

Gloucester City Council

Meeting:	Cabinet	Date:	9th May 2018
Subject:	Introduction of Civil Penalties to tackle Unsatisfactory Housing Conditions within the Private Rented Housing Sector		
Report Of:	Cabinet Member for Housing & Planning		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	No
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Appendices:	None		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 This report outlines how the council intends to implement new enforcement powers provided in the Housing & Planning Act 2016, including the use of civil penalties for private sector housing offences and other regulatory functions.

2.0 Recommendations

- 2.1 CABINET is asked to **RESOLVE** that:

- (1) The new enforcement powers contained within the Housing Act 2004, as amended by the Housing & Planning Act 2016, be adopted;
- (2) Note that the new enforcement powers will enable the council to serve notices imposing civil penalties of up to a maximum of £30,000 in respect of a range of housing offences, and
- (3) Delegated authority be provided to the Head of Communities, in consultation with the Cabinet Member for Housing & Planning and the Council Solicitor to develop and implement a detailed Policy & Procedure in respect of the imposition of Civil Penalties

3.0 Background and Key Issues

- 3.1 The Housing & Planning Act 2016, which amended parts of the Housing Act 2004, came into force in England & Wales during 2017 and introduced a range of new measures to tackle rogue landlords including –

- Civil penalties (Fixed Penalty Notices) of up to £30,000 as an alternative to prosecution for certain specified offences,
- Database of rogue landlords and property agents, and

- Banning Orders for the most serious and prolific offenders
- Additional grounds to apply for rent repayment orders (RRO) under the Housing Act 2004

3.2 The purpose of this new legislation is to provide Local Housing Authorities with alternative & practical enforcement options for non compliance as opposed to the traditional route of taking prosecutions through the court system. Processing prosecutions are both time consuming and expensive and although these new provisions do not replace the option for prosecution, it is expected that prosecution would only be taken in the most serious of cases, for repeat offenders or for those who fail to engage with the council.

3.3 New civil penalty provisions can be used for the following housing offences –

- Failing to comply with an improvement notice;
- Failure to comply with Houses in Multiple Occupation (HMO) management regulations;
- Offences in relation to licensing an HMO;
- Non-compliance with an overcrowding notice, and
- Breaching a banning order

3.4 New measures also allow a Local Authority to apply for a Banning Order which can be sought in a First Tier Property Tribunal (FTPT), if a person has been convicted of a banning order offence. A banning order offence is still to be defined by the Secretary of State. A banning order once imposed will prevent any person subject to a ban from letting housing, engaging in letting agency or management work and from holding a HMO property license in England for a minimum 12 month period. The penalty for breaching a Banning Order, upon summary conviction, is either a fine, or possible imprisonment not exceeding 51 weeks, or both. However the council may as an alternative to prosecution impose a civil penalty of up to £30,000 if it decides beyond all reasonable doubt that a banning order has been breached

3.5 The Housing Act 2004 introduced Rent Repayment Orders (RRO) to recover Housing Benefit/Universal Credit that was paid to landlords convicted of running unlicensed properties. The new legislation introduces an obligation upon councils to consider following conviction for certain offences whether to apply for an RRO, for offences which include –

- Using violence for securing entry
- Eviction or harassment of occupiers
- Failure to comply with an improvement notice
- Failure to comply with a prohibition notice
- Failure to license or be licensed in respect of an HMO
- Failure to license or be licensed in respect of Selective Licensing Scheme
- Breach of a Banning Order

3.6 The Secretary of State has introduced a Rogue Landlord and property agents database, which enables council's to record certain information about, and target enforcement action against any landlord or property agent who has received a

banning order, been convicted of a banning order offence, or has received 2 or more civil penalties over a 12 month period. The new legislation requires council's to update the database with such information.

3.7 Those persons who receive notice of a civil penalty can appeal it to the First-Tier Property Tribunal both in respect of the decision to issue any civil penalty and in respect of the amount imposed. It is therefore important that the council in setting its policy and procedures does so in accordance with relevant guidance and legislative provisions. Civil penalties must meet the criminal standard of proof 'beyond reasonable doubt', the same as that used for prosecution cases.

3.8 Subject to approval of the report, implementing these new enforcement powers will reinforce the council's stance on those landlords who do not comply with statutory obligations and place their tenants at risk. The intention is that these new powers will have a positive impact on landlords.

4.0 Asset Based Community Development (ABCD) Considerations

4.1 Not applicable to this report

5.0 Alternative Options Considered

5.1 The alternative option of not adopting the new powers set out within this report would result in officers continuing to try and manage poor housing conditions in a manner that is time consuming and expensive and would not enable the council to be as effective as it could be in trying to protect the interests of residents.

6.0 Reasons for Recommendations

6.1 Subject to approval of the report, implementing these new enforcement powers will reinforce the council's stance on those landlords who do not comply with statutory obligations and place their tenants at risk.

6.2 The intention is that these new powers will have a positive impact by bringing about further changes in landlord behaviour where current enforcement powers are not as effective in some cases.

6.3 The new powers would allow the council to deliver swifter action against landlords and enable financial penalties to be received directly by the council and retained in order to re-invest in the Housing Service for the benefit of our private tenants.

7.0 Future Work and Conclusions

7.1 Subject to approval, the council's policy that is proposed will be further developed in consultation with the Cabinet Member for Housing & Planning and the Council's Solicitor. This will include a matrix to be used as a guide by enforcement officers to set the civil penalty at an appropriate level based upon individual case circumstances. Such a matrix will be used to ensure transparency and aid consistency of decision making.

8.0 Financial Implications

- 8.1 It is difficult to forecast the council's ability to levy civil penalties as this is dependant on the level of compliance by landlords. In 2016/2017 the Council undertook several successful prosecutions and if 80% of those had been pursued by way of civil penalties then gross income would be in the region of £10,000.
- 8.2 There will be additional costs in processing the civil penalty paperwork, responding to any representations and then defending appeals. It is anticipated however that these additional costs will be met through the additional income generated through levying civil penalties.
- 8.3 The Government has indicated that the income from civil penalties can be retained by council's and must be used to further its statutory work in relation to the private rented housing sector. With this additional income and with the increase in the number licensable HMOs as a result of it may become financially viable to increase the number of Housing Officers and other supporting services to provide a greater deterrent to non-compliant landlords, thus improving the safety and wellbeing of our residents.

(Financial Services have been consulted in respect of this Report)

9.0 Legal Implications

- 9.1 The provisions contained in the Housing and Planning Act 2016 are designed to prevent Landlords renting out unsafe and substandard accommodation. Enforcement is to be carried out by local authorities.
- 9.2 The provisions relating to the civil financial penalty and rent repayment orders have been in force since 6 April 2017 and allow the Council to commence enforcement action immediately. The Department for Communities and Local Government has published useful guidance in relation to these powers which should be referred to when utilising these powers and formulating policy.
- 9.3 Banning Orders are subject to the provisions of the Housing and Planning Act 2016 (Banning Order Offences) regulations 2018, and again the Department for Communities and Local Government has published guidance which should be referred to. The provisions requiring local authorities to contribute to a Government database of rogue Landlords came into force on 6 April 2018 and the Act states what information should be kept and maintained on the database which will assist local authorities should enforcement become necessary.
- 9.4 It will be necessary for the Council to create a policy and procedure for dealing with offences under the Act, ensuring each case is considered on its own merits bearing in mind current guidance and in accordance with the Council's enforcement policy.

(One Legal have been consulted in respect of this Report)

10.0 Risk & Opportunity Management Implications

10.1 There are very few if any risks associated with what is being proposed as part of this report. The opportunities from procuring a new fleet of business vehicles however are many and include –

11.0 People Impact Assessment (PIA):

The PIA screening stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

12.0 Other Corporate Implications

12.1 Sustainability

There are no sustainability implications associated with this report

12.2 Staffing & Trade Union

There are no staffing and trade union implications associated with this report

12.3 Safeguarding

There are no safeguarding issues associated with this report

Background Documents: None