

Meeting: Mayor PDDG / JOT

Date: 4 September 2017

Wards Affected: All

Report Title: Housing Standards – Civil Penalty Policy, Housing and Planning Act 2017.

Is the decision a key decision? No

When does the decision need to be implemented? At the earliest opportunity

Executive Lead Contact Details: Mark King, Executive Lead for Planning, Transport and Housing. Telephone 207114, email: mark.king@torbay.gov.uk.

Supporting Officer Contact Details: Robert Kelly, Acting Principal Officer Housing Standards, telephone: 208042, email: Robert.Kelly@Torbay.gov.uk

1. Proposal and Introduction

- 1.1 The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords, which come into operation during 2017, these include:
 - a) ***The ability of the Local Authority to issue Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force April 2017);***
 - b) Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (came into force April 2017);
 - c) Database of rogue landlords and property agents convicted of certain offences (scheduled to come into force on 1 October 2017);
 - d) Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).
- 1.2 This paper seeks approval for the adoption of the Housing Standards Civil Penalty Policy. It details when a civil penalty will be used and for what amount the penalty will be.
- 1.3 The amount of the penalty is determined by the local housing authority with the maximum being £30,000. In determining an appropriate level of penalty, local housing authorities should have regard to the guidance which has been incorporated into this policy document, which sets out the factors to take into account when deciding on the appropriate level of penalty.
- 1.4 The benefits of such a scheme will be:
 - a) Improved standards within the private rented sector
 - b) Allow a more effective and efficient mechanism within which to tackle rogue landlords.

- c) Reduce the burden on the courts
- d) Level of fine more conducive to the offense committed
- e) Payments from fines come into the LA ring fenced by regulation for Housing Standards enforcement.

- 1.5 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that 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. In order to ensure that the level of fine is conducive to the offence, the policy escalates taking into account the severity of the offence, the culpability and track record of the Landlord and the harm to the tenant. As part of the process a landlord facing a civil penalty can make representations and can appeal at a Housing Tribunal.

2. Reason for Proposal

- 2.1 A policy document is required to enable the local authority to issue Civil penalties under the new legislation. It also ensures a consistency of approach and that there are protections and safeguarding practices in place for landlords. It will also enable a robust mechanism within which to defend any challenges that are open to the local authority from landlords, through the means of a tribunal.
- 2.2 To enable effective implementation of the policy, additional resource is required within Housing Standards of 0.5 FTE this will increase the number of inspecting officers from 2.5 FTE to 3 FTE. It is anticipated that the costs will be met by the income from the civil penalties.

3. Recommendation(s) / Proposed Decision

- 3.1 That the Housing Standards – Civil Penalty Policy, Housing and Planning Act 2017 detailed in appendix 1 be approved. This sets out how Torbay Council will deliver section 249a of The Housing Act 2004 (as implemented by section 126 of the Housing and Planning Act 2016) in order to issue civil penalties as alternative to prosecution.
- 3.2 That funding for 0.5 FTE of Housing Standards Environmental Health Officer be agreed (£23,796)

Appendices

Appendix 1: Housing Standards – Civil Penalty Policy, Housing and Planning Act 2017

Background Documents

Department for Communities and Local Government – Civil penalties under the Housing and Planning Act 2016, Guidance for Local Housing Authorities

Section 1: Background Information

1.	<p>What is the proposal / issue?</p> <p>Rogue landlords can have an incredibly distressing impact on the lives of individuals, families and communities. Picking up the pieces after them is also costly and increasingly challenging for organisations that have diminishing resources at their disposal.</p> <p>Progress has been made in addressing this issue through the Mayors support and commitment to tackle this problem. This proposal provides an additional mechanism to provide an alternative sanction that is more efficient, with fewer burdens on public sources and with greater sanctions, with the aim of facilitating behaviour change across the sector.</p>
2.	<p>What is the current situation?</p> <p>Torbay is heavily reliant on the private rented sector and achieving good quality provision which is affordable in a low wage economy is a challenge. The private rented sector accounts for almost 22% of the housing stock in Torbay compared, to 12% nationally.</p> <p>The Housing Standards team provide a robust approach to rogue landlords and issues such as the Grenville fire have only highlighted the wider concerns across the private rented sector.</p> <p>In the first quarter of this year 70% of all inspections undertaken by the team has required formal intervention. This illustrates the need to provide an additional mechanism by which to enable and facilitate more expedient action from property owners.</p> <p>Prosecutions are undertaken by the Local Authority. Although there is no difference in the burden of proof required in issuing a civil penalty to that of a prosecution, the time required across the whole criminal justice system is significantly less. The level of fines issued by the Courts, are not always conducive to the level of the offence committed. This seeks to address both.</p>
3.	<p>What options have been considered?</p> <p>Not adopting the policy will mean that the local authority will not be able to utilise the legal sanctions available to them.</p>
4.	<p>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</p> <p>Enforcement activity undertaken by the Housing Standards team contributes to the corporate plan in the ways described below. Providing a safe home not only impacts on health but also educational attainment and hence the economic wellbeing of those concerned.</p>

	<p>Ambitions: Prosperous and Healthy Torbay</p> <p>Principles:</p> <ul style="list-style-type: none"> • Use reducing resources to best effect • Reduce demand through prevention and innovation • Integrated and joined up approach <p>Targeted actions:</p> <ul style="list-style-type: none"> • Protecting all children and giving them the best start in life • Working towards a more prosperous Torbay • Promoting healthy lifestyles across Torbay • Ensuring Torbay remains an attractive and safe place to live and visit • Protecting and supporting vulnerable adults
5.	<p>Who will be affected by this proposal and who do you need to consult with?</p> <p>It is the intention that the proposal will facilitate the ability to drive up standards in the private rented sector in Torbay. As such it will impact both on landlords and also tenants.</p> <p>Significant consultation has been undertaken by Central Government on the implementation of the legislation, both through statutory agencies and those representatives that provide housing, including landlord associations.</p> <p>Significant peer consultation has already been undertaken across Devon and Somerset, to ensure a consistent approach to the implementation of the legislation.</p> <p>With the adoption of this policy it is intended to consult with landlords and their representatives on its implementation and provide appropriate information.</p>
6.	<p>How will you propose to consult?</p> <p>The overarching policy guidance from Central Government has been based on an extensive consultation exercise with National Landlord Associations. As such any implementation will be undertaken at a local through engagement with landlords associations.</p>

Section 2: Implications and Impact Assessment

7.	<p>What are the financial and legal implications?</p> <p>Income received from a civil penalty is retained by the Council and can only be used towards the statutory functions in relation to its enforcement of standards in the private rented sector. The Council may also apply for costs and expenses incurred in relation to the enforcement action.</p> <p>Any income generated from this activity is unpredictable based on the nature of enforcement action. It is therefore not possible to forecast any income levels for the year.</p>
8.	<p>What are the risks?</p> <p>Failure to agree the document and hence have an appropriate policy in place means the Council will be unable to issue civil penalties for such offences.</p> <p>The issuing of any penalties are open to legal challenge through a Housing Tribunal.</p> <p>Not providing adequate resource may impact on the deliverability and implementation of the new legislation.</p>
9.	<p>Public Services Value (Social Value) Act 2012</p> <p>N/A</p>
10.	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>The policy document has been based on documentation provided by DCLG on Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Authorities.</p>
11.	<p>What are key findings from the consultation you have carried out?</p> <p>As a result of consultation with other Devon local authorities it is their intention to adopt Torbay's policy document. This will provide a consistent approach across the region.</p>
	<p>Amendments to Proposal / Mitigating Actions</p> <p>N/A</p>

Equality Impacts

13	Identify the potential positive and negative impacts on specific groups Not required			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people	New powers to deal with poor housing conditions		
	People with caring Responsibilities	New powers to deal with poor housing conditions		
	People with a disability	New powers to deal with poor housing conditions		
	Women or men	New powers to deal with poor housing conditions		
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>	New powers to deal with poor housing conditions		
	Religion or belief (including lack of belief)	New powers to deal with poor housing conditions		
	People who are lesbian, gay or bisexual	New powers to deal with poor housing conditions		
	People who are transgendered	New powers to deal with poor housing conditions		
	People who are in a marriage or civil partnership	New powers to deal with poor housing conditions		
	Women who are pregnant / on maternity leave	New powers to deal with poor housing conditions		

	Socio-economic impacts (Including impact on child poverty issues and deprivation)	New powers to deal with poor housing conditions		
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	New powers to deal with poor housing conditions which will improve the wider determinants of health		
14	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	N/A		
15	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	N/A		