

Cabinet Member Delegated Decision 6 August 2018

Report title: Civil Penalty Notices for Private Rented Landlords

Wards: All

Portfolio: Cabinet Member for Housing: Councillor Paul Gadsby

Report Authorised by: Sue Foster: Strategic Director for Neighbourhoods and Growth

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Report summary

Property Standards and Enforcement Service (PSES) carries out a range of housing enforcement work in relation to the private rented sector. The Housing and Planning Act 2016 introduced new enforcement powers designed to complement the powers PSES use to target rogue landlords and managing agents. These changes include a power for the council to impose civil penalties of up to £30,000 as an alternative to prosecution for several specified offences under the Housing Act 2004 and extend the scope of rent repayment orders so as to cover illegal eviction and other specified offences. This report outlines these powers and seeks approval to use civil penalties and rent repayment orders as laid out in the Housing and Planning Act 2016 as further tools to assist the Council in improving standards within the private rented sector.

Finance summary

The implementation of this Act is covered by existing budgets.

Recommendations

1. To agree that the council use new enforcement powers contained in the Housing and Planning Act 2016 allowing the Council to impose civil penalties and to apply for rent repayment orders.
2. To approve and agree the adoption of the Housing Enforcement Policy at Appendix 1.
3. To delegate to the Strategic Director of Neighbourhoods and Growth in consultation with the Cabinet Member for Housing and the Director of Legal Services, authority to develop, implement and further amend the councils policy in respect of the imposition of Civil Penalties, such policy to be in accordance with Schedule 13A of the Housing Act 2004, and any other guidance issued by the Secretary of State.
4. To authorise the Strategic Director of Neighbourhoods and Growth to authorise other council officers, including but not limited to the Assistant Director Housing Needs, PSES Managers and Officers employed by PSES, to discharge the relevant powers detailed in this report.

1. Context

1.1 The Housing and Planning Act 2016 makes several amendments to the Housing Act 2004 and introduces a range of measures to assist local authorities to tackle rogue landlords and managing agents, including:

- Powers to impose civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences as detailed at paragraph 2.2 below;
- The extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences;
- The introduction of a database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties; and
- Banning orders for the most serious and prolific offenders.

1.2 The adoption of these powers supports the council's commitment to target and drive out irresponsible, criminal landlords who fail to provide decent homes and to drive up management standards within the private rented sector.

2. Proposal and Reasons

Civil Penalties

2.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 (HPA2016) amended the Housing Act 2004 (HA 2004) so as to provide for the imposition of civil penalties as an alternative to prosecution for certain specified housing offences.

2.2 This power is set out at Section 249A(1) of the HA2004, which states that a, "local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England." A relevant housing offence for these purposes means one of the following offences under the HA2004:

- Failure to comply with an Improvement Notice (s30)
- Offences in relation to the licensing of Houses in Multiple Occupation (s72)
- Offences in relation to licensing of houses under Part 3 of the Act (s95) (if the Council adopted selective or additional licensing in the future)
- Contravention of an overcrowding notice (s139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (s234)
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

2.3 Only one penalty (of up to £30,000) may be imposed on a person in respect of the same conduct. The council cannot impose a civil penalty and prosecute for the same offence. Similarly if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct. The decision on when to prosecute and when to issue a civil penalty will be decided on a case by case basis and (once adopted) in accordance with the Housing Enforcement Policy (HEP) at Appendix 1, which has been amended to include reference to the issuing of civil penalties as an alternative to prosecution for relevant offences under the Housing Act 2004. Where it is determined to impose a civil

penalty, the amount of that penalty will be calculated by reference to the Civil Penalty Policy appended to the HEP. A civil penalty will only be imposed where there is sufficient evidence to show the commission of a relevant offence, such as to provide a realistic prospect of a conviction if that breach was prosecuted in the Magistrate Court. Accordingly the evidence must reach the standard of the criminal burden of proof, i.e. beyond all reasonable doubt. It is not to be considered an easier or softer option to prosecution. Where both a landlord and a letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution and the level of penalty may be set at different levels. A person who has been issued with a civil penalty has a right of appeal to the First-Tier Tribunal and this will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (i.e. increase or reduce) or cancel the civil penalty that the Council has issued. The landlord or agent will be notified of their rights of appeal when served with a civil penalty.

2.4 A local housing authority must have regard to guidance issued by the Secretary of State relating to the exercise of functions pertaining to the issue of civil penalties. A copy of the guidance is attached as a background document to this report. Section 3.3 of that guidance document states that local housing authorities should develop and document their own policy on when to prosecute and when to issue a civil penalty, and that this policy should set out how the authority will determine the appropriate level of civil penalty to be applied in a particular case.

2.5 The guidance also sets out the factors which a local housing authority should take into account when deciding the appropriate level of penalty. These factors are:

- The severity of the offence
- The culpability and track record of the offender
- The harm caused or likely to be caused as a consequence of committing the offence
- Punishing and deterring the offender
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained as a result of committing the offence

2.6 The revisions to the HEP and the Civil Penalties and Rent Repayment Order Policy appended thereto, has been drafted and developed having regard to the said guidance.

Rent Repayment Orders

2.7 A Rent Repayment Order (RRO) is an order made by the First Tier Tribunal requiring a landlord to repay a specified amount of rent. The HA2004 introduced RROs to cover situations where the landlord of a property had failed to obtain a HMO licence for a property that was required to be licensed as such. As originally drafted, the power to seek a RRO only arose once a conviction was obtained. The HPA2016 extended this power to cover a much wider range of offences, set out below:

- Violence for securing entry to a premises – Criminal Law Act 1977
- Eviction or harassment of occupiers of a premises – Protection from Eviction Act 1977
- Failure to comply with an improvement notice – Section 30 Housing Act 2004
- Failure to comply with a prohibition order – Section 32 Housing Act 2004

- Control or management of an unlicensed HMO – Section 72 Housing Act 2004
- Control or management of an unlicensed house – Section 95 Housing Act 2004
- Breach of a banning order – Section 21 Housing and Planning Act 2016

2.8 RROs can be granted to either the tenant or the council, although a tenant may apply for an RRO only if the offence relates to housing that, at the time of the offence, was let to the tenant, and the offence was committed within 12 months of the application. If the tenants rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent is repaid to us. If the tenant paid their own rent themselves, it is repaid to the tenant. If the rent was paid partially by the tenant with the remainder through Housing Benefit/Universal Credit, the rent will be repaid on an equivalent basis. The amount awarded under this power will be dependent upon the offence committed, the amount of rent paid during the specific 12 month time period and who is applying (whether it is a local authority or tenant). The amount the First Tier Tribunal may require the landlord to repay must not exceed the amount of rent paid (by the tenant) or the amount of housing benefit or housing component of Universal Credit that the landlord received (from the local authority) in respect of rent. Under the HPA2016, a RRO can be sought even when the Landlord has not been convicted of one of the offences listed above. Where this is the case, the First Tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

2.9 Section 48 of the HPA2016 also places a new duty of local housing authorities to consider applying for a rent repayment order if they become aware that a person has been convicted one or more of the offences set out at 2.7 above in relation to housing in that authority's area. Tenants also have a right to apply to the First Tier Tribunal to make a rent repayment Order and Section 49 of the same Act specifies that local housing authorities may help a tenant to apply for an RRO by, for example, giving advice to tenants or conducting proceedings on a tenant's behalf.

2.10 A landlord may appeal against a decision of the First-tier Tribunal to the Upper Tribunal provided that permission to appeal has been given by the First-tier Tribunal or the Upper Tribunal.

2.11 The HA2004 requires that local authorities have regard to any guidance given by the Secretary of State when deciding whether to apply for rent repayment orders. Section 3.1 of that guidance document states that local housing authorities should develop and document their own policy on when to prosecute and when to apply for a RRO, and should decide each case on its merits.

2.12 The revisions to the HEP and the Civil Penalties and Rent Repayment Order Policy appended thereto, has been drafted and developed having regard to the said guidance.

Banning Orders and the National Database of Rogue Landlords

2.13 Section 15(1) of the HPA2016 provides local authorities with a power to apply for a banning order against a person who has been convicted of a banning order offence. The order is made by the First Tier Tribunal (for a period of no less than 12 months) and operates to

ban a landlord (and managing agent) from letting housing in England; engaging in English letting agency or property management work or both. A banning order offence is an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017. These Regulations specify a range of housing, immigration and other serious crimes. Statutory guidance has been issued on the exercise of this power.

- 2.14 Chapter 3 of the HPA2016 enables the secretary of state to create a central database of rogue landlords and agents. The purpose of this is to provide local authorities with a tool for keeping track of known rogues so that enforcement action and resources are focused on those individuals and organisations who knowingly flout their legal obligations and to assist in the identification of such individuals especially those who operate across council boundaries.
- 2.15 Local authorities must make an entry on the database for a person or organisation that has received a banning order and otherwise have a discretion to do so where a person has been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or property agent. Non-statutory guidance has been issued on the operation of the database.

3. Finance

- 3.1 There are no staffing or on-cost implications for the implementation of this Act as there is already a set of posts and staff associated with it in Environmental Health, both pre and post the Housing Services restructure.

4. Legal and Democracy

- 4.1 The Legal implications have been fully addressed in the body of the report.
- 4.2 The Secretary of State has issued statutory guidance pertaining to the exercise of the powers mentioned in this report and the council is required to have regard to those documents when exercising the relevant powers. Paragraph 3.3 of the Civil Penalties Guidance document (see Background Papers) states that local authorities are expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and to set out how it will apply civil penalties. Section 3.1 of the Rent Repayment Orders guidance (see Background Papers) also states that local authorities are expected to develop and document their own policies on when to prosecute and when to issue a Rent Repayment Order. So as to discharge this requirement, this report seeks inter alia Cabinet Member approval to adopt the Housing Enforcement Policy attached at Appendix 1 and the addendum Civil Penalties and Rent Repayment Order Policy annexed thereto.
- 4.3 Section 149 of the Equality Act 2010 sets out the new public sector equality duty replacing the previous duties in relation to race, sex and disability and extending the duty to all the protected characteristics i.e. race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership and gender reassignment. The public sector equality duty requires public authorities to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity and
- Foster good relations between those who share a protected characteristic and those who do not.

- 4.4 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it, including, in particular, steps to take account of disabled persons' disabilities;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 4.5 Part of the duty to have “due regard” where there is disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim. Accordingly, there is an expectation that a decision maker will explore other means which have less of a disproportionate impact. The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.
- 4.6 This proposed key decision was entered in the Forward Plan on 15 June 2018 and the necessary 28 clear days’ notice has been given. In addition, the Council’s Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. **Consultation and co-production**

The DCLG conducted an extensive national consultation on the measures referred to in this report and the council has been engaged directly in the development of the guidance pertaining to exercise of the new powers particularly the powers to impose civil penalties as an alternative to prosecution.

6. **Risk management**

- 6.1 No potential risks associated with the proposed course of action.

7. Equalities impact assessment

7.1 The Equalities Impact Assessment did not identify any key equalities issues or mitigations. Impacts on protected groups were identified as likely to be positive through improving the conditions of private rented sector housing in the borough. (EIA attached at Appendix 2).

8. Community safety

8.1 The exercise of these new powers should have the result of forcing non-compliant, criminal landlords out of the PRS (whilst encouraging others to comply) and in this way prevent the commission of housing offences.

9. Organisational implications

9.1 Environmental

None.

9.2 Staffing and accommodation

This will be managed within current staffing resource. Activity will be monitored, and resource reviewed at the end of the financial year. If required, new posts will be created to cover extra work, and these will be financed from the income from fines.

9.3 Procurement

None.

9.4 Health

Increased enforcement of the PRS will result in improved standards of private rented sector accommodation, with resulting positive impacts on health and wellbeing.

10. Timetable for implementation

10.1 The recommendations in the report will be implemented immediately. Enforcement is reactive to offences being committed, therefore we are unable to provide a list of measurable aims and outcomes with the date by which they should be achieved.

Audit Trail				
Consultation				
Name/Position	Lambeth directorate / department or partner	Date Sent	Date Received	Comments in paragraph:
Councillor Gadsby	Cabinet Member for Housing	11.07.18	12.07.18	
<i>Sue Foster</i>	Strategic Director for Neighbourhoods and Growth	11.07.18	12.07.18	
<i>Andrew Ramsden, Finance</i>	Corporate Resources	11.06.18	19.06.18	3.1
<i>Jean Marc Moorcambe, Legal Services</i>	Corporate Resources	11.06.18	11.06.18	Report and policy co-produced with legal
Maria Burton, Democratic Services	Corporate Resources	21.06.18	02.07.18	4

Report History	
Original discussion with Cabinet Member	05/06/2018
Report deadline	N/A
Date final report sent	N/A
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	15.06.18
Key decision reasons	3. Meets community impact test
Background information	Housing Act 2004 Housing and Planning Act 2016 Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities
Appendices	Appendix 1 – Private Sector Housing Enforcement Policy Appendix 2 – EIA

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Candida Thompson, Assistant Director Housing Needs

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:

Signature: _____ **Date:** 6 August 2018

Post: Councillor Paul Gadsby, Cabinet Member for Housing

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None