set out clearly in appendix 2 & 3).
- 4.6 In some circumstances however, in particular when breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a penalty notice (we are unable to impose a financial penalty and seek prosecution for the same offence).

5.0 Financial Implications

- 5.1 The proposed civil penalties matrix and penalty charge amounts are set out in appendices 2 & 3.
- 5.2 It is possible that the introduction of the new financial penalty regime will result in additional income to the council. However, financial penalties are just one type of enforcement action applied by the council, and each case is judged on an individual basis. The enhanced penalties are also expected to act as a deterrent to landlords committing offences. This means that it is difficult to assess the financial impact arising from this change.
- 5.3 The financial impact of these changes will be monitored. Any income received from the issue of civil penalties will be used to further our private sector housing working practice in line with regulations.

6.0 Legal Implications

- 6.1 The Housing and Planning Act 2016 introduced a new financial penalty regime Which took effect from 6 April 2017. This enables the Council to impose a civil penalty up to £30,000.
- 6.2 The legal basis for these powers is contained in section 126 and Schedule 9 of the Housing and Planning Act 2016, which allows financial penalties to be given as an alternative to prosecution.

- 6.3 Statutory guidance issued in April 2017 gives guidance for local authorities when exercising their functions in respect of civil penalties. The guidance provides that local authorities will be able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004;
- Failure to comply with an Improvement Notice (section 30);
 - Offences in relation to licensing of Houses in Multiple Occupation (section 72);
 - Offences in relation to licensing of houses under Part 3 of the Act (section 95);
 - Offences of contravention of an overcrowding notice (section 139)
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).
- 6.4 The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. In determining an appropriate level of penalty, local housing authorities should have regard to;
- a) Severity of the offence.
 - b) Culpability and track record of the offender.
 - c) The harm caused to the tenant.
 - d) Punishment of the offender.
 - e) Deter the offender from repeating the offence.
 - f) Deter others from committing similar offences.
 - g) Remove any financial benefit the offender may have obtained as a result of committing the offence.
- 6.5 A minimum penalty level has not been set.
- 6.6 The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004.
- 6.7 A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local authorities to impose a civil penalty and prosecute for the same offence.
- 6.8 A civil penalty can be issued as an alternative to prosecution for **each separate** breach of the House in Multiple Occupation Management Regulations.
- 6.9 When looking at imposing a civil penalty the council must have in mind that the same criminal standard of proof is required as for prosecution. Therefore, the council must satisfy itself that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.
- 6.10 Local authorities are expected 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 that policy.

7.0 Consultation

- 7.1 No formal consultation is required as a result of the policy proposal set out in this report.
- 7.2 The penalty charges and conditions will however be clearly advertised on the relevant pages of the Council's website. The matrix of charges (appendix 2 & 3) will be published online and on the appropriate notices and literature on the proposed implementation date of 19th March 2018.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

BACKGROUND PAPERS - None

For completion by the **Cabinet Member** for Housing

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: **Councillor Rachael Robathan, Cabinet Member for Housing**

State nature of interest if any

.....
(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **Private Sector Housing Enforcement Policy** and reject any alternative options which are referred to but not recommended.

Signed

Councillor Rachael Robathan, Cabinet Member for Housing

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the City Treasurer and, if there are resources implications, the Director of People Services (or

their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix A

Other Implications

1. **Resources Implications** - The policy may result in a minor increased resource requirement for back office administration and increase back office costs and handling times as a result, however the retained penalty charges where issued may help to mitigate such costs.
2. **Business Plan Implications** – The policy will be incorporated into relevant business plans for 2018/19
3. **Risk Management Implications** - The policy could present reputational risks to the Council for using financial penalties. With the Homes (Fitness for Human Habitation and Liability for Housing Standard) Bill 2018, and DCLG announcement of new powers for local authorities to regulate private landlords going through Parliament there is a risk that further national policy changes may occur which could impact on the policy. The policy will be kept under review and updated with any changes to legislation.
4. **Health and Wellbeing Impact Assessment including Health and Safety Implications** - The impact that poor housing can have on health is a key consideration for the Residential Services team and there are commitments in our Housing Strategy to improving the health and wellbeing of residents including tackling poor condition in the private rented sector through working with private landlords to bring properties up to standard and taking enforcement action where necessary. This policy directly supports the commitment.
5. **Crime and Disorder Implications** – The policy will support officers to have a common approach towards tackling anti-social behaviour identified within private housing in Westminster which is intended to help address crime and disorder in the city.
6. **Impact on the Environment** – The policy seeks to improve the Private Sector Housing Environment
7. **Equalities Implications** – Initial equalities screening has been carried out on Private Sector Housing Enforcement Policy 2018, and a full equalities impact assessment (EIA) is not considered to be needed. This screening is attached in Appendix B
8. **Staffing Implications** – None
9. **Human Rights Implications** – None
10. **Energy Measure Implications** – None

- 11. Communications Implications** - The penalty charges and conditions will be clearly advertised on the relevant pages of the Council's website. The matrix of charges (appendix 2 & 3) will be published online and on the appropriate notices and literature on the proposed implementation date of 19th March 2018.

Appendix B

Equalities Impact Assessment

Appendices contained within the Private Sector Housing Enforcement Policy:

Appendix 1

Civil Penalties Guidance

Appendix 2

Civil Penalties Matrix under Housing & Planning Act 2006

Appendix 3

Statement of Principles for determining the Penalty Charge under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.