

**CIVIL PENALTIES UNDER THE HOUSING AND PLANNING ACT 2016 FOR
PRIVATE SECTOR HOUSING ENFORCEMENT**

Report of the:	Head of Housing & Community
Contact:	Oliver Nelson
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Annexes/Appendices (attached):	Annexe 1 - Housing Civil Penalties charging structure
Other available papers (not attached):	Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities – DCLG April 2017. Housing Act 2004. Epsom & Ewell Borough Council Environmental Health and Licensing Enforcement Policy.

REPORT SUMMARY

To determine the charging structure for civil penalties for certain Housing Act offences.

RECOMMENDATION (S)

That the Committee:

- (1) Approves the charging structure set out in Annexe 1 to this report.**
- (2) Delegates to the Head of Housing and Community the determination of individual financial penalties in accordance with the charging structure.**

1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 **Supporting our Community** – The private rented sector in Epsom and Ewell accounts for 14 percent of total borough housing stock and is growing. The link between housing and health is long established as is the fact that the private rented sector contains the worst housing conditions and the most vulnerable occupants.
- 1.2 **Managing our Resources** – The income received from civil penalties as outlined in this report can be retained by the authority provided it is used to further the authority's statutory functions in relation to private sector housing as defined in regulations.

2 Background

- 2.1 The Council has statutory responsibility for the enforcement of acceptable conditions in borough housing stock, with the main focus being on the private rented sector. This function is presently discharged through the Environmental Health Service.
- 2.2 The majority of landlords are law abiding and keen to act on advice given. Experience has shown that enforcement is generally only required in a relatively small number of cases which take up the majority of resources.
- 2.3 Where deficiencies are found, a range of enforcement tools exist including improvement notices, prohibition orders, emergency remedial action notices as well as the Houses in Multiple Occupation (HMO) licensing regime provided by the Housing Act 2004. A criminal offence is created for breach or non-compliance with these provisions for which a prosecution may be considered.
- 2.4 The power given to local housing authorities to impose a civil penalty of up to £30,000 as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016. It is expected that the higher level of fines will be reserved for the worst offending only. For the very worst offences, it may still be appropriate to launch a criminal prosecution.
- 2.5 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:
 - Section 30 – Failure to comply with an Improvement Notice
 - Section 72 – Offences in relation to licensing of Houses in Multiple Occupation
 - Section 95 – Offences in relation to licensing of houses under Part 3 of the Act

- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 - Failure to comply with management regulations in respect of Houses in Multiple Occupation

2.6 The existing Environmental Health and Licensing Enforcement Policy promotes an informal approach to enforcement in the first instance. Only when any subsequent formal action has not been complied with will these proposals have effect as an alternative to prosecution.

3 Proposals

3.1 It is proposed to adopt the charging structure contained in **Annexe 1** to this report and to review it over the course of the next twelve months. It is proposed that any revised scheme devised in light of experience will be brought back to the Committee for approval.

3.2 It is also proposed that officers be delegated the responsibility of determining the appropriate civil penalty on a case by case basis per breach of law.

4 Financial and Manpower Implications

4.1 There are no additional adverse financial or manpower considerations.

4.2 The proposals are expected to have a positive effect in reducing any future unplanned expenditure on court proceedings together with the receipt of penalty income which may be retained by the authority subject to it being used in the field of private sector housing enforcement.

4.3 Government guidance states that both the evidential and public interests tests must be met before issuing a civil penalty and the burden of proof is at the criminal level (beyond reasonable doubt). This will require therefore the input of the Council's legal service in the same way as for prosecution although there will be no costly court attendances.

4.4 **Chief Finance Officer's comments:**

Any income generated from civil penalties will be retained and used for the purposes of statutory private sector housing functions.

5 Legal Implications (including implications for matters relating to equality)

5.1 These proposals will help improve the housing conditions and the life chances of people with protected characteristics, including homeless people, people with disabilities and families with children. They will therefore have a positive impact on equality.

5.2 The Environmental Health Team are trained in working within legal frameworks and once approved, expect to be able to adopt these proposals with relative ease. Enforcement action is guided by the existing enforcement policy which contains the principles of proportionality, accountability, consistency and transparency.

5.3 ***Monitoring Officer's comments:*** The Housing and Planning Act 2016 amended the Housing Act 2004 (HA) to allow local authorities to impose civil penalties for certain breaches of the HA. The HA sets out the process to be followed when imposing a civil penalty and this must be followed to ensure compliance with the legislation. The government has issued guidance that must be followed when dealing with civil penalties. The proposed charging structure takes account of this guidance. In addition, regulations provide that income received from HA civil penalties must 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. Failure to comply with this requirement will result in any income being sent to a central government fund.

6 Sustainability Policy and Community Safety Implications

6.1 There are no implications for policies on sustainability or community safety.

7 Partnerships

7.1 Although the Housing Act and therefore action stemming from it is technically tenure neutral, current working arrangements ensure the properties owned and managed by Social Housing Providers are dealt with by them without recourse for formal action from the Council except in extraordinary cases involving, for example, an emergency.

8 Risk Assessment

8.1 As it is a recent development, the civil penalty scheme is largely untested and there are appeal provisions built into the law. The Government has made it clear however that offenders must not derive any financial benefit from their offences and it has briefed Tribunals on what is expected from them.

9 Conclusion and Recommendations

9.1 It is concluded that adoption of these proposals will allow additional flexibility in deciding on how to discharge Housing Act offences in the interests of the occupants of these dwellings and to the majority of law abiding landlords.

WARD(S) AFFECTED: (All Wards);