



Doncaster Council

Report

Date: 10th April 2018

To the Chair and Members of the
CABINET

Approval of Housing Enforcement Policy including implementation of Civil Penalties

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Councillor Chris McGuinness Cabinet Portfolio Holder for Communities, the Voluntary Sector and Environment Councillor Glyn Jones Cabinet Portfolio Holder for Housing	All wards	Yes

EXECUTIVE SUMMARY

1. Civil Penalties have been introduced by several pieces of government legislation as an alternative to traditional criminal law enforcement against businesses, mostly relating to Housing offences. Local authorities have the power to set civil penalty amounts locally up to a statutory maximum. Civil Penalties allow for a higher financial penalty than the currently low court fines; they will provide an effective deterrent and protect Doncaster residents against rogue landlords; they will protect against unscrupulous letting agents and other poor business practices. Civil penalties would also deliver more cost efficient and faster enforcement in the area of housing disrepair and fire safety standards.

EXEMPT REPORT

2. The report may be published as it does not contain exempt information.

RECOMMENDATIONS

3. It is recommended:-
 - a) To adopt the Housing Enforcement Policy attached to this report, which sets out the out standards of enforcement that landlords, businesses, individuals and the community can expect from Doncaster Council in relation to housing matters.
 - b) Civil Penalties are introduced for offences under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and The Enterprise and Regulatory Reform Act 2013 with the civil penalty amounts listed in Appendix 3 of the Housing Enforcement Policy.
 - c) Civil Penalties are further introduced as an alternative to prosecution for any offences enforced by the Enforcement Team, where government legislation introduces this option, in accordance with the civil penalty enforcement policy detailed in Appendix 2 of the Housing Enforcement Policy.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. Despite the removal of the cap of maximum fines in March 2015, the fines awarded by Magistrates Courts in relation to offences by businesses are often so low that they are unable to provide an effective deterrent for poor management practices. Civil penalties would introduce a higher financial penalty and therefore provide a better deterrent for businesses such as landlords and letting agents who are flaunting legal requirements for financial gain. This would increase the protection for citizens of Doncaster against rogue landlords, unscrupulous letting agents and other poor business practices. Civil penalties would also deliver more cost efficient and faster enforcement in the area of housing disrepair and fire safety standards and it allows the Authority to retain the income from such penalties provided that it is used to further the Authorities statutory functions in relation to enforcement covering the private rented sector.

BACKGROUND

Civil Penalties versus traditional criminal enforcement

5. Traditionally Regulation and Enforcement has enforced legislation using the principles of criminal law. Breaches of legislation would result in a legal notice being served and prosecution if non-compliance is witnessed. This is sometimes a long winded process. In the last 15 years Fixed Penalty Notices have been introduced to offer a more appropriate alternative to prosecution for some simpler offences such as littering and breach of community protection notices. If such penalties are not paid the matter would still end up in the Magistrates' Court giving the recipient a court fine and a criminal conviction.

6. Over the last few years government policy has been focused on de-criminalisation of many offences. This has led to many pieces of new legislation being introduced based on Local Authorities issuing civil penalties, instead of taking cases through the traditional criminal route. Civil penalties are already successfully used for enforcement in other areas such as parking. They are based on the principle that if an offence is witnessed the Local Authority would send out an intention to serve a civil penalty, stating the amount and details of the breach, giving the person a set time to appeal the decision. The Council would consider any appeal received internally and progress the matter to a civil penalty if appropriate. If the penalty is paid the matter is closed at this stage. If penalties remain unpaid the Council would issue a Charge Certificate and pass the debt for recovery through an Enforcement Agent if necessary. Once the civil penalty is issued the recipient could appeal this to a tribunal.

Requirement for Smoke Detectors and Carbon Monoxide Alarms in rented accommodation

7. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 were enacted and became law on the 1st of October 2015. The regulations require landlords to ensure at least one smoke alarm is installed on every storey in a rented property on which there is a room used wholly or partly as living accommodation. A carbon monoxide alarm must also be installed in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance. For any new tenancy started after 1st October 2015, there is also a requirement on the landlord to check the alarms and ensure they are in working order at the start of each new tenancy. Social Housing, Licenced HMOs, live-in landlords, long leases and student hall of residence are excluded from the new requirements.
8. The legislation introduces a statutory duty on Local Authorities to serve a remedial notice on any landlord/agent within 21 days when they have reasonable grounds to believe that they have breached their duties under the regulations giving them 28 days to put the matter right. If no action is taken within this time scale the Local Authority must install the required smoke and/or carbon monoxide detection in the property and issue a Civil Penalty Notice. The Local Authority has the power to specify the Civil Penalty amount they feel is appropriate for non-compliance up to a maximum of £5000.
9. Before commencing enforcement of this legislation the Council must publish a statement of principles on their website, including the locally agreed Civil Penalty amounts.

Requirement for property managers and letting agents to be a member of a recognised property redress scheme.

10. The Enterprise and Regulatory Reform Act 2013 introduced a requirement for property managers and letting agents to be registered with one of the government approved redress schemes. The background of the legislation was a growing number of concerns from tenants regarding poor practices and unfair fees set by property managers and letting agents. The main purpose of the redress scheme is to create a neutral mediator to settle unresolved complaints from consumers who have suffered a loss as a result

of the action of a scheme member. It is seen as an alternative to using the courts process.

11. Living in a privately rented property that is badly managed may expose tenants to possible hazards in their home. Better management by more accountable agents and property managers should help to reduce hazards. This legislation is a valuable tool in tackling irresponsible letting and management in the private rented sector.
12. The Enforcement Team has already provided a large amount of informal advice to local business in respect to this new legislation. An informal letter has been sent to all known letting agents and management companies with properties in Doncaster advising them of the need to register with one of these schemes. Checks are also already in place for any landlord applying for a HMO or Selective Licence, with advice provided to any agent/manager found to be non-compliant with the requirements of the Act. The local compliance with this requirement amongst reputable letting agents and property managers is now very high, making it appropriate to introduce effective enforcement against any individuals not adhering to this legislation.
13. The legislation allows the Council to issue a notice of intent to impose a monetary penalty followed by a final notice with a fine. The Local Authority has the power to specify the civil penalty amount they feel is appropriate for non-compliance up to a maximum of £5000.

Civil Penalties as an alternative to prosecution under existing legislation:

14. In addition to being the preferred enforcement option for any new legislation coming into force, the Secretary of State has in the last 12 months announced a number of proposals where Civil Penalties would be introduced as an alternative to prosecution to offences that are already enforced by Local Authorities under existing legislation.
15. One example of this is the Housing and Planning Act 2016 which received Royal Assent on 12th May 2016 and came into force on the 1st April 2017. The legislation includes measures to further target rogue landlords and bad practices in the private rented sector. The Act provides the option for Local Authorities to impose Civil Penalties as an alternative to prosecution for several offences already existing under the Housing Act 2004, such as:
 - Failure to comply with a Housing Improvement Notice
 - Failure to comply with an Overcrowding Notice
 - Failure to licence premises (HMOs and Selective Licensing)
 - Failure to comply with HMO Management Regulations.
16. The amount of a financial penalty imposed under this legislation is to be determined by the Local Authority, but must not be more than £30,000.
17. In order to start issuing civil penalties for these offences rather than continuing the practice of taking these matters to court, the Local Authority would need to agree a policy on determining the appropriate level of Civil Penalty and publish a statement of policy on their website.

Considerations made when determining a fair, transparent and proportionate fine structure for Civil Penalties.

18. In April 2017, further guidance for Local Authorities was issued by Department for Communities and Local Government, setting out the process and procedures that must be followed. The guidance also sets out the factors Local Authorities should consider when setting civil penalty levels which include: severity of the offence, culpability and track record of the offender, the harm caused to the tenant, punishment of the offenders and ability to provide a deterrent for further offences.
19. It is an established legal principle that a criminal court should take into consideration if an early guilty plea was entered when determining the appropriate fine for an offence. This has been re-enforced by recent consultation issued by the Sentencing Council. An early acceptance of guilt reduces the impact of the crime on the victim, saves witnesses from having to testify and is in the public interest as it saves public time and money on file preparation, administration and court trial/tribunal appearances. For cases going to Magistrates Court, the Sentencing Council propose an early plea discount of 1/3rd. The legislation which introduced Civil Penalties in other areas of enforcement has left it to the individual Local Authorities to determine the level of Civil Penalty appropriate in each case. Enforcement Team feel it would be in the public interest to encourage early resolution of cases. As the alternative to a Civil Penalty would be a prosecution, it would be fair to offer the same early resolution discount of 1/3rd (as applied by the Sentencing Council) for any civil penalty paid within 14 days.
20. Government guidance makes it clear that prosecution of landlords still serves an important purpose for repeat offenders. The reviewed Enforcement Policy proposes that any landlord/agent that has already been served with two civil penalties in the last 2 years, or any case where a previous civil penalty remain unpaid, would still be referred for prosecution.

Expected impact of introduction and volumes of penalties.

21. In any 12-month period the Enforcement Team investigate around 300 cases of housing disrepair. Most of these cases are resolved by working with the landlord to complete necessary repairs but enforcement action is taken to ensure compliance in around 50 cases a year, including service of Improvement Notices. In approximately 3-5 cases a year, such notices are not complied with and cases referred for prosecution action. If Civil Penalties was introduced, these landlords could have been fined, rather than officers preparing legal files, saving time as well as imposing a more substantial penalty.
22. During the implementation of Selective Licensing in Hexthorpe, the Enforcement Team has investigated around 100 cases of landlords failing to licence their property in time. Approximately 50 such cases have been forwarded for prosecution action. Civil penalties would provide a better deterrent and a swifter penalty for these types of offences.

23. When inspecting private rented properties, smoke detection is often found to be lacking or not working. Being able to issue warnings under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, impose civil penalties if warnings are ignored and complete work in default would give officers a quicker and more efficient route to deal with this serious hazard. Based on evidence from other Local Authorities who have already implemented this legislation, it is expected that nearly all landlords will comply with the requirement when receiving a warning letter including the threat of a civil penalty fine. Even if few fines are expected to be issued under this legislation, it would greatly benefit private rented tenants in Doncaster as the threat of civil penalty fines are likely to drive up compliance in this sector.

OPTIONS CONSIDERED

24. The only other option is not to take any action. This would mean continuing the current practice of prosecution for any offences currently enforced. It would also mean not implementing the powers provided to Local Authorities to take action under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and The Enterprise and Regulatory Reform Act 2013 as there is no provision in these two pieces of legislation for any other formal action apart from civil penalties.

REASONS FOR RECOMMENDED OPTION

25. Civil penalties have been successfully implemented by other Local Authorities for Smoke/Carbon monoxide Detection enforcement and for not being registered with a Redress scheme. Many Local Authorities have also adopted Civil Penalties for other offences as introduced by the Housing and Planning Act 2016. Civil Penalties were introduced by the government to tackle some of the poor private rented sector practices outlined in this report. Introduction of civil penalties as an alternative to prosecution of businesses under other legislation is also expected to provide more time efficient enforcement, a more effective deterrent and further protection of Doncaster residents against rogue landlords, unscrupulous letting agents and other poor business practices.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

26.

Outcomes	Implications
<p>Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> • Better access to good fulfilling work • Doncaster businesses are supported to flourish • Inward Investment 	<p>All civil penalties currently proposed relate to offences committed by businesses. Civil penalties are higher than current court fines awarded for these offences and will ensure poor management practices cost more than compliance and do not give a commercial advantage. This will be beneficial for all the responsible businesses operating in Doncaster.</p>
<p>Doncaster Living: Our vision is</p>	<p>The purpose of the relevant legislation is</p>

<p>for Doncaster’s people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> • The town centres are the beating heart of Doncaster • More people can live in a good quality, affordable home • Healthy and Vibrant Communities through Physical Activity and Sport • Everyone takes responsibility for keeping Doncaster Clean • Building on our cultural, artistic and sporting heritage 	<p>to ensure those accessing the private rented sector can do so in the knowledge that they can expect safe living standards and be protected from fraud by letting agents and property managers.</p> <p>Some of the civil penalties in this report relate to the failure to appropriately maintain private rented properties. Poorly maintained properties cause detriment not just to the individual tenants, but to the surrounding areas by causing an eyesore and a negative impact on the residential amenity.</p>
<p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> • Every child has life-changing learning experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	<p>Many of the most vulnerable families in Doncaster live in private rented accommodation as this is the only option available to them. Effective enforcement of housing standards safeguards all families who have the right to a safe home. It is hoped that higher penalties for housing offences would serve as an effective deterrent and drive up private rented housing standards.</p>
<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust <p>Older people can live well and independently in their own homes</p>	<p>Many of the most vulnerable families in Doncaster live in private rented accommodation as this is the only option available to them. Effective enforcement of housing standards safeguards all families who have the right to a safe home. It is hoped that higher penalties for housing offences would serve as an effective deterrent and drive up private rented housing standards.</p>
<p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting 	<p>Enforcement through civil penalties is more efficient and provides better value for money than traditional enforcement through prosecution.</p>

<p>community assets and strengths</p> <ul style="list-style-type: none"> • Working with our partners and residents to provide effective leadership and governance 	
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RISKS AND ASSUMPTIONS

27. The local authority cannot choose to adopt The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and The Enterprise and Regulatory Reform Act 2013, we have a statutory duty to do so. Failure to enforce this legislation may result in action by the Local Government Ombudsman. The authority does however have discretion in the level of civil penalty they will impose if a landlord does not comply with the remedial notice.
28. In relation to Smoke and Carbon Monoxide Alarms, there is an absolute duty for the Local Authority to take remedial action to remove the risk if the remedial notice is not complied with. This will incur a cost for the Local Authority. A quick survey shows that 10 year Lithium Battery smoke detectors will cost between £9.24 and £12.76; CO detectors between £19.56 and £20.68 per unit (excl. VAT) depending on the amount purchased and bulk discounts applied. Most properties would require a minimum of two smoke detectors and one CO monitor at a potential unit cost of £40 (excl. VAT) in addition to installation costs.
29. However, each case where remedial action is required, would result in a civil penalty and the Council is allowed to keep the full amount of any income gained this way, to use for housing enforcement purposes. This should ensure costs are recovered for any remedial action required. It is unlikely that the amount spent by the Council on remedial work as a result of this legislation would exceed £1000 a year as most landlords are likely to comply with the remedial notice.
30. Introducing enforcement in relation to Smoke/Carbon monoxide detectors and the Property Redress Scheme is likely to result in an initial increase in officer time spent enforcing smoke alarms and making sure agents are registered with a redress scheme. However, it is expected that there would be a long term resource benefit of the legislation providing clear expectations to landlords and a time efficient way of enforcement for any landlord ignoring their duties.
31. There is a likelihood that some landlords may challenge remedial notices or civil penalties imposed. Landlords have a legal route to request the Local Authority to review any civil penalty notice and can further appeal the notice to a First-tier Tribunal. Such challenges can be time consuming for the officers involved, however the Enforcement Hub has substantial experience of handling such reviews in a time efficient manner through the FPN process and parking enforcement. To limit the number of appeals as far as possible and ensure high quality of evidence in all cases, the Enforcement Team already operates a rigorous case disposal authorisation process for Criminal Cases. The same safeguards will be implemented for any Civil Penalty

Offences. To defend an appeal in a First-tier Tribunal is not more time consuming than the current practice of taking cases to court.

32. Some landlords and property managers may feel that higher penalties are unfair and inhibiting to further investment. However, it is worth noting that when officers from the Enforcement Team have recently attended local landlord's forums, many reputable landlords have expressed the view that the authority should take stronger action against those in the sector ignoring legal requirements as they feel they undermine their business financially and by damaging the reputation of local landlords.

LEGAL IMPLICATIONS [Officer Initials: HP/MCC Date: 2.3.18]

33. The change in legislation to put more emphasis in housing enforcement on civil penalties rather than traditional criminal enforcement is set out in the body of the report and as the Council proceeds with this enforcement method good practice requires an update to the housing enforcement policy. This sets out clearly the Council's enforcement intentions and failure to follow this without good reason will put the Council at risk of legal challenge.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 were enacted and became law on the 1st of October 2015. The regulations require landlords to ensure at least one smoke alarm is installed on every storey in a rented property on which there is a room used wholly or partly as living accommodation.

The legislation introduces a statutory duty on Local Authorities to serve a remedial notice on any landlord/agent within 21 days when they have reasonable grounds to believe that they have breached their duties under the regulations giving them 28 days to put the matter right. If no action is taken within this time scale the Local Authority must install the required smoke and/or carbon monoxide detection in the property and issue a Civil Penalty Notice. The Local Authority has the power to specify the Civil Penalty amount they feel is appropriate for non-compliance up to a maximum of £5000.

Before commencing enforcement of this legislation the Council must publish a statement of principles on their website, including the locally agreed Civil Penalty amounts.

The civil penalty amounts are generally more than criminal sanctions so by introducing these measures, the Council is providing a greater deterrent.

FINANCIAL IMPLICATIONS [Officer Initials: RT Date: 1.3.18]

34. These new penalties will help generate additional income for the enforcement service. It is difficult to estimate how many charges would be made and from this how many would be fully paid.

It is likely that by introducing the new charges there will be a high level of compliance so a reduction in the number of fines issued.

An income budget of £10,000 will be set for 2018/19 which will contribute

towards the overall savings in Regulation and Enforcement which has a target of £200,000 for 2018/19.

HUMAN RESOURCES IMPLICATIONS [Officer Initials: DK Date: 22.11.17]

35. This proposal is changing working practices for staff, but not affecting the overall job role or number of posts.

TECHNOLOGY IMPLICATIONS [Officer Initials: PW Date: 16.03.18, supported by ODR for Fine Processing Software RE18 0038]

36. A business case to procure a specialist Parking Management solution to manage the full process of Parking Penalty Charge Notices, Fixed Penalty Notices and Civil Penalty Notices on expiry of the current contract with Conduent for Si-dem SPUR was considered and agreed by the ICT Governance Board (IGB) in June 17. A Technology Project Manager has been assigned to lead the project and ICT have been fully involved in the procurement exercise to ensure that the new solution meets the necessary technical and security standards. A full Privacy Impact Assessment has also been completed and approved by SIRO.

Following contract award, implementation planning will commence with the Project Manager from Chipside.

The new solution will enable the delivery of the improvements and efficiencies identified in the Digital Council Future State Report together with supporting a number of other projects and savings targets for Regulation and Enforcement.

It is not yet clear whether permit management, parking enforcement and fixed penalty fine office processing will be within the scope of the Doncaster Integrated Customer Asset and Property Solution (DICAPS) for which an options appraisal is currently underway. However, it has been necessary to procure the Chipside solution for an initial 5 year term to commit to the investment required for bus lane enforcement, together with the Digital Council savings. The timescales for the new contract with Chipside would need to be taken into consideration as part of the phased implementation planning for any replacement solution to be delivered by DICAPS.

EQUALITY IMPLICATIONS [Officer Initials: HP/MCC Date: 2.3.18]

37. The Council is statutorily required to have due regard to the protected characteristics of those affected by the proposals. These proposals are aimed at business owners and landlords irrespective of their personal characteristics, including any protected characteristics. Similarly, any improvement in property standards or business compliance achieved by these proposals will benefit all citizens in Doncaster irrespective of their personal, including any protected, characteristics.

HEALTH IMPLICATIONS [Officer Initials: RS Date; 05.03.18]

38. Poor quality rented housing can seriously affect the health of tenants. These proposals implements measures introduced by the government to tackle rogue landlords to ensure private rented housing reach minimum standards and reduce the risk to health of the occupiers.

CONSULTATION

39. Consultation has taken place with the Portfolio Holders.

BACKGROUND PAPERS

40. None

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