

Item No. 13.	Classification: Open	Date: 22 January 2019	Meeting Name: Cabinet
Report title:		Implementing Civil Penalties in the Private Rented Sector	
Ward(s) or groups affected:		All wards	
Cabinet Member:		Councillor Victoria Mills, Finance, Performance and Brexit	

FOREWORD - COUNCILLOR VICTORIA MILLS, CABINET MEMBER FOR FINANCE, PERFORMANCE & BREXIT

Southwark Council is firmly committed to driving up the quality of private sector housing in our borough as we know that PRS properties tend to be less satisfactory than any other occupancy type.

We have a clear responsibility to deal with poor quality housing that presents health and safety hazards to the occupiers. The introduction of civil penalties of up to £30,000 gives us another means of enforcing good conditions and good management as well as targeting rogue landlords and managing agents. This new power does not replace prosecution but is instead an alternative that provides another tool to assist the Council in improving standards.

Our use of enforcement is designed to be fair to responsible landlords. However, it should also be capable of dealing with uninformed or rogue landlords and it should ensure that we meet our commitment that every resident has warm, dry and safe place to call home.

RECOMMENDATIONS

1. That cabinet approve the adoption of the Private Sector Housing - Prosecution and Civil Penalties Enforcement Policy, in Appendix 1 of this report for use by the duly authorised officers.
2. That cabinet delegate authority to the strategic director of environment and leisure for enforcement of the Housing and Planning Act 2016 (HPA 2016).
3. That cabinet delegate authority to the strategic director of environment and leisure to make minor amendments to the civil penalty charge matrix to reflect any legal changes by way of Regulations and/or guidance.

BACKGROUND INFORMATION

4. Landlords who knowingly rent out accommodation that is unlicensed and substandard place tenants' health, safety and welfare at serious risk. The council pursues such landlords with actions available to them under the Housing Act 2004. Where landlords fail to comply with those actions they are committing a criminal offence and the council can prosecute them. In some circumstances the conditions in a property can be so poor and landlords have placed their tenant's

in immediate danger the conditions constitute an immediate criminal offence and action is taken to move straight to prosecution. This has been a very successful way to enforce against rogue landlords with significant fines being imposed and the landlord being deemed not to be a fit and proper person to hold a housing licence. They are also 'named and shamed' via the Greater London Authorities 'Rogue Landlord Checker'.

5. Southwark will continue to prosecute the very worst landlords but this will no longer be the only option. The new powers under the HPA 2016, have been introduced to give authorities a range of different tools to deal with criminal, rogue or irresponsible landlords. These include the ability to impose Civil Penalties for certain specified offences of up to £30,000 as an alternative to prosecution where the authority deems it to be appropriate.
6. The new powers came into force in April 2018 when statutory guidance under section 23(10) and Schedule 1 and 9 of the HPA 2016 was issued giving council officers direction of the complex penalty matrix needed to be devised by each individual Local Authority (LA). Southwark decided to wait whilst a number of other LA's devised and adopted their own penalty matrixes. This gave Southwark's officers the advantage of devising a matrix taking into account advice given to other LA's at appeal. In the mean time officers continued to prosecute landlords for offences under the HA 2004.

Civil Penalties

7. The new powers allow local authorities to impose a civil penalty notice (CPN) as an alternative to prosecution, for those landlords or letting agents who are in breach of one or more of the following specified housing offences under the HA 2004:
 - Failure to comply with an Improvement Notice (section 30 Housing Act 2004)
 - Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs) (section 72 Housing Act 2004)
 - Failure to licence or other licensing offences under the Council's Selective Licensing Scheme (section 95 Housing Act 2004)
 - Failure to comply with an Overcrowding Notice (section 139 Housing Act 2004)
 - Failure to comply with a management regulation in respect of an HMO (section 234 Housing Act 2004)
 - Breaching a Banning Order (section 21 Housing and Planning Act 2016)
8. The maximum CPN that can be imposed is £30K per offence although it is for the Council to determine the appropriate level of the penalty (section 126 and Schedule 9 Housing and Planning Act 2016). The statutory guidance details the factors a local housing authority should take into account when deciding on the level of civil penalty.
9. The same criminal standard of proof is required for the imposition of CPN's as for a prosecution. This means that before taking any formal action, the Council must be able to demonstrate, beyond all reasonable doubt, that an offence has been committed and further satisfy itself that there would be a realistic prospect of conviction if the case was to be prosecuted in the Magistrates Court.
10. Fines resulting from successful prosecutions are recovered by the Court and not passed to the council. The only funding received by the council from a

prosecution is the award of costs for the proceedings. These costs rarely cover the actual cost incurred by the Council in pursuing the case.

11. Income received from a CPN can be retained by the Council, provided that it is used to further the local authority's statutory functions in relation to their enforcement activities within the private rented sector.
12. A financial penalty such as that imposed by a CPN is an immediate and direct penalty. Consequently CPNs served will be accompanied by an invoice with instructions on how to pay. Online payments will be set up to make it easier to pay the penalty.
13. Prosecutions will remain part of the enforcement process for repeat offenders or for cases where the health, safety and welfare of an occupier is in grave or immediate danger. Successful prosecutions mean the landlord receives a criminal record, and this is publicised on the Greater London Authority (GLA) 'Rogue Landlord & Agent Checker' for one year after conviction. A criminal record under the Housing Act will result in the landlord as being classed as not fit and proper person to be a licence holder. It may result in that landlord being subject to banning orders in the future. Whilst CPN's do not constitute a criminal conviction if a landlord receives two or more civil penalties over a 12 month period, local housing authorities may include that person's details in the 'Rogue Landlord & Agent Checker'.

KEY ISSUES FOR CONSIDERATION

14. Before a local authority can impose a civil penalty it must devise and publicise a policy setting out when and how the penalties will be applied. The policy must include a 'fee matrix' for calculating the level of penalty to be imposed in each case. Appendix 1 contains the proposed CPN enforcement policy and penalty matrix.
15. When determining the fee matrix the LA must have regard to the following factors:
 - severity of the offence
 - culpability and track record of the offender
 - the harm caused to the tenant
 - appropriate punishment of the offender
 - appropriate deterrent the offender from repeating the offence
 - appropriate deterrent to others from committing similar offences
 - any financial benefit the offender may have obtained as a result of committing the offence
 - Costs associated with investigating, determining and applying a civil penalty.

Identified Risks and how they will be managed

16. A consequence of changes in enforcement is a likely increase in complaints about the service and formal appeals against CPNs to FTT. This is to be expected and policy and procedures will be developed by the service to ensure all actions are taken in accordance with legislative requirements.
17. A further risk is the potential difficulty of recovering the financial penalties from some of the offenders as they may be limited liability companies and/or have no

financial assets from which to recover the monies. However, the council will use appropriate legal processes in order to recover as much debt as possible.

The Enforcement Policy

18. The CPN Enforcement Policy and fee matrix is set out in Appendix 1. It summarises the new measures introduced under the HPA 2016 and lists the actions the council will take in relation to civil penalties. It is designed to provide a legal framework and consistent approach when taking enforcement action in the Private Rented Sector.
19. The CPN Enforcement Policy confirms that decisions on an appropriate course of action will be made on a case-by-case basis. It explains the actions available to the council and describes the reasons why the council may take such action. It demonstrates that enforcement activity will be targeted, proportionate, consistent, transparent, fair and objective. It also provides an appropriate formal action response for the minority of landlords who:
 - Have been prosecuted repeatedly;
 - do not view a criminal record as a deterrent, and
 - view the small fines levied as a business cost that is easily written off.

For this type of landlord it is anticipated that the CPN fine of up to £30,000 per offence would prove more of an effective deterrent, and encourage compliance with the necessary standards or encourage them to leave the “market”

20. If the CPN Enforcement Policy is adopted, the Regulatory Services enforcement policy will be amended to reflect these changes, additionally the Council’s website will be updated with detailed information including:
 - the CPN Enforcement Policy and associated civil penalty fine matrix, and
 - hyper-links to all relevant information such as the original legislation and information regarding landlords’ responsibilities.

Policy implications

Southwark’s Housing Strategy to 2043

21. In January 2015 the long term housing strategy for the borough was agreed by cabinet. It contains a vision for the future of housing in the borough which consists of 4 principles:
 - Principle 1: We will use every tool at our disposal to increase the supply of all kinds of homes across Southwark;
 - Principle 2: We will demand the highest standards of quality, making Southwark a place where you will not know whether you are visiting homes in private, housing association or council ownership;
 - Principle 3: We will support and encourage all residents to take pride and responsibility in their homes and local area;
 - Principle 4: We will help vulnerable individuals and families to meet their housing needs and live as independently as possible.

22. Principle 2 of the strategy makes specific reference to improving conditions in the private rented sector. There is a commitment to 'crack down on rogue landlords and letting agencies' and 'taking a zero tolerance approach to landlords where the health and safety and welfare of tenants are put at serious risk'.
23. The Council Plan 2018/19- 2021/22 presents a set of commitments with an overarching aim of delivering Southwark's vision of a fairer future for all. The Civil Penalty Notice Enforcement Policy will support the Council Plan's theme of "a place to call home" by driving up standards through addressing poor housing conditions, bad management and targeting rogue and criminal landlords.

Community impact statement

24. The ability to issue fixed penalty notices would be another enforcement tool in addition to our existing policy to prosecute landlords who fail to ensure their properties are up to standard or fail to comply with the requirement to license their property. It will raise the profile of the commitment to improve standards in private rented properties and the council's robust approach to enforcement. This will have a positive impact on the wider community as it is recognised that an increase in decent home is linked to improved communities, reducing crime and improving educational achievement.

Equality Analysis

25. Poor housing has been identified as a health inequality, which adversely impacts on the health of vulnerable groups, and it is accepted that the ability to live in appropriate housing is key to other aspects of wellbeing. The private rented sector, and particularly houses let in multiple occupation, can house many lower income households, vulnerable adults and families with children. Traditionally, the most disenfranchised sectors of the community are accommodated within this sector. The proposals are part of a wider enforcement policy which seeks to improve the quality of accommodation for occupiers in the private rented sector, reduce the impact on the wider community and make our expectations and enforcement of the conditions clear and transparent.
26. The Equalities Impact Assessment is provided in Appendix 2.

Resource implications

27. The policy will be applied with existing staffing resources so there are no additional resources needed. Its adoption aims to target activity and create more efficient ways of working.
28. The HPA 2016 specifies that income received by a local authority following the implementation of a civil penalty can be retained by the local authority. The money received must however, be used on private sector housing enforcement and / or providing support to the private rented sector.

Legal implications

29. Landlords have the right to appeal against civil penalties. These appeals are heard and determined by the First-tier Tribunal FTT. There is a lack of certainty

around decisions that will be made by the FTT when they consider an appeal against the imposition of a civil penalty as this is a new piece of legislation. The FTT will have the power to quash, confirm, increase or reduce the civil penalty, however as the regime is new, the decision making has not been fully tried or tested. Despite this, the Government has made it clear that offenders must not derive any financial benefit from their offence and has briefed the tribunals on what is expected from them. To reduce this risk further, any cases deemed appropriate for CPN as opposed to prosecution will be carefully considered by Southwark's Private Sector Housing Enforcement team with support from legal services.

30. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success. Grounds for appeal are restricted to:
- the decision to impose the penalty, or
 - the amount of the penalty.

Financial implications

31. The Housing and Planning Act 2016 introduced a new financial penalty regime which enables the Council to impose a civil penalty up to £30,000. The proposed CPN enforcement policy and penalty matrix are set out in Appendix 1.
32. The overriding objective of the penalties is to act as an effective deterrent to landlords and encourage compliance with the necessary standards. The introduction of the new financial penalty regime will potentially result in additional income to the council. However, it is difficult to assess the financial impact arising from the adoption of the policy at this stage.
33. The financial impact of the adoption will be monitored on a regular basis as part of the departmental revenue monitoring process. Any additional income received from the issue of civil penalties will be used to support the council's statutory functions in relation to enforcement activities covering the private rented sector.

Consultation

34. No consultation is necessary.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

35. N/a

Director of Law and Democracy

36. Section 126 of the Housing and Planning act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. The Schedule in turn amends the Housing Act 2004 including a new Section 249A which includes the financial penalties as an alternative to prosecution.

37. When considering the recommendations of this report, due regard must be given to the public sector equality duty in section 149 of the Equality Act 2010. This requires the council to consider all individuals when carrying out its functions. Specifically, to have due regard to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The PSED also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct. Cabinet members are referred to the community impact statement in the report.
38. The decision being requested falls in accordance with part 3B of the Constitution.
39. The adoption of this new enforcement policy is an operational decision.

Strategic Director of Finance and Governance

40. The strategic director of finance and governance notes the recommendations in this report that the Cabinet approve the adoption of the Civil Penalty Policy for use by the Private Rented Sector Housing Enforcement Team and to delegate authority to the Chief Officer for enforcement of the Housing and Planning Act 2016.
41. The strategic director of finance and governance services notes the resource and financial implications contained within the report. The strategic director also notes the potential of additional income to the council from the adoption of the policy albeit difficult to assess at this stage.
42. Officer time to effect the recommendation will be contained within existing budgeted revenue resources.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Private Sector Housing Enforcement Policy - Civil Penalties, Housing and Planning Act 2016 and Prosecutions Housing Act 2004
Appendix 2	Equality Analysis

AUDIT TRAIL

Cabinet Member	Councillor Victoria Mills, Cabinet Member for Finance, Performance & Brexit.	
Lead Officer	Ian Smith, Strategic Director Environment and Leisure	
Report Author	Emma Trott, Private Sector Housing Enforcement & Licensing Manager, Regulatory Services	
Version	Final	
Dated	9 January 2019	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		11 January 2019