



Service Delivery Committee	Tuesday, 10 July 2018	Matter for Information and Decision
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Report Title: **Civil Penalties under the Housing and Planning Act 2016**

Report Author(s): **Tony Cawthorne (Environmental Health Officer)**

Purpose of Report:	To bring to the attention of Members an amendment to legislation to impose civil penalties for breaches of housing legislation and to approve a Policy as required by the statutory guidance issued under section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016.
Report Summary:	The Housing and Planning Act 2016 amends the Housing Act 2004 to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.
Recommendation(s):	<p>A. That the proposed Policy (as set out at Appendix 1) be approved by Members; and</p> <p>B. That delegated authority is given to the Head of Law & Governance / Monitoring Officer, following consultation with the Chair of the Service Delivery Committee, to make minor amendments to the Policy to reflect changes in fact and law.</p>
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Interim Chief Executive) (0116) 257 2602 anne.court1@oadby-wigston.gov.uk</p> <p>David Gill (Head of Law and Governance / Monitoring Officer) (0116) 257 2626 david.gill@oadby-wigston.gov.uk</p> <p>Tony Cawthorne (Environmental Health Officer) (0116) 257 2670 tony.cawthorne@oadby-wigston.gov.uk</p>
Corporate Priorities:	Effective Service Provision (CP2)
Vision and Values:	<p>"A Strong Borough Together" (Vision)</p> <p>Accountability (V1)</p> <p>Innovation (V4)</p> <p>Customer Focus (V5)</p>
Report Implications:-	
Legal:	The implications are contained within the report.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	<p>Decreasing Financial Resources (CR1)</p> <p>Reputation Damage (CR4)</p>

	Regulatory Governance (CR6) Failure to Respond to a Significant Incident (CR7) Economy/Regeneration (CR9)
Equalities Assessment (EA):	Initial EA Screening (See Appendices)
Human Rights:	The proposed Policy does not impact on any particular human rights in the Borough area as it applies to all tenants in privately-rented properties covered by the regulations and all landlords and letting agents.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	During the drawing-up of the Policy with the aid of the Local Government Association, all national agencies dealing with landlords and tenants were consulted.
Background Papers:	Housing Act 2004 Housing and Planning Act 2016 Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences – Sentencing Council Definitive Guideline
Appendices:	1. Civil Penalties under the Housing Act 2004 Policy 2. Initial Equality Assessment Screening

1. Introduction

- 1.1 The Housing and Planning Act 2016 ("the 2016 Act") amends the Housing Act 2004 ("the 2004 Act") to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.
- 1.2 The proposed Policy (as set out at **Appendix 1**) sets out guidance as to how Oadby and Wigston Borough Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

2. Background

- 2.1 Marcus Jones MP (Parliamentary under Secretary of State at the Department for Communities and Local Government) has stated that:

'[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.'

- 2.2 Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:
- section 30 (failure to comply with improvement notice);
 - section 72 (licensing of Houses in multiple occupation (HMOs));
 - section 95 (licensing of houses under Part 3);
 - section 139(7) (failure to comply with overcrowding notice); or
 - section 234 (management regulations in respect of HMOs).
- 2.3 A new Schedule 13A has also been inserted into the 2004 Act which prescribes the procedures that a local housing authority must follow before imposing a financial penalty, for imposing the penalty, the appeal process and the procedure for recovery of the penalty.
- 2.4 The Government's Department for Communities and Local Government (DCLG) have published the following document: '[Civil Penalties under the Housing and Planning Act 2016:- Guidance for Local Authorities](#)'. This is statutory guidance to which local housing authorities must have regard. This statutory guidance recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

3. Basis of this Policy

- 3.1 In accordance with the new section 249A(4) of the 2004 Act, the amount of a financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding on the level of penalty, it does not go into any level of detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of civil penalty in a particular case and seeks to set out further guidance through this policy as to how it will do so.
- 3.2 The Council has decided to largely base this policy on the principles set out in the '[Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guide](#)' which is considered to be the most relevant sentencing guidance issued by the Sentencing Council. The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.
- 3.3 The range of financial penalties in this guidance use similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

4. Guidance for Officers

- 4.1 The proposed Policy provides guidance to Officers on how to make these decisions on the level of financial penalty under the 2016 Act.