

Meeting: Cabinet

Date: 14 July 2025

Wards affected: All Wards

Report Title: Housing Standards Civil Penalty Policy & HMO Licence Conditions Review

When does the decision need to be implemented? Upon conclusion of the Call-in period

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1. Purpose of Report

- 1.1. Housing and Planning Act 2016 brought in the opportunity for Local Housing Authorities (LHA) to issue Civil Penalties as an alternative to prosecution with the following advantages; less burden on the judicial system, quicker outcomes, a greater understanding of housing legislation and practice (Tribunal vs Magistrate), fines that better reflected the seriousness of the issue and the ability for the proceeds to be used for housing enforcement activity (The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017).
- 1.2. A policy is required in order to establish the amount of fine in a given circumstance up to a maximum of £30K.
- 1.3. Housing Act 2004 required LHA's to licence certain types of Houses In Multiple Occupation (HMO) and to assign a set of licence conditions to each licence. Some conditions were set as 'Mandatory' by legislation, some were 'Local' (set by LHA in every licence) and some specific to the actual HMO in question.
- 1.4. The purpose of this report is to seek approval to adopt an updated Housing Standards Civil Penalty policy and to update the HMO licence conditions.

2. Reason for Proposal and its benefits

- 2.1. The proposals in this report help us to deliver our vision of a healthy, happy, and prosperous Torbay by ensuring that landlords provide safe and wholesome homes for our privately renting community and that those living in licensable HMO accommodation occupy a properly managed building.

- 2.2. The adoption of the amended Housing Standards Civil Penalty Policy will ensure that we are compliant with current legislative developments to ensure that when landlords breach legislation to the degree that action is justified, we are able to apply the appropriate sanctions.
- 2.3. Adoption of the amended HMO licence conditions ensures that we are able to apply the relevant conditions without the need to clarify poorly drafted legislation making it easier for HMO licensee's to understand the requirements and making our review more efficient.
- 2.4. A consultation commenced on 27th May and concluded on 17th June, details are provided in 10.1 below.
- 2.5. In addition to the amendments within this Policy update and the consultation, we will expect to receive a further update to the Housing Standards Civil Penalty Policy following the Renters Rights Bill (RRB) receiving Royal Ascent. The current expectation is that Royal Ascent will occur in July or October and that we should expect an updated policy approximately 2 months after. The purpose of the update will be to include the new duties set out in the RRB such as landlord discrimination, incorrect use of tenancy etc, to increase the maximum fine level from £30K to £40K and to introduce the concept of a first-offence fine level (max £7K) for certain offences. These updates will follow legislation (will be a requirement) and won't change the methodology of the policy.
- 2.6. An updated policy is being provided now to reflect the outcome of a recent legal case; Leicester vs Morjariato, as enforcement activity is a daily occurrence and to mitigate against any delays in Royal Ascent being obtained for the RRB.

3. Recommendation(s) / Proposed Decision

- 3.1. That the Housing Standards Civil Penalty Policy as set out in Appendix 1 of the submitted report be approved;
- 3.2. That the amended House In Multiple Occupation Licence Conditions as set out in Appendix 2 to 4 of the submitted report be approved; and
- 3.3. That delegated authority be given to the Director of Adults and Community Services, in consultation with the Cabinet Member for Adult and Community Services, Public Health and Inequalities, to make further updates to the Housing Standards Civil Penalty Policy and House In Multiple Occupation Licence Conditions following Royal Ascent of the Renters Rights Bill.

4. Appendices

- 4.1. Appendix 1: Torbay's New Civil Penalty Policy
- 4.2. Appendix 2: Current HMO licence conditions in Torbay
- 4.3. Appendix 3: List of additional conditions for Torbay HMO's
- 4.4. Appendix 4: New HMO licence conditions in Torbay

5. Background Documents

- The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017
- <https://cornerstonebarristers.com/wp-content/uploads/2023/06/Tribunals-Decision-dated-19-June-2023.pdf>

Supporting Information

6. Introduction

- 6.1. Following the commencement of the Housing and Planning Act 2016 Torbay Council adopted a Housing Standards Civil Penalty Policy which has been used to good effect. 37 Civil Penalties have been issued in 6 years enabling approximately £27K to be used in housing enforcement activity. This is the 2nd highest number of civil penalties in Devon behind Plymouth City Council. There are an additional 3 that have been served since April this year.
- 6.2. The policy deliberately mirrored the Statutory guidance and was tested at First-tier Tribunal (FtT) on a number of occasions with positive feedback.
- 6.3. In 2023 an appeal (Leicester vs Morjariato) to the FtT resulted in a decision that was a catalyst for Housing Standards Civil Penalty policies to be reviewed.
<https://cornerstonebarristers.com/wp-content/uploads/2023/06/Tribunals-Decision-dated-19-June-2023.pdf>
- 6.4. Following the case, government set aside a small fund for a 3rd sector organisation (Tenants for Justice) to organise procurement of legal support to update policy, including Housing Standards Civil Penalty policies and with an eye on the policy demands of the Renters Rights Bill (RRB).
- 6.5. We accessed these funds early and received £5K in 'credit' for policy drafting support, legal support and training. LHA's currently applying will only receive £2,500.
- 6.6. The outcome was confirmation that a number of our policies are fine, drafting of a new Housing Standards Civil Penalty Policy (Appendix 1) to reflect the outcome from the above case law and a review of our HMO licence conditions.
- 6.7. With regard to the Housing Standards Civil Penalty Policy, the principal change is that a 'starting amount' must be set out for each offence. The factors set out in the statutory guidance then act as mitigating or aggravating factors to increase or reduce the amount accordingly. Our current policy aggregates a score based upon the factors in the statutory guidance to indicate a fine level. It is not possible to say whether this will have any specific impact upon the general levels of fines as each case will have its own unique circumstance.
- 6.8. The process for determining the level of fine is set in the policy and a procedure document. This details the reviewing of the case and penalty level sign off. The officer using the policy will set out their considerations and this will be reviewed and signed off by the Service Manager. Cases are also reviewed by Legal Services. There are other assurances built into the process. The initial determination is issued, and the recipient has the right to issue representation. Only once the representations have been considered can a final outcome be reached. The Tribunal will have the ultimate say in what the penalty level ought to be.
- 6.9. The adoption of the amended Housing Standards Civil Penalty Policy will ensure that we are up to date with current legislative developments to ensure that when landlords breach

legislation to the degree that action is justified, that we are able to effectively apply the appropriate sanctions.

- 6.10. With regard to the current HMO licence conditions (Appendix 2), the advice we received is that the conditions should be restructured and clarification conditions added. A good example of this would be the original Mandatory conditions state:

If gas is supplied to the house, that the relevant gas safety certificate must be provided annually to the Council.

However, they don't say when. As such the following two clarification conditions resolve this issue;

Within 14 days of a gas safety certificate being carried out it must be provided to the Council at Housing.Private.Sec@torbay.gov.uk or posted to Housing Standards, Torquay Town Hall, Torquay, TQ1 3DR.

When a demand is made for evidence of gas safety it must take the form of a Gas Safety Certificate, and it must be provided within 14 days to the Council at Housing.Private.Sec@torbay.gov.uk or posted to Housing Standards, Torquay Town Hall, Torquay, TQ1 3DR.

- 6.11. There are several other conditions that receive similar clarification. A list of additional conditions can be found in Appendix 3.
- 6.12. Furthermore, as the Mandatory, Local & Specific conditions are set out separately in our current documentation, they don't interact well with one another. There is no legislative requirement or imperative for them to be listed separately and therefore we propose to combine them.
- 6.13. Adoption of the amended HMO licence conditions (Appendix 4) ensures that we are able to apply the relevant conditions without the need to clarify poorly drafted legislation making it easier for HMO licensees to understand the requirements and making our review more efficient.

7. Options under consideration

- 7.1. Option 1 – Adopt both policies and delegate authority to make adjustments following forthcoming legislation. The updated policies will ensure that we are legislatively compliant, able to action requirements efficiently and effectively, able to direct landlords and licensees to clear and understandable requirements. By delegating authority, it will enable updates of any new requirements promptly.
- 7.2. Option 2 – Refuse to adopt the new Housing Standards Civil Penalty Policy. The way the current policy is drafted is not in line with the most recent case law. Whilst this won't impact our ability to seek action at the First-tier Tribunal, it undermines our ability to set the fine levels resulting in the possibility of escalation to the Upper tribunal and the associated resources for the Torbay Council and landlords.

- 7.3. Option 3 – Refuse to adopt the HMO licence condition amendments
There would be no fundamental problem other than inefficiency in managing the HMO licensing and a missed opportunity to provide a clearer set of conditions for licensees to follow.

8. Financial Opportunities and Implications

- 8.1. Failure to adopt the new Housing Standards Civil Penalty Policy will result in reduced income and greater costs.

9. Legal Implications

- 9.1. The current policy does not reflect current caselaw and therefore we would risk failing to justify our penalty decisions at FtT. This may lead to a need to consider more onerous prosecution more often undermining the principles of the Housing and Planning Act 2016 and the forthcoming RRB.

10. Engagement and Consultation

- 10.1. A consultation commenced on 27th May and concluded on 17th June. The consultation paperwork was circulated using the Landlord's Newsletter (currently with over 400 subscribers), direct communication with all HMO licence holders and via Torbay Council's social media platforms. In total 3 responses were received two in favour of the proposals and an anonymous one stating; *Why are landlords responsible for ASB they are not parents - tenants need to be held accountable*
- 10.2. There is no requirement within legislation to consult on the proposed changes, but it is deemed as best practice and forms part of our work with landlords in Torbay to improve standards.

11. Procurement Implications

- 11.1. None

12. Protecting our naturally inspiring Bay and tackling Climate Change

- 12.1. Energy efficiency requirements are enforceable under Housing Acts and non-compliance could be addressed using the Housing Standards Civil Penalty Policy. Failure to have a legally compliant policy could undermine efforts to improve the energy efficiency of privately rented homes.

13. Associated Risks

- 13.1. As described above, the risks are associated with an inability to effectively enforce compliance with housing legislation and to oversee the proper management of licensable HMO accommodation.

14. Equality Impact Assessment

Protected characteristics under the Equality Act and groups with increased vulnerability	Data and insight	Equality considerations (including any adverse impacts)	Mitigation activities	Responsible department and timeframe for implementing mitigation activities
Age	<p>18 per cent of Torbay residents are under 18 years old.</p> <p>55 per cent of Torbay residents are aged between 18 to 64 years old.</p> <p>27 per cent of Torbay residents are aged 65 and older.</p>	<p>The policy relates specifically to landlords and the legal recourse for non-compliance with housing law. Children are unlikely to be landlords, but any other age range could be. There is a positive impact of this policy for all tenants in Torbay as a tool to improve standard in the private rented sector.</p>	None required	Not applicable
Carers	<p>At the time of the 2021 census there were 14,900 unpaid carers in Torbay. 5,185 of these provided 50 hours or more of care.</p>	<p>There is no differential impact anticipate.</p>	None required	Not applicable
Disability	<p>In the 2021 Census, 23.8% of Torbay residents answered that their day-to-day activities were limited a little or a lot by</p>	<p>The policy will be published on the council webpages and therefore the accessibility options will be available.</p>	None required	Not applicable

	a physical or mental health condition or illness.			
Gender reassignment	In the 2021 Census, 0.4% of Torbay's community answered that their gender identity was not the same as their sex registered at birth. This proportion is similar to the Southwest and is lower than England.	There is no differential impact anticipated.	None required	Not applicable
Marriage and civil partnership	Of those Torbay residents aged 16 and over at the time of 2021 Census, 44.2% of people were married or in a registered civil partnership.	There is no differential impact anticipated.	None required	Not applicable
Pregnancy and maternity	Over the period 2010 to 2021, the rate of live births (as a proportion of females aged 15 to 44) has been slightly but significantly higher in Torbay (average of 63.7 per 1,000) than England (60.2) and the South West (58.4). There has been a notable fall in the numbers of live births since the middle of the last decade across all geographical areas.	There is no differential impact anticipated	None required	Not applicable

Race	In the 2021 Census, 96.1% of Torbay residents described their ethnicity as white. This is a higher proportion than the South West and England. Black, Asian and minority ethnic individuals are more likely to live in areas of Torbay classified as being amongst the 20% most deprived areas in England.	There is no differential impact anticipated.	None required	Not applicable
Religion and belief	64.8% of Torbay residents who stated that they have a religion in the 2021 census.	There is no differential impact anticipated.	None required	Not applicable
Sex	51.3% of Torbay's population are female and 48.7% are male	There is no differential impact anticipated.	None required	Not applicable
Sexual orientation	In the 2021 Census, 3.4% of those in Torbay aged over 16 identified their sexuality as either Lesbian, Gay, Bisexual or, used another term to describe their sexual orientation.	There is no differential impact anticipated.	None required	Not applicable
Armed Forces Community	In 2021, 3.8% of residents in England reported that they had previously served in the UK armed forces. In Torbay,	There is no differential impact anticipated.	None required	Not applicable

	5.9 per cent of the population have previously served in the UK armed forces.			
Non-English speakers	In Torbay, the majority of the population speaks English as their main language (97%). Additionally, 2.5% of the population speaks English either well or very well. However, 0.4% reported having poor English language skills, and 0.1% of the population does not speak English at all	All documents can be translated on request. Other software assists to provide translation through domestic technology provides. The policy will be published on the council webpages and therefore the accessibility options will be available.	None required	Not applicable
Additional considerations				
Socio-economic impacts (Including impacts on child poverty and deprivation)	32% of Torbay residents living in an area amongst the 20% most deprived areas in England.	There will be positive impacts for persons living in poorly managed rental accommodation most of which is located in Torbay's most deprived areas.	None required	Not applicable
Public Health impacts (Including impacts on the general health of the population of Torbay)	There is significant variation in health and wellbeing across the bay. In our most affluent areas residents can expect to live on average over eight years longer than those living in our more deprived communities.	The correlation between poor quality housing and health are well documented. There will be positive impacts for persons living in poorly managed rental accommodation. The legislation underpinning these interventions (Housing Acts) are principally designed to protect and improve health.	None required	Not applicable

Human Rights impacts		There is no differential impact anticipated. The Council recognises that good quality housing and accommodation is vital to upholding human rights.	None required	Not applicable
Child Friendly	Torbay Council is a Child Friendly Council, and all staff and Councillors are Corporate Parents and have a responsibility towards cared for and care experienced children and young people.	There is no differential impact anticipated.	None required	Not applicable

15. Cumulative Council Impact

15.1. None

16. Cumulative Community Impacts

16.1. None