

## **BARNSELY METROPOLITAN BOROUGH COUNCIL**

**This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan**

### **REPORT OF THE EXECUTIVE DIRECTOR OF COMMUNITIES TO CABINET ON 6<sup>th</sup> MARCH 2019**

#### **CIVIL PENALTIES POLICY IMPLEMENTATION**

##### **1. PURPOSE OF REPORT**

- 1.1 To report seeks to outline the rationale for implementation the above policy in accordance with legislative provision made under the Housing and Planning Act 2016, and subsequently how it is implemented fairly and consistently in accordance with Government guidance.

##### **2. RECOMMENDATIONS**

1. **That the Civil Penalties Policy set out in Appendix 1 be approved.**
2. **That the Service Director Stronger, Safer and Healthier Communities be authorised to implement the policy and to undertake relevant enforcement under it, including the issuing and enforcement of Civil Penalty Notices.**

##### **3. INTRODUCTION**

- 3.1 The Council, via delegated authority has the provision of various pieces of legislation to deal with issues raised for the private rented sector relating to housing issues. This type of enforcement work seeks to redress the property issues by the use of enforcement action and where non-compliance arises, redress through the court system via prosecution. Examples of hazards raised are: lack of heating provisions. A category 1 hazards (which is the most serious). This type of enforcement work carries penalties of prosecution and in some cases custodial sentences.

##### **4. PROPOSAL AND JUSTIFICATION**

- 4.1 By introducing a Civil Penalties policy it will allow the Council to take a broader and more pragmatic approach to non-compliance for enforcement by the imposition of financial penalties against the landlord or managing agent, commensurate with culpability and levels of harm caused to the tenants. This Policy outlines the rationale for when to prosecute and when to consider the use of civil penalties. Thus offering a transparent approach to enforcement so that people understand how they will be dealt with.
- 4.2 The Policy relies on the same level of evidence as a prosecution ie. the criminal standard of proof. However, it introduces several different levels of financial penalty. This will be decided by the Council in accordance with the policy framework and aggravating factors. See Appendix 1 Civil Penalties policy document.

- 4.3 The Policy reflects the requirements to use reform where it offers a suitable alternative to prosecution and potentially where previous prosecution action has not yielded the required results or where landlords have little regard for the law but place greater emphasis on monetary gain at the expense of the most vulnerable.
- 4.4 There is a right of appeal by landlords to the First Tier Tribunal against the Council's decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final penalty notice was issued by the Council. The final penalty notice is suspended until the appeal is determined or withdrawn.
- 4.5 An appeal will involve a re-hearing of the Council's decision to impose a civil penalty. It may also have regard to matters of which the Council was unaware when the decision to impose a civil penalty was made. The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000. It can further dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

## **5. CONSIDERATION OF ALTERNATIVE APPROACHES**

- 5.1 There are no alternative approaches other than the use of enforcement which is currently being undertaken. Considering the role of the court and the level of fines or punishment given, civil penalties offer a social responsibility to redress a wrong, where prosecution has not deterred the landlord from his former actions. Officers will be expected to use judgement to decide whether it is better to prosecute or use the civil penalties route.
- 5.2 Consideration has been given to the use of Community Protection Notices (CPN) as an alternative to enforcement action. However, this type of notice offers no enforcement to remedy the hazard where non-compliance occurs. The initial level of fine has been considered and set to mirror the true cost of a civil penalty notice within the civil penalties policy.

## **6. IMPLICATIONS FOR LOCAL PEOPLE/SERVICE USERS**

- 6.1 There are no implications, other than the ability for local communities to be clear on the Civil Penalties policy as an alternative to prosecution which has been adopted by the Local Authority.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 None specific to this report – it's currently very difficult to estimate how much income is likely to be generated following implementation of the Policy.
- 7.2 It should be noted however that any income that is generated from civil penalties issued in relation to housing offences must be ring-fenced to directly support those functions necessary to the Council in managing and improving the private rented sector.

## **8. EMPLOYEE IMPLICATIONS**

8.1 No direct implications associated with this report.

## **9. LEGAL IMPLICATIONS**

9.1 This Policy has been drafted in accordance Government guidance (DCLG 'Civil Penalties under the Housing and Planning Act 2016 'Guidance for local authorities'. This is statutory guidance that the Council must have regard to in the exercise of its functions in respect of civil penalties.

9.2 There will be a protocol for Legal advice to be incorporated into the decision making process and legal assistance may be required where:

- a) landlords appeal against the decision of the Council to issue a civil penalty to the First Tier Tribunal, or
- b) landlords fail to pay a civil penalty and the case is then referred to the county court for an order of that court and to recover the debt.

Depending on the numbers and frequency this may have resource implications for Legal Services.

## **10. CUSTOMER AND DIGITAL IMPLICATIONS**

10.1 No implications in terms of Customer of Digital.

## **11. COMMUNICATIONS IMPLICATIONS**

11.1 There are no specific issues associated with this report. Other than to make the public aware of the proposed policy in accordance with the current communications policy.

## **12. CONSULTATIONS**

12.1 Consultation has been sent to: The Private Sector Housing Task and Finish Group

Which includes : Place Directorate, People Directorate, Communities Directorate and Berneslai Homes. Amendments have been made to the policy document.

In addition, a smart survey linked to the policy document was placed on the council's web pages. The survey requested comments relating to the council implementing such a policy. Of the seven responses, which were all from landlords and landlord groups, one respondent felt the policy was not required. The remaining responses indicated they were behind the implementation of such a policy. Of those; The Barnsley Residential Landlords Association (BRLA) were in favour of the policy and Goldthorpe Landlords and Residents group (GLR) did not comment.

### **13. THE CORPORATE PLAN AND THE COUNCIL'S PERFORMANCE MANAGEMENT FRAMEWORK**

13.1 The Policy supports the delivery of the following strategic priorities;

#### **To achieve a thriving and vibrant economy**

- Create more and better housing

#### **To achieve strong and resilient communities**

- Protecting the borough for future generations

Performance is actively monitored in-line with SNS and Communities Directorate performance management frameworks.

### **14. PROMOTING EQUALITY, DIVERSITY AND SOCIAL INCLUSION**

14.1 The purpose of the Policy is to ensure all Civil Penalties are proportionate and reasonable with due regard to promoting equality, diversity and social inclusion.

### **15. TACKLING THE IMPACT OF POVERTY**

15.1 The purpose of the Policy is to ensure that where Civil Penalties are used across Barnsley, the Policy is implemented on a case by case basis to support the corporate ambition to transform and create a sustainable and better housing. Ultimately the benefits of stimulating improvement in housing through dealing effectively with complaints should benefit all residents of the borough and help address issues associated with housing.

### **16. TACKLING HEALTH INEQUALITIES**

16.1 Dealing effectively with Housing issues in this manner will support the improvement of housing having a positive impact on supporting the most vulnerable people in our communities.

### **17. REDUCTION OF CRIME AND DISORDER**

17.1 There are no specific issues associated with this report.

### **18. RISK MANAGEMENT ISSUES**

18.1 There are no risks in relation to the agreement of the policy. Implementation of such a policy is at the discretion of the council.

### **19. HEALTH, SAFETY AND EMERGENCY RESILIENCE ISSUES**

19.1 There are no specific issues associated with this report.

### **20. COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

20.1 There are no specific issues associated with this report.

## **21. CONSERVATION OF BIODIVERSITY**

21.1 There are no specific issues associated with this report.

## **22. GLOSSARY**

22.1 SNS – Safer Neighbourhood Services  
DCLG – Departments for Communities and Local Government  
BRLA- Barnsley Residential Landlords Association.  
GLR- Goldthorpe Landlords and Residents association.

## **23. LIST OF APPENDICES**

Appendix 1: Civil Penalties Policy

## **24. BACKGROUND PAPERS**

DCLG Guidance Document -‘Civil Penalties under the Housing and Planning Act 2016 Guidance for local authorities’.

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Financial Implications/Consultation



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*(To be signed by senior Financial Services officer  
where no financial implications)*