

CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM**

**REPORT TO CABINET**

**14 NOVEMBER 2024**

**REPORT OF  
CORPORATE  
MANAGEMENT TEAM**

**CABINET DECISION**

**Cabinet Member for Regeneration and Housing – Councillor N Cooke**

**CIVIL PENALTY POLICY & CIVIL PENALTY FEE STRUCTURE (Private Sector Housing Enforcement)**

**Summary**

Following a recent Upper Tribunal decision (Leicester City Council vs Morjaria) the report details proposed changes to the Councils Civil Penalty Policy and Civil Penalty Fee structure to ensure it is robust and mitigates the risk of successful appeals. Members are also asked to approve a streamlined process of progressing financial penalty notices of intent and final notices.

**Reasons for the Recommendations/Decision**

The Housing and Planning Act 2016 introduced financial penalties as an alternative to prosecution for certain relevant housing offences. In December 2017, Cabinet approved the introduction of a Civil Penalty policy (Cabinet Decision Record D170112) and a fee structure for the calculation of Civil Penalty fees in October 2019 (Decision Record EGDS.HS.214.19). The fee structure was further updated in October 2022 (Decision Record FDR.153.2223). However, in June 2023, the Upper Tribunal (UT) decision in Leicester City Council vs Morjaria stated that there should be starting levels for each offence. This rendered the councils existing Civil Penalty policy at risk of successful appeals. Subsequently the amendments proposed to the Civil Penalty Policy and Civil Penalty Fee calculation/structure reflect the UT's decision and assigns starting levels to each relevant offence. The updated policy will ensure that the Council can continue to take appropriate action to drive up standards of property management and condition in the private rented housing sector.

**Recommendations**

Cabinet is asked to:

1. Approve and adopt the amended Civil Penalty policy and fee matrix (**Appendix A**).
2. As detailed in paragraph 22 delegate authority to the Director of Adults, Health & Wellbeing in consultation with the Cabinet Member for Regeneration and Housing to make any further/necessary amendments to the Civil Penalty Policy and associated financial penalty policies.
3. Approve the streamlined process for signing off financial penalty notices of intent and final notices (as detailed in paragraph 23).

## DETAIL

### Background

4. The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords; these included:
  - a) Civil Penalties of up to £30,000 as an alternative to prosecution for certain specified offences; and
  - b) An extension of rent repayment orders to cover illegal eviction, breach of a Banning Order and certain other specified offences.
5. On 6th April 2017, further new legislation was introduced meaning that regulations came into force with provisions to allow local housing authorities (LHAs) to impose a civil penalty as an alternative to prosecution for the following offences:
  - a) Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004).
  - b) Offences in relation to Licensing of Houses in Multiple Occupation (HMO) (section 72 of the Housing Act 2004).
  - c) Offences in relation to Licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004).
  - d) Offences of contravention of an Overcrowding Notice (section 139 of the Housing Act 2004).
  - e) Failure to comply with Management Regulations in respect of HMOs (section 234 of the Housing Act 2004); and
  - f) Breach of a Banning Order (section 21 of the Housing and Planning Act 2016).
6. The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. The same criminal standard of proof is required for a civil penalty as for prosecution, that is, beyond reasonable doubt.
7. Local Housing Authorities were required to develop and document policies on imposing a civil penalty charge. The then Department for Communities and Local Government (DCLG) issued guidance to accompany the legislation to assist local authorities consider and determine civil penalty charges. Several factors are required to be considered to ensure civil penalty charges are set at an appropriate level on a case by case basis. These were:
  - a) Severity of the offence: the more serious the offence, the higher the penalty.
  - b) Culpability and track record of the offender: a higher penalty where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.
  - c) The harm caused to the tenant: the greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the penalty.
  - d) Punishment of the offender: a civil penalty should not be regarded as an easy or lesser option compared to prosecution and should have an economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

- e) Deter the offender from repeating the offence: the level of the penalty should be set at a high enough level to deter the offender from repeating the offence.
  - f) Deter others from committing similar offences.
  - g) Remove any financial benefit the offender may have obtained as a result of committing the offence; the offender should not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.
8. The process for issuing civil penalties is set out in statutory guidance and in legislation and as noted previously the Council adopted a Civil Penalty policy in 2017 and a fee structure for Civil Penalty fees in 2019.
9. Income received from a civil penalty can be retained by the Council if it is used to further the Council's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations. Where the landlord or property agent fails to pay a civil penalty, recovery is through the county court procedure and ultimately recoverable through county court bailiffs.

### **Upper Tribunal Decision 2023**

10. The Upper Tribunal (UT) issued a decision in June 2023 following an appeal by Leicester City Council (LCC) against the decision of a First tier Tribunal (FtT) to drastically reduce the amount of civil penalty for an HMO licence offence.
11. While the UT restored the quantum of the penalty to nearer the original, the judge highlighted some concerns about the penalty matrix used by LCC. The judge suggested that a better approach would be for Local Housing Authorities to do the following when calculating an appropriate level for a civil penalty:
- a) Step one: rank the seriousness of offences and give a starting point for each offence in isolation.
  - b) Step two: consider the culpability in isolation and harm in isolation via a scoring matrix;  
and
  - c) Step three: consider aggravating and mitigating factors.
12. The Council's current policy and matrix, while considered to be compliant with the statutory guidance, does not reflect the Morjaria decision and would therefore be open to significant challenge in FtT. It is likely that the majority of Local Housing Authorities in England have financial penalty policies that are at risk of successful appeals as they are not compliant with the UT decision.

### **Amended Civil Penalty Policy**

13. The Council's current Civil Penalty policy has been updated to reflect the principles set out in the Morjaria UT decision (with penalty amounts based on case precedents) and drafted to include local licensing conditions. A copy of the proposed new policy is attached at **Appendix A**.

The proposed Civil Penalty fee matrix

14. The Government intends for financial penalties to deter others from committing similar offences and to be self-funding. The starting points and financial amounts detailed in the policy reflect this. The category and starting level for each of the offences are:

<b>Seriousness of Offence</b>	<b>Starting Level [£]</b>
Mild	2,500
Moderate	7,500
Serious	12,500
Very Serious	17,500
Severe	22,500
Very Severe	27,500

15. It is proposed that the offences listed in paragraph five are categorised below:

- a) Non-compliance with an Improvement Notice – Severe: £22,500.
- b) HMO licensing:
  - (i) No licence – Very serious: £17,500.
- c) Selective licensing:
  - (i) No licence – Serious: £12,500.
- d) Licence conditions:
  - (i) Signage or information – Mild: £2,500.
  - (ii) ASB/vetting/maintenance common parts and living areas/waste receptacles/minor repairs or alterations – Moderate: £7,500.
  - (iii) Documentation relating to fire detection/emergency lighting/gas and electric installation – Serious: £12,500.
  - (iv) Minimum floor areas – Very serious: £17,500.
  - (v) Condition of smoke and CO alarms/emergency lighting/gas, electric and fire detection and prevention/safe means of escape – Severe: £22,500.
- e) Overcrowding Notice – very serious: £17,500.
- f) HMO Management Regulations:
  - (i) Not providing information to occupier – Mild: £2,500.
  - (ii) Take safety measures – Very serious: £17,500.
  - (iii) Maintain water supply and drainage – Serious: £12,500.
  - (iv) Maintain gas and electricity – Serious: £12,500.
  - (v) Maintain common parts etc. – Moderate: £7,500.
  - (vi) Maintain living accommodation – Moderate: £7,500.
  - (vii) Provide waste disposal facilities – Moderate: £7,500 and
- g) Banning Order – Most serious: £30,000.

16. Aggravating factors, specific to each offence and generic ones, will be applied meaning the final quantum could increase, decrease or remain the same.

17. It is proposed to apply discounts in the following circumstances:

- a) In the event that the offender rectifies the identified breach (for example, by making an application to licence a previously unlicensed property) within the representation period at the 'notice of intent' stage (i.e. within the period of 28 days beginning with the day after that on which the notice of intent was given), the Council will consider reducing the level of any

figure that would have otherwise been imposed in the final notice (“the original calculated financial penalty) by 20%; and

- b) A discount of 15% of the original calculated financial penalty will be deducted from the penalty imposed in the final notice should the penalty be paid within a specified time period (normally 28 days), this discount would be in addition to any reduction applied as a result of compliance at the notice of intent stage.

#### Comparisons of the Civil Penalty fee: existing policy and proposed policy

- 18. Using the examples provided in the Civil Penalty Fee Worked Examples document (**Appendix B**):

Example 1: *Operating an Unlicensed HMO*, the civil penalty amount calculated from the existing policy was £13,050. When considering the same offence/circumstances and applying the principles of the new policy the new amount would be £17,500. (If the penalty fee was paid within the specified time period (normally 28 days) then the amount would be reduced to £14,875)

Example 2: *Failure to comply with an Improvement Notice*, the civil penalty amount calculated from the existing policy was £16,950. When considering the same offence and circumstances and applying the principles of the new policy the new amount would be £22,500. (If the penalty fee was paid within the specified time period (normally 28 days) then the amount would be reduced to £19,125).

Example 3: *Failure to comply with the House in Multiple Occupation (HMO) Management Regulations*, the civil penalty amount calculated from the existing policy was £611 for the offence failing to comply with the duty of a manager to provide information to the occupiers by not displaying the managers details. When considering the same offence and circumstances and applying the principles of the new policy the new amount would be £2,500. (If the penalty fee was paid within the specified time period (normally 28 days) then the amount would be reduced to £2,125).

- 19. While these are worked examples, it is anticipated that in general, financial penalty amounts will be higher under the proposed policy.
- 20. Members are asked to note that whilst financial penalties are used as an alternative to prosecution, legal action will be pursued where it is most appropriate to do so.

#### **Impact Locally**

- 21. The Councils Private Sector Housing team endeavour to be pro-active in dealing with rogue landlords whilst having regard to the Corporate Regulatory Enforcement Policy and the Regulators Code (i.e. formal action is instigated in a timely manner). It is anticipated that most landlords and property agents will be compliant and that it will be a small minority that are subject to the new enforcement powers.

#### **Renters Rights Bill (was the Renters Reform Bill)**

- 22. The widely publicised Renters Rights Bill is currently going through the relevant parliamentary scrutiny and stages. It is proposed that the Director of Adults Health & Well-being in consultation with the Cabinet Member for Regeneration and Housing be given approval to make any further change to the Civil Penalty Policy (and changes) as required by this bill and any subsequent legislation.

### **Notices of Intent process – streamlining current procedures**

23. The current procedure for notices of intent sign-off (within the Private Sector Housing team) is aligned with prosecutions i.e. the process requires sign-off from the legal team and Director. Legal services have advised this approval process is not required. It is therefore proposed that in future whilst a decision to pursue this course of action will remain with the relevant Director there will be an onward delegation to the relevant Assistant Director Service and/or Lead Private Sector Housing or (once satisfied that the public interest and evidential tests are met).

### **COMMUNITY IMPACT IMPLICATIONS**

24. An Equality and Poverty, Impact Assessment (EPIA) has been completed to ensure that the Council is following its legal duties and that we are promoting equality and diversity within the Councils decision-making processes. The conclusion of the EPIA is that the proposed Civil Penalty Policy and associated fee structure will not have a potential and/or differential impact on the needs of specific groups, including those who possess a protected characteristic.

### **CORPORATE PARENTING IMPLICATIONS**

25. This report is not the subject of any Corporate Parenting Implications.

### **FINANCIAL IMPLICATIONS**

26. The Housing and Planning Act 2016 allows the income from civil penalty charges to be retained by the local authority. The income from civil penalties recovered under section 23 of the Housing and Planning Act 2016 will be used to meet the costs and expenses (Whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.
27. No budget provision has been made for 2024/2025 in respect of income that may be received through this process. As mentioned above, at this current time, it is expected that it will be a small minority that are subject to the new enforcement powers and any financial income will therefore also be minimal.

### **LEGAL IMPLICATIONS**

28. Future financial penalty final notices using the current policy and matrix could be appealed at the First-tier Tribunal. The UT decision could cause issues in that respect so the sooner the new policy and matrix is adopted the better. To ensure the proposed policy is compliant colleagues in legal services have been consulted.

### **RISK ASSESSMENT**

29. The introduction of the proposals detailed within the body of this report are likely to be low to medium risk and will therefore be managed through existing control mechanism.

### **WARDS AFFECTED AND CONSULTATION WITH WARD/COUNCILLORS**

30. The policy if applicable would apply to all wards. Consultation briefings have taken place with the Cabinet Member for Regeneration & Housing.

**Name of Contact Officer:** Jane Edmends  
**Post Title:** Assistant Director, Housing & A Fairer Stockton-on-Tees  
**Telephone No.** 01642 526682  
**Email Address:** [jane.edmends@stockton.gov.uk](mailto:jane.edmends@stockton.gov.uk)