

**REPORT OF:** HOUSING, HEALTH AND ECONOMIC DEVELOPMENT SERVICES MANAGER

**TO:** EXECUTIVE

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## TACKLING ROGUE LANDLORDS

### PURPOSE OF REPORT

To make Executive aware of new civil penalties that have been introduced under the Housing and Planning Act 2016 and suggest how we deal with these.

### RECOMMENDATIONS

- (1) To note the new civil penalties that have been introduced under the Housing and Planning Act 2016.
- (2) To agree the appointment of an additional Environmental Health Officer for a 2 year period and that a supplementary estimate for £39,000 be agreed for 2017/18 funded by additional income from civil penalties.
- (3) To receive a further report setting out a proposed policy.

### REASON FOR RECOMMENDATIONS

To ensure that the new powers are used to tackle the problem of rogue landlords.

### ISSUE

#### Civil penalties under the Housing and Planning Act 2016

1. The Housing and Planning Act 2016 introduced a number of measures to crack down on rogue landlords:
  - Civil penalties of upto £30,000 as an alternative to prosecution for certain specified offences (came into force 6<sup>th</sup> April 2017)

- Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (came into force 6<sup>th</sup> April 2017)
  - Database of rogue landlords and property agents convicted of certain offences (scheduled to come into force on 1<sup>st</sup> October 2017)
  - Banning orders for the most serious and prolific offenders (scheduled to come into force on 1<sup>st</sup> October 2017)
2. Local housing authorities will be able to impose a civil penalty (i.e. a fine) as an alternative to prosecution for the following offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice
  - Offences in relation to licensing of Houses in Multiple Occupation (HMOs)
  - Offences in relation to licensing of houses under Part 3 of the Act (i.e. selective licensing)
  - Failure to comply with management regulations in respect of HMOs
3. The maximum penalty is £30,000 but the amount of penalty is to be determined by the local housing authority. They should develop and document their own policy setting out the appropriate level of civil penalty in a particular case. The local authority will need to take a number of factors into account when deciding on the penalty:
- Severity of the offence
  - Culpability and track record of the offender
  - The harm caused to the tenant
  - Punishment of the offender
  - Deter the offender from repeating the offence
  - Deter others from committing similar offences
  - Remove any financial benefit the offender may have obtained as a result of committing the offence
4. Local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty. There is then a set procedure that they must follow, as set out in Schedule 13A of the Housing Act 2004, to impose a civil penalty. A landlord /agent has the right of appeal to a First-tier Tribunal. The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty or to cancel it.
5. The Government has also consulted on changes to the licensing requirements for HMO properties. One of the most significant changes is that currently only HMOs of at least three storeys in height are covered by mandatory licensing. Under the proposed changes mandatory licensing will apply to all HMOs with five occupants or more from two different households irrespective of how many storeys are in the property. The HMO Regulations will also extend mandatory licensing to flats above and below business premises. This will result in many of our unlicensed HMO's falling within the licesing regime. It is expected that the new regulations will be enacted in 2017. This will increase the workload of staff in the Environmental Health Residential Team as it will increase the number of licences that will need to be issued and the checks that need to be made. At this stage the numbers of properties that will fall under the new legislation are unknown. We currently charge £500 for an HMO licence for up to 10 lets and any

lets over 10 are charged at £50 per let. This may need to be reviewed when it is clear what additional requirements there may be as the licence fee is set on the basis of cost recovery.

### **Existing staffing resources**

6. The Environmental Health (Residential) Team deal with housing conditions, management and licensing within the private rented sector. A number of the landlords and managing agents operating in the Borough do not meet the standards that are required of them by legislation. With current staffing resources we can only provide a reactive service that deals with complaints.
7. In 2016/17 we received 114 disrepair complaints, served 123 enforcement notices in total (all notice types) 11 of the notices were Section 11 & 12 Improvement Notices. We removed category one and two hazards informally in 27 properties and carried out works in default in 3 properties due to failure to comply with Improvement Notices.
8. When there were greater staffing resources we adopted a more proactive approach. When this proactive work was carried out in targeted areas we had a compliance rate through informal action of 46%. When formal action was taken on the remaining 54% of landlords only 9% failed to comply with improvement notices. However, after serving enforcement charges and threatening further enforcement action all complied. We also saw the number of landlords seeking advice on tenancy related issues rise and the numbers of illegal evictions fall in the target areas. When we had funding from the Government's Rogue Landlord programme we targeted landlords about whom we received the most complaints and had a high level of compliance to improve property conditions. There are no such programmes currently available to bid into.

### **Suggested way forward**

9. The new legislation under the Housing and Planning Act 2016 provides Local Housing Authorities with a range of new powers to tackle the problems of rogue landlords, but further work is needed to develop a local policy. As a number of landlords and managing agents operate across Pennine Lancashire it makes sense to try and work with the other local authorities to see if a consistent policy approach can be developed.
10. In order to properly implement the new legislation that has been enacted, or is expected to be enacted later in the year, additional staffing resources will be needed in the Environmental Health (Residential) Team. As local authorities will be able to retain any civil penalties then this would offset some, or all, of the additional costs. However, it is not clear at this stage if the threat of a large civil penalty will act as a sufficient deterrent to ensure that Improvement Notices are complied with.
11. It is suggested that an Environmental Health Officer is appointed, initially on a 2 year contract, to support the policy development and implementation of this new legislation. A further report will be brought to a future meeting of the Executive with a proposed policy for the use of civil penalties and with more detail of the legislation that is due to be enacted later in the year

## **IMPLICATIONS**

**Policy:** Pendle will need to agree a policy around the use of civil penalties

**Financial:** The cost of employing an Environmental Health Officer (including NI and Pension) is estimated at £39,000. The report outlines a proposal to appoint on the basis of a two year contract initially. Set against this commitment is the expectation that the Council may recover this cost, either in full or in part, from the civil penalties allowed under the legislation and which it can retain. There is clearly far less certainty regarding the recovery of income from penalties than there is attached to staffing costs. The risk of penalties may act as a deterrent and ensure a high level of compliance by landlords and there may also be timing considerations linked to the receipt of penalty income given the rights of appeal to a First Tier Tribunal.

As a result whilst the additional costs may be offset by additional income from penalties this is not without risk and it will be necessary to monitor the ongoing position as part of our existing budget framework and it may require corrective action based on actual performance.

**Legal:** The Housing and Planning Act 2016 sets the legal framework for the imposition of civil penalties for offences under the Housing Act 2004.

**Risk Management:** None directly arising from this report

**Health and Safety:** None directly arising from this report

**Sustainability:** None directly arising from this report

**Community Safety:** None directly arising from this report

**Equality and Diversity:** None directly arising from this report

## **APPENDICES**

None

## **LIST OF BACKGROUND PAPERS**

Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>