

Report to: **West Devon Hub Committee**

Date: **11 September 2018**

Title: **Civil Penalties for breaches of Housing Standards Enforcement Notices**

Portfolio Area: **Health and Wellbeing – Cllr Leech**

Wards Affected: **All**

Relevant Scrutiny Committee: Overview and Scrutiny Committee

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **Council**
25 September 2018

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Recommendations:

That Hub Committee **RECOMMENDS** to Council to update the existing Enforcement policy with the Civil Penalty Policy

1. Executive summary

Civil Penalties have been introduced by government legislation as an alternative to traditional criminal law enforcement against landlords, mostly relating to Housing offences. Local authorities have the power to set civil penalty amounts locally up to a statutory maximum. Civil Penalties allow for a higher financial penalty than the currently low court fines; they will provide an effective deterrent and protect residents against rogue landlords; they will protect against unscrupulous letting agents and other poor business practices. Civil penalties would also deliver more cost efficient and faster enforcement in the area of housing disrepair.

2. Background

- 2.1 Traditionally Regulation and Enforcement has enforced legislation using the principles of criminal law. Breaches of legislation would result in a legal notice being served and prosecution if non-compliance is witnessed. This is sometimes a long winded process. In the last 15 years Fixed Penalty Notices have been introduced to offer a more appropriate alternative to prosecution for some simpler offences such as littering and breach of community protection notices. If such penalties are not paid the matter would still end up in the Magistrates' Court giving the recipient a court fine and a criminal conviction.
- 2.2 Over the last few years government policy has been focused on decriminalisation of many offences. This has led to many pieces of new legislation being introduced based on Local Authorities issuing civil penalties, instead of taking cases through the traditional criminal route. Civil penalties are already successfully used for enforcement in other areas such as littering/flytipping. They are based on the principle that if an offence is witnessed, the Local Authority would send out an intention to serve a civil penalty, stating the amount and details of the breach, giving the person a set time to appeal the decision. The Council would consider any appeal received internally and progress the matter to a civil penalty if appropriate. Once the civil penalty is issued the recipient could appeal this to a tribunal.
- 2.3 Housing and Planning Act 2016 includes measures to further target rogue landlords and bad practices in the private rented sector. The Act provides the option for Local Authorities to impose Civil Penalties as an alternative to prosecution for several offences already existing under the Housing Act 2004, such as:
- Failure to comply with a Housing Improvement Notice
Failure to comply with an Overcrowding Notice
Failure to licence premises (HMOs and Selective Licensing)
Failure to comply with HMO Management Regulations. 16. The amount of a financial penalty imposed under this legislation is to be determined by the Local Authority, but must not be more than £30,000.
- 2.4 In order to start issuing civil penalties for these offences rather than continuing the practice of taking these matters to court, the Local Authority would need to agree this policy on determining the appropriate level of Civil Penalty and publish a statement of policy on our website.
- 2.5 The legislation which introduced Civil Penalties in other areas of enforcement has left it to the individual Local Authorities to determine the level of Civil Penalty appropriate in each case. It is felt it would be in the public interest to encourage early resolution of cases. As the alternative to a Civil Penalty would be a prosecution, it would be fair to offer the same early resolution discount.

- 2.6 The civil penalty matrix has been developed at a county level, it is based on a hybrid of a recommended matrix from Government and Chartered Institute of Environmental Health.

3. Outcomes/outputs

- 3.1 The Council serves a number of notices each year, if such notices are not complied with, cases are referred for prosecution. In the last couple of years we have not needed to undertake any prosecutions, as the enforcement notices were complied with. Going forward this will be a useful tool but it is hard to anticipate how many landlords will flout the law. If Civil Penalties were introduced, these landlords can receive a fixed penalty, rather than officers preparing legal files, saving time as well as imposing a more substantial penalty.
- 3.2 In October 2018 the mandatory licencing of certain houses of multiple occupation (HMO) is being expanded. With this policy the council will have better tools to deal with landlords who refuse to licence the required HMO. There is little information on how many are out there, they are out there, and at the time of writing this report no applications have been received.
- 3.3 There may be a surge in fixed penalties in this year's 3rd and 4th quarter, with the expansion of HMO licensing. The base level going forward is expected to be in single figures.

4. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The proposed amendments to the Council's Enforcement Policy and the new proposed policy on financial penalties are compliant with the relevant legislative changes and statutory guidance to which the Council must have regard.
Financial	Y	<p>These new penalties will help generate additional income for the enforcement service. It is difficult to estimate how many charges would be made and from this how many would be fully paid.</p> <p>It is likely that by introducing the new charges there will be a high level of compliance so a reduction in the number of fines issued.</p>

Risk	Y	<p>There is a likelihood that some landlords may challenge remedial notices or civil penalties imposed. Landlords have a legal route to request the Local Authority to review any civil penalty notice and can further appeal the notice to a First-tier Tribunal. Such challenges can be time consuming for the officers involved, however Specialists have experience of handling such reviews in a time efficient manner. To limit the number of appeals as far as possible and ensure high quality of evidence in all cases, the Specialists undertake a rigorous case review. The same safeguards will be implemented for any Civil Penalty Offences. To defend an appeal in a First-tier Tribunal is not more time consuming than taking cases to court.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		<p>Residents from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poor quality accommodation. The policy aims to safeguard the health, safety and welfare of residents in the rental sector.</p> <p>Poor housing conditions can negatively affect the health, safety and well-being of all residents, irrespective of age. However, certain housing deficiencies can have a more serious and harmful impact on individuals of particular ages. For example, older persons will suffer more in cold homes. This policy will be commensurate with the severity of the defect.</p> <p>Enforcement through civil penalties is more efficient and provides better value for money than traditional enforcement through prosecution.</p>
Safeguarding		The policy identifies residents in rental properties as a beneficiary of assistance. The policy also aims to safeguard residents by making their homes safer for them to live in.
Community Safety, Crime and Disorder		There is no positive or negative impact on crime and disorder.
Health, Safety and		The policy also aims to improve the health, safety and

Wellbeing		wellbeing of residents by making their homes safer for them to live in.
Other implications		<p>This proposal is changing working practices for staff, but not affecting the overall job role or number of posts</p> <p>Political & Reputation – This proposal demonstrates the Council's commitment to improve the private rental sector.</p>

Supporting Information

Appendices:

Appendix 1 Civil Penalty Policy
Appendix 2 Examples

Background Papers:

Council Enforcement Policy