

Report for: Cabinet Member for Housing and Planning(Deputy Leader)

Title: Civil Penalties in Private Sector Housing

Report

authorised by: Barry Francis

Lead Officer: Lynn Sellar – 07973244122 – lynn.sellar@haringey.gov.uk

Ward(s) affected: All

Report for Key/

Non-Key Decision: Key

1. Describe the issue under consideration.

- 1.1 This report seeks to gain authorisation to adopt changes to the section setting out the process of setting civil penalties imposed by Civil Penalty Notices (CPN) under the Housing and Planning Act 2016 in the existing Private Sector Housing Enforcement Policy.
- 1.2 A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain offences.
- 1.3 The Private Sector Housing (PSH) Enforcement Policy was approved by Cabinet in 2019.
- 1.4 Following recent case law, it has become necessary to revise the guidance on CPN in relation to the use, justification and determination for setting fines levied under the above legislation.
- 1.5 These revisions are required to ensure penalties are set fairly within current case law.

2. Cabinet Member Introduction

N/A.

3. Recommendations

That Cabinet member for Housing and Planning:

- 3.1 Approve the revised document at Appendix 1 to this report.
- 3.2 Authorise the Director for Environment and Resident Experience, in consultation with the Cabinet Member for Housing and Planning to adopt any further similar amendments as may be required in the future.

4. Reasons for decision

- 4.1 The Council seeks transparency and consistency in the discharge of its functions under its regulatory framework. The PSH Enforcement Policy sets out how the local authority exercises its powers when undertaking its statutory duties.
- 4.2 The PSH Enforcement Policy, outlines the Council's procedures in the use and setting of the level of a civil penalty in each case as an alternative to prosecution proceedings.
- 4.3 Recent case law [Leicester v Morjaria] opens many local authorities to challenge as to use of Civil Penalty Notices.
- 4.4 Funding has been awarded to Justice for Tenants by the Mayor of London to assist Local Authorities to address such deficiencies.
- 4.5 LB Haringey applied for use of this grant fund in order for the current policy to be reviewed and amended, as necessary. This work has been completed and reflected in this report at appendix one.
- 4.6 The existing PSH Enforcement Policy must be amended to reflect these changes. Once incorporated these revisions will deliver a more robust process for the issuing of Civil Penalty Notices.
- 4.7 The main changes are to the 'Civil Penalty Matrix' and the minimum level of fine associated with each offence committed. The matrix is intended to provide an indicative 'starting level' for a fine under the various offence categories.
- 4.8 The maximum fine level for an offence has been re-determined as part of the policy review. The final level of a civil penalty will be adjusted in each case. Officers will consider any aggravating and mitigating factors that the Council deems significant; including, but not limited to, factors relating to the track record and culpability of the landlord and the actual or potential harm to the occupants.
- 4.9 The revised document provides greater transparency regarding these relevant considerations in relation to each of the offences in which a civil Penalty Notice can be issued.

5. Alternative options considered.

- 5.1 The alternative option was to leave the current policy on the use of Civil Penalty Notices as it was and not take account of the judge's decision in the case of *Leicester v Morjaria*.
- 5.2 Were it not to revise the policy, the Council would be likely to have CPN's appealed and challenged.
- 5.3 The result of this could be a failure to uphold Civil Penalty Notices and the associated fines.

6. Background information

- 6.1 A civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain offences under the following legislation.
 - Housing Act 2004
 - Breach of a Banning Order under the Housing and Planning Act 2016.
 - Breach of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- 6.2 The Council has the power to impose a civil penalty of up to a maximum of £30,000 for each separate offence. If multiple offenders have committed the same offence at the same property, a separate civil penalty can, and usually will, be imposed on each offender. In each case, the level of civil penalty imposed on each offender will be in line with this policy.
- 6.3 The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 entitled "Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities." The Council has regard to this guidance in the exercise of their functions in respect of civil penalties.
- 6.4 The statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending.' The same paragraph sets out several factors that should be considered to ensure that the civil penalty is set at an appropriate level in each case.
- 6.5 It has become necessary following recent case law for the provision of imposing a civil penalty within our existing enforcement policy to be amended.
- 6.6 The objective of the amended CPN policy is to promote both transparency and consistency in the imposition of financial penalties under the legislation given in paragraph 6.1 above.
- 6.7 The Civil Penalty Notice amended guidance (Appendix one).

7. Contribution to the Corporate Delivery Plan 2022-2024 High level Strategic outcomes?

- 7.1 Improving Property Condition through the use of Property Licensing within the borough. CPN is a form of enforcement that can be used to penalise landlords who fail to undertake improvements or comply with licensing conditions.

8. Carbon and Climate Change

Not applicable.

9. Statutory Officers comments (Director of Finance (procurement), Head of Legal and Governance, Equalities)

9.1 Finance

- 9.1.1 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 within the 'Rent Repayment Orders and Financial Penalties (amounts recovered) (England) Regulations 2017'.

- 9.1.2 The revenue generated from the fines imposed through CPN is therefore an important income generator that can support further enforcement work.

- 9.1.3 It is therefore essential that any revisions to the existing policy are made that may prevent appeals and or penalties not being upheld by the First Tier Tribunal.

9.2 Procurement

- 9.2.1 Strategic Procurement note the contents of this report and confirm there are no procurement related matters preventing the Cabinet Member for Housing and Planning approving the recommendations stated in paragraph 3 above.

9.3 Assistant Director of Legal & Governance [Robin Levett – Interim Senior Lawyer]

- 9.3.1 The Assistant Director of Legal & Governance has been consulted in the drafting of this report and comments as follows.

- 9.3.2 In *Leicester City Council v Morjaria* the Deputy Chair of the Upper Tribunal (Lands Chamber) expressed the view that the two-dimensional grid - reflecting respectively harm caused by the offence and culpability of the offender - in common use by Councils risked conflating the harm caused with the seriousness of the offence, the third main factor identified in the Statutory Guidance referred to. He recommended that a starting point, or range, of penalties be adopted to reflect the seriousness of each housing offence

covered by the policy, and that the actual penalty be set by reference to other relevant factors within that range or around that starting point.

9.3.3 The new approach is set out at page 3 onwards of Appendix 1 and adopts the recommendation of beginning with a starting point for each offence; these, and the factors considered in increase or mitigation of the penalty to be imposed, are set out in page 4 and succeeding pages.

9.3.4 There is no legal reason why the Member should not adopt the recommendations set out in this report.

9.4 Equality

9.4.1 The council has a Public Sector Equality Duty (PSED) under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advance equality of opportunity between people who share protected characteristics and people who do not.
- Foster good relations between people who share those characteristics and people who do not.

9.4.2 The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty. Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socioeconomic status as a local protected characteristic.

9.4.3 The decision outlined in this report is to adopt changes to the existing Private Sector Housing Enforcement Policy to reflect case law rulings.

9.4.4 The main impact will be on landlords who are issued Civil Penalty Notices. It is not anticipated that this decision will have impacts on any groups with protected characteristics specifically because of these characteristics.

10. Use of Appendices

Appendix one –Civil Penalties under the Housing and Planning Act 2016 and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020