



To: Councillor Kevin Price Executive Councillor for Housing
Report by: Yvonne O'Donnell Environmental Health Manger
Relevant scrutiny committee: Housing 21/9/2017
Scrutiny Committee
Wards affected: All

Fee structure for Civil Penalty Notices for Housing Act 2004 offences

Not a Key Decision

1. Executive summary

1.1 The private rented sector is an important part of our housing market, housing 4.3 million households in England and comprising of approximately 28% of the housing market within Cambridge. With the average house prices in Cambridge at over 40% above national average and the demand for social housing high additional pressure is placed on private rented sector meaning landlords can rent out even the worst of properties. It is vital therefore that the Council focuses on sustaining the quality of the private rented sector specifically by improving conditions for its tenants.

1.2 In April of this year The Housing Act 2004 was amended by the Housing and Planning Act 2016. The 2016 Act introduced a range of measures to crack down on rogue landlords including the introduction of civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

1.3 The change in legislation aims to support good landlords who provide decent well maintained homes, but allow a new range of enforcement action to be taken for the small number of landlords knowingly rent out unsafe and substandard accommodation.

1.4 Every year as a local authority we take enforcement action against landlords some of which could be better dealt with by the use of Civil Penalty Notices. In serving a Civil Penalty Notice under these amendments the Council must decide a charge on a case by case basis rather than having a fixed fee. Cambridge intends to address this in the same method as other local authorities by creating a charging matrix.

2. Recommendations

The Executive Councillor is recommended:

- To agree the charge levels for the enforcement of Civil Penalty notices for relevant Housing Act 2004 offences as set out in Appendix 1

3. Background

3.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences.

3.2 The same criminal standard of proof is required for a civil penalty as for prosecution. Where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

3.3 Before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

3.4 The list of offences that that may be dealt with under the Housing Act 2004 by way of a financial penalty are as follows:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (Part 2 section 72); this relates to mandatory Licensing that is currently undertaken in Cambridge
 - Failure to Licence
 - Failure to comply with Licence conditions
- Offences in relation to licensing of houses under Part 3 of the Act (section 95); relates to selective licensing not currently adopted in Cambridge
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

3.5 The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

3.6 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents when this made available for local authority use.

When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

3.7 When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made it very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.

3.8 In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:

"[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000"

"It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants"

In view of this the fee Matrix has been designed to allow for the worst offences or repeat offences to receive the maximum penalty. Due to the complexity of applying the fee matrix a guide to applying the fee matrix has been produced to support officers when using it Appendix 2.

3.9 It is the responsibility of the individual authority to decide the financial penalty, the penalty must be relevant to the particular offence that has been committed meaning there will be variations and a single fee cannot be set. In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil Penalties under the Housing and Planning Act 2016

3.10 To ensure that there is clarity and the Council can demonstrate fairness within the process a Matrix system has been designed that will allow a penalty charge to be made in line with the level of the offence. In creating the Matrix levels of fines achieved during prosecution cases and costs to the Council awarded in these cases was taken into consideration. The Matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty the council must consider:

- Severity of the offence.
- Culpability and track record of the offender
- The harm caused to the tenant.
- Punishment of the offender.
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences.
- Removing any financial benefit the offender may have obtained as a result of committing the offence.

3.11 The introduction of imposing financial penalties as an alternative to prosecution will mean in suitable cases the process of enforcement action will be faster. The use of a Civil Penalty Notice does not prevent the council from carrying out works in default. A financial penalty notice cannot be served when enforcement action has been taken already for the offence. The Council may withdraw a civil penalty notice.

- 3.12 The guidance requires that we deter offenders from repeat offending. With this in mind the charge is doubled for a second offence and doubled again if more than one hazard, breach of regulations or licence condition was on the notice or Management Regulations letter that had not been complied with.
- 3.13 If a third offence is committed the charge is set within an incremental range allowing for the most serious repeat offenders to receive the maximum fine of £30,000. Calculating the charge in this way takes into account the principals set out within the guidance and detailed in paragraph 3.9 whilst ensuring that it will always be a higher charge than for previous offences.

4. Implications

(a) Financial Implications

Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations. It is difficult to put a figure on the amount of income generation owing to the number of civil penalties issued being unknown. However consideration of housing cases that have resulted in prosecution would indicate that a majority of these could have been dealt with via this course of action.

(b) Staffing Implications

There will be no staffing Implications.

(c) Equality and Poverty Implications

An EQIA has been completed As per Appendix 3

(d) Environmental Implications

Nil Rating

(e) Procurement

There will be no procurement implications

(f) Consultation and communication

- No public consultation has been carried out as there is no requirement to do so within the legislation.
- The Change in legislation is currently published on the Council Website with and explanation of the government guidance.

- The changes in the legislation and the use of Civil Penalty Notices have been communicated to the team who will be enforcing it.
- The use of fixed penalty notices has been updated within the Enforcement Policy which is due to be consulted on.

(g) **Community Safety**

5. Background papers

Housing and Planning Act 2016 -

<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

Civil Penalties under The Housing and Planning Act Guidance

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

The Housing act 2004

<http://www.legislation.gov.uk/ukpga/2004/34/contents>

The Management of Houses in Multiple Occupation (England) Regulations 2006

<http://www.legislation.gov.uk/uksi/2006/372/contents/made>

6. Appendices

Appendix 1 – Fee Matrix

Appendix 2 – Guide to Applying the Civil Penalties Fee Matrix

Appendix 3 – EQIA

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

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