

HOUSING STANDARDS ENFORCEMENT POLICY

AND

HOUSING STANDARDS CIVIL PENALTY NOTICE (CPN) POLICY

Executive Summary

The Housing Standards Enforcement Policy has not been updated since 2017. There have been many additional pieces of legislation regarding enforcement in the Private Rented Sector along with more clarity on the treatment of enforcement appeals by the First Tier Tribunal. In order to keep up to date with legislative changes, it is important that this policy is reviewed regularly and changes in legislation included.

In addition, it has become clear through recent Tribunal decisions that there is an expectation to have a clear process for determining penalties when an offence has been committed. It has also been stated that there should be a known starting point for each offence from which other factors are applied to reach the penalty amount. It should be the case that anyone applying the policy will reach the same amount.

The Enforcement Policy aims to:

- a) improve the standard of privately rented housing within Woking and to provide a safer and healthier private housing sector;
- b) clearly set out in one place our approach to enforcement and the range of enforcement options available to officers under multiple pieces of legislation
- c) ensure that housing standards enforcement decisions are fair, transparent, consistent and proportionate;
- d) support all landlords to maintain appropriate standards of accommodation;
- e) incentivise responsible renting and increase public confidence in the quality and management of accommodation leading to a vibrant private rented sector in the Borough;
- f) hold persons responsible for their actions which are detrimental to the health, safety and welfare of their tenants and to local environmental quality.
- g) 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.

The Civil Penalty Notice Policy aims to ensure that enforcement actions comply with the following principles:

- a) Consistency – taking a similar approach in similar circumstances
- b) Proportionality – relating enforcement action to the risks and severity of the breaches
- c) Openness – explaining our actions clearly in plain language and having the policy available publicly.

Appeal cases with the First Tier Tribunal and the Upper Tribunal have laid down new precedents for applying policies to enforcement decisions. In particular, clear potential penalties must be available to all parties at all times. In case law, *Leicester City Council v Morjaria* [2023], the judge stated that all offences should have a particular starting point for a Civil Penalty Notice, and that all officers applying the policy will reach the same conclusion in terms of the penalty for that offence in the given circumstances.

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Recommendations

The Executive is requested to:

RECOMMEND TO COUNCIL That

- i) the changes to the Housing Standards Enforcement Policy in respect of private rented sector accommodation, as set out in Appendix 1 to the report, be approved;
- ii) the new Housing Standards Civil Penalty Notice Policy in respect of private rented sector accommodation, as set out in the Appendix 2 to the report, be approved and adopted;
- iii) delegated authority be given to the Strategic Director - Place, in consultation with the Portfolio Holder, to approve minor modifications and updates to the Housing Standards Enforcement Policy and the Housing Standards Civil Penalty Notice (CPN) Policy;
- iv) delegated authority be given to the Strategic Director - Place, in consultation with the Portfolio Holder, to agree the inclusion of new legislation and duties relevant to Private Sector Housing imposed on the Council by the Government in the Housing Standards Enforcement Policy and the Housing Standards Civil Penalty Notice (CPN) Policy; and
- v) the above recommendations, if approved, will be implemented from the 27 September 2024.

Reasons for Decision

Reason: To set a clear, consistent, proportionate and transparent approach to the enforcement of Housing Standards legislation and to enable minor amendments and the inclusion of new legislation and case law to be adopted expediently going forward.

The item(s) above will need to be dealt with by way of a recommendation to Council.

Background Papers: [Housing Standards Enforcement Policy - v1.0](#)

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**Housing Standards Enforcement Policy and
Housing Standards Civil Penalty Notice (CPN) Policy**

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Housing Standards Enforcement Policy and Housing Standards Civil Penalty Notice (CPN) Policy

1.0 Introduction

- 1.1 Housing Enforcement is an ever changing landscape with alterations to current legislation and new legislation coming into play regularly. The Council has a duty to ensure that all parties involved with the Private Rented Sector understand their responsibilities and are aware of the consequences of not fulfilling their duties. This sector houses some of the most vulnerable people within the community and it is the Council's duty to ensure that they are housed in adequately safe and healthy accommodation.
- 1.2 It is vital that we have a policy that is up to date with current legislation and able to be adapted when the government make changes or introduce new legislation. It needs to be robust to pass scrutiny from a judge or magistrate. It needs to be clear and easy to read to ensure that all people involved in the private rented sector can understand it and they are aware of the consequences of not operating lawfully.

2.0 Current Legislation

- 2.1 The Council has a wide range of legislation to intervene in the Private Rented Sector where required, including but not limited to:
 - a) Housing Act 2004
 - b) Housing Health and Safety Rating System (England) Regulations 2005
 - c) The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
 - d) The Management of Houses in Multiple Occupation (England) Regulations 2006
 - e) The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022
 - f) The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
 - g) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
 - h) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Regulations 2014
 - i) Housing and Planning Act 2016
 - j) Protection from Eviction Act 1977

Legislation continues to change within this sector, and the Council requires a policy which will be applicable whenever new legislation is implemented, with only minor changes to the Housing Standards Enforcement Policy.

- 2.2 The Housing Standards Enforcement Policy, attached at Appendix 1 to the report, has been written in a way which makes it accessible to those who are not familiar with legislation. It includes both formal and informal action including:
 - a) Providing advice and guidance to support compliance with the law;
 - b) Undertaking investigations (either proactively or in response to a complaint) to establish whether intervention is appropriate;

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- c) Taking informal action including where no action is taken;
- d) Requiring the provision of information;
- e) Serving enforcement notices and making enforcement orders;
- f) Taking emergency action
- g) Licensing private rented accommodation (including houses in multiple occupation);
- h) Carrying out works in default where a person has failed to comply with the requirements of a notice or order;
- i) Issuing Civil Penalties;
- j) Instigating Rent Repayment Orders;
- k) Issuing simple cautions,
- l) Instigating prosecution proceedings;
- m) Applying for banning orders,
- n) Entering enforcement records on the Rogue Landlord Database,
- o) Penalty Charge Notices for certain pieces of legislation.

2.3 The current policy has been used for the past 7 years without modification, and review is needed to encompass changes in legislation and recommendations from tribunal cases. This updated policy has been written with a view to make it more accessible and easier to follow, including legislation that we enforce, and the more recent Penalty Charge Notices for newer legislation which is not covered by Civil Penalty Notices.

2.4 A section has been added about Illegal Evictions to clarify that the Council has the power to enforce against this all too common practice.

3.0 Introducing a new matrix for assessment of penalties

3.1 The courts have demonstrated that a robust policy cannot be veered from in terms of appeal and that the court should follow the local authority policy when it is considering such appeals. However, where a policy is not robust or has erroneous content, the court can and will impose their own processes which could have implications on the ability for a council to consider future enforcement action if they continue to use the same policy. It can also be costly financially if court costs are awarded to the appellant.

3.2 Recent court cases have shown how important it is to have a framework from which civil penalties are calculated. In *Leicester City Council v Morjaria* [2023], the court went further to state that all offences should have a starting point for a penalty before any culpability or harm factors are included. They also state that two people presented with a framework for the same offence should come to the same penalty amount by following the process. This confirms the importance of having a robust framework (or matrix) from which penalties are calculated.

3.3 Previously the Council has not worked with a matrix and it has been the decision of the legal officer, based on experience of previous penalties, harm and culpability factors, and aggravating and mitigating factors to come to a decision about the amount of penalty to be

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imposed. This means that it is very unlikely for two people to reach the same conclusion on the proposed fine.

- 3.4 The Renters Reform Bill is also on the horizon which will impose a duty on the Council to take action regarding new legislation and potential offences, and the Council needs to ensure that its policies are current and effective so that new offences will be penalised in the same way as current offences. The framework needs to accommodate new offences without having major modifications.
- 3.5 Every case is assessed individually and has to undergo the evidential and public interest test as with any prosecutions. The following factors will be taken into account when assessing any case:
 - a) Severity of the offence
 - b) Culpability and track record of the offender
 - c) Harm caused to the tenant
 - d) Deterrent to others for committing an offence
 - e) Removing financial benefit for operating unlawfully
- 3.6 Starting points for the various offences have been selected based on results of tribunal cases which have either shown fines have been upheld or changed. Policies from other Local Authorities have also been used to consider where they place their starting points. The factors above are all considered within the matrix, however, we need to have a starting point to which to apply these. All offences have been considered and allocated a starting point, with the decision as to whether harms are Category 1 or Category 2 as per the Housing Health and Safety Rating Scale also being considered. Thus some offences will have different starting point depending on the severity of potential harms.
- 3.7 Percentage changes in the proposed penalty are allocated on the basis of whether there are mitigating or aggravating circumstances. We have included as many factors as possible. The percentage variation is based on other local authority policies and the consideration that they give to these factors. The percentages have been set to ensure the penalty for the offences which could cause more harm are reflective of this.
- 3.8 Worked examples have been included in the Housing Standards Civil Penalty Notice (CPN) Policy attached at Appendix 2. These have been compared with the outcomes generated from the policies of other Councils and have been shown to be equivalent.

4.0 Corporate Strategy

- 4.1 This links with Healthier Communities priority in terms of ensuring high quality homes for all.

5.0 Implications

Finance and Risk

- 5.1 A non-robust policy can lead to more appeals against civil penalty notices and prosecutions of people operating unlawfully. If the policy has errors this can lead to the Council's procedures being unacceptable in the eyes of the court and appeals being successful. Clarity is also important to ensure everyone is able to see the consequences of unlawful behaviour in this sector. Without a new policy the Council face the risk of not being able to prosecute or issue civil penalty notices, and / or have appeals upheld and potentially face court costs.
- 5.2 In 2023, the Council issued fixed penalties in excess of £40,000. This income is ring fenced and should be used to pay for further investigative and enforcement actions. This can only be positive in ensuring the Private Rented Sector is operating to a good standard.

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- 5.3 Any income received from the issue of civil penalties will be used to further our private sector housing working practice in line with regulations.
- 5.4 Non-payment of a financial penalty becomes a civil debt and must be pursued through the Council's debt recovery process, which, in itself, incurs additional costs both in terms of officer time and financial payments.

6.0 Equalities and Human Resources

- 6.1 This policy ensures that all people not acting lawfully will be treated following the same principles and procedures, and that those operating lawfully are not losing financially compared to those flouting the law.
- 6.2 This policy ensures the Council is able to monitor and improve the housing conditions for all occupants within the Borough, improving substandard property and living conditions.

Legal

- 6.3 The Regulators' Code under the Legislative and Regulatory Reform Act 2006 requires local authorities to develop clear enforcement policies and operational procedures that guide their regulatory activities.
- 6.4 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.
- 6.5 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.
- 6.6 Statutory guidance issued in April 2017 gives guidance for local authorities when exercising their functions in respect of civil penalties. The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. A minimum penalty level has not been set. The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004. 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.
- 6.7 The Policy, if approved, will help ensure that the Council's duties to regulate standards within private sector rented accommodation are met. Failure to have an up to date Policy is likely to attract criticism and have an adverse effect on the reputation of the Council and places undue risk in the event of an appeal/prosecution.

7.0 Engagement and Consultation

- 7.1 No formal consultation is required as a result of the policy proposal set out in this report.
- 7.2 Consultation has been carried out internally to arrive at the wording for this policy. Legal input has also been sought to ensure that it is accurate and provides a robust legal framework from which we can all work.
- 7.3 The civil penalty policy, charges and conditions will however be advertised on the relevant pages of the Council's website. The matrix of charges (Appendix 2) will also be published online.

REPORT ENDS