



PART B:	RECOMMENDATIONS TO COUNCIL
REPORT TO:	POLICY AND RESOURCES
DATE:	15 NOVEMBER 2018
REPORT OF THE:	SPECIALIST SERVICES LEAD GARY HOUSDEN
TITLE OF REPORT:	INTRODUCTION OF CIVIL PENALTIES NOTICES FOR ALL HOUSING ACT OFFENCES
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1. To adopt a new policy which will enable the Council to implement the new powers in relation to Civil Penalties introduced by the Housing and Planning Act 2016. These are an alternative to prosecution for a range of offences under the Housing Act 2004. The report also seeks approval for a revised Private Sector Enforcement Policy

2.0 RECOMMENDATION(S)

- 2.1 That Council is recommended to:

- (i) Consider the new powers in line with Government guidance¹.
- (ii) Approve the attached policies.

3.0 REASON FOR RECOMMENDATION(S)

- 3.1 (i) to enable the Council to use the Civil Penalties introduced by the Housing & Planning Act 2016 as an alternative to prosecution for specific penalties under the Housing Act 2004

- (ii) to enable the Council to fully implement the new powers available.

4.0 SIGNIFICANT RISKS

- 4.1 There are potential risks to the reputation of the Council whether it adopts the recommendations of this report or not. The Council has a statutory duty to inspect residential premises once a complaint has been received with a view to determining whether any Category 1 or 2 hazards² exist in the premises.

The Council could be accused of failing to act to meet the housing needs of local people if it did not have effective enforcement powers in place.

- 4.2 Risks associated with taking action under the new Civil Penalties procedures can be mitigated by taking legal/professional advice if necessary in order to minimise financial risks through any appeal process.
- 4.3 The Civil Penalty has the potential to assist in the more effective remedy to breaches of the relevant Housing legislation by the Council. If formal prosecution remains as the only option available to use this could lead to more protracted solutions. This could result in residents continuing to live in sub-standard properties for longer periods of time.

REPORT

5.0 BACKGROUND AND INTRODUCTION

5.1 The private rented sector (PRS) is an important part of Ryedale's housing market, forming about 20% of the total housing stock within the district. While standards have improved, the 2017 British Research Establishment (BRE) survey research evidence base found the PRS to be the worst housing tenure sector with 1/3 of all hazards³ in this tenure despite it forming less than 20% of the whole housing stock.

5.2 Officers have worked to raise standards in the PRS and continue to support landlords through a range of initiatives including the HMO licensing programme; the Ryedale letting scheme; Landlord forums and information on the Council's website. However officers are also aware of a small number of landlords and agents in the sector who rent out unsafe and substandard properties. The attached policy aims to utilise the full powers available with a view to tackling these landlords who do not comply with the law. It should be noted that government has given a significant steer by advising

*"It is important to raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants"*³

5.3 The Housing and Planning Act 2016, as part of a range of new measures to crack down on rogue landlords, introduced Civil Penalties of up to £30,000 as an alternative to prosecution for specified offences. This provision came in to force on the 6th April 2017 alongside statutory guidance. The Council must have regard to this guidance when developing its policy.

6.0 POLICY CONTEXT

6.1 The overarching policy is set out in the York, North Yorkshire and East Riding Housing Strategy and the Ryedale Private Sector Housing Action Plan.

7.0 CONSULTATION

7.1 Officers have been working with colleagues across the region to draft a policy which fully takes account of the law and the statutory guidance. This is to ensure a consistency of approach reducing the risk that neighbouring Councils adopt different approaches which could then be subject to challenge.

8.0 REPORT DETAILS

8.1 A Civil Penalty is a financial penalty imposed by a Council on an individual or organisation as an alternative to prosecution. The Council will be able to impose a Civil Penalty for the following offences under the Housing Act 2004:

- Section 30 – failure to comply with an Improvement Notice
- Section 72 – mandatory licensing of a House in Multiple Occupation (HMO)
- Section 95 – licensing under Part 3 of the Housing Act 2004
- Section 139 – failure to comply with an Overcrowding Notice
- Section 234 – breach of management regulations in respect of HMO

8.2 The powers are not retrospective and will not apply to offences committed before the 6th April 2017. Members should note that the Council cannot both apply a Civil Penalty and prosecute for the same offence.

8.3 The revised Enforcement Policy also included penalties as an option to consider when taking formal enforcement action. The Enforcement Policy determines that the most appropriate enforcement action is taken. It is the intention of the Council to use Civil Penalties as the main enforcement option instead of prosecution, in line with Government guidance. The proposed attached policies outlines an approach which determines the appropriate level of Civil Penalty to be imposed once the decision to take enforcement action has been approved.

8.4 The overriding principle when considering Civil Penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation. The Guidance advises that the Council should consider a range of factors when setting the penalty. The factors being:

- Level of culpability
- Level of harm
- Severity of the offence
- Aggravating Factors
- Mitigating Factors
- Penalty to be fair and reasonable
- Penalty to be such as to be a deterrent and remove the gain derived through the failure to comply

8.5 Following a decision to impose a Civil Penalty rather than alternative legal action, the Council must follow the procedure outlined in Schedule 13a of the Housing Act 2014 and which is outlined in the policy. This includes the Council serving an initial Notice of Intent and a Final Notice.

8.6 Critically the Council must, as part of that Notice procedure, set out the amount of the financial penalty, the reasons for imposing the penalty, information about how to pay, the payment period, how to make an appeal and the consequences of failure to comply with the notice.

8.7 If the Council decides to serve a Final Notice, following the 28 day period for representations, then the person can still make an appeal to the First Tier Property Tribunal. During this appeal stage the Final Notice remains suspended until the appeal it is determined or withdrawn by either party.

9.0 IMPLICATIONS

9.1 The following implications have been identified:

- a) Financial
Any income raised as Civil Penalties must be used to raise standards in the Private Rented Sector Housing
- b) Legal
The power to impose a Civil Penalty as an alternative to prosecution for these offences was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016.
- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

10.0 NEXT STEPS

10.1 If agreed by Policy and Resources Committee the policy would need to be approved at Full Council on the 6th December 2018.

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Background Papers:
Annex 1- Civil Penalties Policy
Annex 2- Revised Enforcement Policy

Background Papers are available for inspection at:
<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

- ¹ Civil Penalties under the Housing & Planning Act 2016 – Guidance for Local Authorities
- ² Housing Health & Safety Rating System Category 1 Hazards
- ³ Houses of Commons, Marcus Jones MP (Parliamentary Under Secretary of State Department of Communities and Local Government.