



Cabinet Meeting

18 October 2017

Report title	Housing Enforcement and Charging Policy	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Peter Bilson City Assets and Housing	
Corporate Plan priority	People - Stronger Communities	
Key decision	Yes	
In forward plan	Yes	
Wards affected	(All Wards)	
Accountable Director	Lesley Roberts, Strategic Director: City Housing	
Originating service	Private Sector Housing	
Accountable employee	Ravi Phull	Service Manager Private Sector Housing
	Tel	01902 552812
	Email	Ravi.phull@wolverhampton.gov.uk
Report to be/has been considered by	Place Leadership Team	11 September 2017
	Strategic Executive Board	12 September 2017

Recommendations for decision:

Cabinet is recommended to:

1. Approve the revisions to the Council's housing enforcement policy.
2. Approve the adoption of the use of Civil Penalties in respect of certain breaches of statutory housing responsibilities.
3. Approve the discount to be applied to the fee in respect of housing licence applications for landlords/agents achieving a Three Star and above rating under the Council's Rent with Confidence (RwC) programme.
4. Delegate the issuing of Civil Penalties to the relevant Head of Service/Director in consultation with the Director of Governance.

5. Delegate authority to the Cabinet Member for City Assets and Housing in consultation with the relevant Director to approve the matrix for the amount of the Civil Penalties, and any subsequent amendments.
6. Delegate authority to the Service Manager Private Sector Housing to make the reduction in enforcement charges where landlords/agents sign up to the Rent with Confidence scheme.

Recommendation for noting:

Cabinet is asked to note:

1. That the Houses in Multiple Occupation (HMO) licensing scheme is proposed to be revised by the Department for Communities and Local Government to include a wider range of properties. The licence fees including any discounts for all properties will be refreshed at the time that the revisions are enacted.

1.0 Purpose

- 1.1 To request approval of revisions to the Council's housing enforcement policy including the use of Civil Penalties and discounts to be applied to housing licensing fees in respect of Rent with Confidence (RwC) Three Star and above rated Landlords.

2.0 Background

- 2.1 Local Housing Authorities are the primary enforcement agency for ensuring the protection of the health, safety and welfare rights for occupiers and visitors in private sector housing. For the City of Wolverhampton Council ("the Council"), this responsibility is with the City Housing team.
- 2.2 Authorised employees ("employees") within City Housing have both duties and discretionary powers to take enforcement action, using a range of legislation to address issues arising at privately owned accommodation.
- 2.3 It is proposed to amend the existing housing enforcement policy to make it clear and transparent to operators within the private housing sector how and when the Council will take enforcement action and when the Council will use powers under the Housing and Planning Act 2016 to make Civil Penalties for failures to comply with relevant statutory requirements.
- 2.4 The main objectives of the enforcement policy are to ensure that:
- Privately rented accommodation, including houses in multiple occupation ("HMO"), and accommodation provided by registered providers of social housing, are free from actionable hazards that affect the health and safety of the tenant, licensee or any visitor;
 - Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements;
 - Privately rented accommodation meets minimum energy efficiency ratings;
 - All licensable properties are licensed, with licence conditions being met;
 - Owners or occupiers of privately owned accommodation or land do not cause statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood;
- 2.5 The Enforcement Policy aims to:
- Demonstrate the transparency of enforcement with respect to private sector housing in Wolverhampton, by setting out legal requirements, policies and principles that officers will follow when enforcing legislation;

- Improve housing conditions and raise the standard of property management within the private rented sector;
- Provide safer, healthier, affordable and warmer homes in the private sector to enable all people within the City access to healthy housing and environments; and
- Contribute to the Council's Corporate Objective of Improving the Overall City Housing Offer.

3.0 Main Principles of Operation

- 3.1 The following bullet points outline the main principles of operation of enforcement and are set out in detail in the policy for approval at Appendix 1.
- a. To ensure that the Council acts fairly in dealing with housing conditions on both reactive and proactive basis, the Council will continue to work informally with landlords, agents, owners and service users, by providing a range of information and guidance through the RwC scheme. This will enable a positive relationship to be maintained with responsible landlords, owners and agents to enable compliance with regulatory requirements and agree works to be completed within a short timescale.
 - b. In cases where the Council is under a duty to take action, such as where premises contain Category 1 Hazards, the Council will always use its statutory powers to ensure that the health, safety and welfare of occupants or those likely to be adversely affected by the conditions at the property are properly protected. The use of certain provisions within the Housing Act 2004 prevents landlords from evicting their tenants using Section 21 provisions of the Landlord and Tenant Act 1985, whilst action is on-going. This provision ensures that tenants are not at risk of retaliatory eviction and assists in homeless prevention.
 - c. The Council will charge for enforcement action where it is empowered to do so. This will include recovery of investigation costs up to the service of relevant statutory notices and orders.
 - d. Where the landlord can prove that they were either unaware of the existence of hazards within the property or where hazards exist due to the tenant occupying the property in an "un-tenant like" manner and, once made aware, acts promptly to remedy these issues, formal action will still be taken owing to the duty the Council has to take action in respect of Category 1 hazards. At the discretion of the Service Manager Private Sector Housing, the enforcement charge may be reduced or waived. The exception to this rule would be in situations where the landlord is a portfolio landlord or agent, is known to the Council and the Council has spent a sufficient amount of time engaging with and educating the landlord of their legal obligations. In such cases, the enforcement charges will remain.
 - e. Where landlords, owners and agents agree to work positively with the Council to address issues identified in statutory notices and orders, the Council will consider a reduction in the enforcement charge of fifty percent subject to them agreeing and

being registered under the RwC programme, achieving a minimum of a 3 Star rating. The authority to make the reduction in the charge is to be delegated to the Service Manager Private Sector Housing.

- f. The Council will issue Civil Penalties facilitated by the Housing and Planning Act 2016 where there are breaches of certain statutory provisions as outlined in the Act and any relevant regulations and statutory instruments. The Charges will be made in accordance with the Charging policy and matrix, which has been developed by the City of Wolverhampton Council in conjunction with other leading housing authorities as best practice in this area. This policy considers the impact of the breach and the culpability of the offender. Charges can be up to £30,000 per offence with the Charge being retained by the Council. The issuing of a Charge will be subject to the evidential and public interest test. The issuing of Civil Penalties is to be delegated to the Head of Housing/Service Director in consultation with Legal Services. The matrix for Civil Penalties will be delegated to the Service Director City Housing in conjunction with the Cabinet Member for City Assets and Housing. The relevant policy is attached as Appendix 2.
- g. The Council will consider prosecutions in cases where a Civil Penalty could be issued but it is considered that a prosecution may be more appropriate – for example to support action to introduce a Banning Order.
- h. In all cases where the person responsible fails to undertake works required to comply with statutory requirements, the Council will consider undertaking the works in default (WID) to ensure that the health, safety and welfare of the occupants, and any persons who may be adversely affected by conditions at the property, are safeguarded. The Council will seek to recover all costs incurred in undertaking the WID.
- i. To support the Rent with Confidence (RwC) Programme, it is proposed that applications for licences under the Housing Act 2004 from applicants who have achieved a Three Star or above rating, will benefit from a discount to the licence application fee. This will be on a sliding scale to reflect the Star rating: -
 - Three Star - 33 percent discount
 - Four Star - 66 percent discount
 - Five Star (top rating) – 100 percent discount

Such landlords will already have invested considerable time and money achieving and maintaining the highest accreditation status and will be supporting the Council in achieving wider housing outcomes such as prevention of homelessness as well as providing safe well managed accommodation. Currently only the mandatory houses in multiple Occupation (HMO) licensing scheme is in operation in the City. The HMO licensing scheme is proposed to be revised by DCLG to include a wider range of properties. The licence fees including any discounts for all properties will be refreshed at the time that the revisions are enacted.

4.0 Evaluation of alternative options:

- 4.1 The alternative option would be to do nothing.
This would leave the existing housing enforcement policy in place. The existing policy is not up to date in that it does not take into account both changes to statutory provisions nor the Council's recent changes to the approach to the private rented sector, and in particular the launch of the Rent with Confidence Scheme. This would leave housing enforcement at odds with the Council's strategy of supporting the responsible private rented sector and potentially alienate responsible landlords from working with the Council to address issues such as homelessness and wider public health outcomes.

5.0 Reasons for decision(s):

- 5.1 The revision of the housing enforcement policy will ensure that the Council complies with its legal obligations and that support is given to make further improvements to the City Housing Offer, whilst maintaining transparency on when and how enforcement actions will be undertaken. This will complement the Rent with Confidence programme which aims to support responsible private housing businesses in the City and improve quality and choice for those having their housing needs and aspirations met through this housing tenure.

6.0 Financial implications

- 6.1 The imposition of Civil Penalties enables the Council to retain the funds rather than them being taken by the Treasury, provided that it is used to further the Council's statutory functions in relation to private rented sector housing enforcement. This may provide some additional income to support private sector housing enforcement, however this should be considered alongside the likelihood of challenges to the Charges through the First Tier Tribunal (Property).
- 6.2 The carrying out of Works in Default will result in the Council committing resources to fund the works with the costs plus any associated administrative costs being recovered through the sundry debt system. The Council's funding will be protected through the debt being registered as a local land charge.
- 6.3 The discounting of application fees for landlords and agents of Three Star and above will have a small impact on the income received from the licensing of houses in multiple occupation. As this is not retrospective it will only affect a small number of new licensable HMOs in the City. In total, there are around twenty HMO applications a year with total income of £13,000.
- 6.4 The HMO licensing scheme for Houses in Multiple Occupation (HMOs) is proposed to be revised by DCLG to include a wider range of properties. The licence fees including any discounts for all properties will be refreshed at the time that the revisions are enacted.

7.0 Legal implications

- 7.1 Part 2 of the Housing and Planning Act 2016 (H&PA 2016) deals with the notion of “Rogue Landlords and Property Agents in England”, introducing Banning Orders, a national database of Rogue Landlords and Property Agents, and rent repayment orders. Schedule 1 to the act introduces Financial Penalties (named Civil Penalties in the government guidance) for breach of a Banning Order whilst Schedule 9 amends the Housing Act 2004 (HA2004) and introduces Financial Penalties for a number of offences described in the Housing Act 2004.
- 7.2 Schedule 9 of the H&PA2016 inserts s249A into the Housing Act 2004 (HA2004) to deal with Financial Penalties under the HA2004. The test to follow to impose a Financial Penalty is the same as for a prosecution and it is proposed that the same robust processes are used in practice.
- 7.3 Schedule 9 paragraph 7 specifically prohibits the LHA to offer a Financial Penalty once criminal proceedings have been instituted, or when the person has previously been convicted of the offence, so the initial decision not to impose a fine will be final. Legislation provides for a maximum amount of £30,000 fine for each offence and the proposed decision process for the level of fine should be robust enough to support challenges and appeals.
- 7.4 Schedule 13A of the H&PA2016 provides the recipient with the opportunity to respond to the LHA’s notice of intent and to appeal the final notice to the First-Tier Tribunal, which provides sufficient safeguards without the LHA having to include further steps. Appeals are expected in the initial stages of the implementation and it is anticipated that this work would be covered internally by both departments.
- 7.5 Schedule 13A paragraph 11 of the H&PA2016 provides for the unpaid and partially unpaid Financial Penalties to be recovered in the same way as any other debt through the County Court whilst Paragraph 9 entitles the LHA to withdraw Financial Penalties at any time. A decision will therefore be made, on a case by case basis, on which route to follow when a Financial Penalty is not fully paid on the due date and robust systems will need to be put in place in due course.
- 7.6 S14 H&PA2016 introduces Banning Orders (via the First-Tier Tribunal) for landlords who have been convicted of certain offences under the HA2004. These last a minimum of 12 months and prohibit the landlord from holding an HMO licence, being involved in letting or managing properties in England. A breach is an offence attracting an unlimited fine or imprisonment for up to 51 weeks in the Magistrates’ Court. Alternatively, a Financial Penalty can be imposed and follows the same requirements as fines imposed for HA2004 offences. In this instance however, successive Financial Penalties can be imposed, although only one within any 6 month period. The same robust process will be followed for each breach to safeguard the decision making process.
- 7.7 Finally, Chapter 4 of Part 2 H&PA2016 entitles the LHA to apply to the First-Tier Tribunal for Rent Repayment Orders, whether the landlord has been convicted of any offence or not. This would enable recovery of the rent and / or universal credit amounts paid.

Possible involvement of the LHA in this recovery process would give a further incentive for tenants to report offences.

- 7.8 The imposition of Civil Penalty Charges will enable to Council to avoid the employee time of taking prosecutions through the Courts. The Civil Penalty Charges matrix will follow the principles of the Courts Sentencing Guidelines to ensure a robust approach to the setting of Charges and minimise the likelihood of successful challenge.

[LW/29092017/W]

8.0 Equalities implications

- 8.1 This report deals with the Council's policy to ensure that it is effectively discharging its duties and powers with respect to the enforcement of housing conditions in the private sector. An initial equality analysis has been undertaken which demonstrates that there are no specific equalities implications.

9.0 Environmental implications

- 9.1 There are no direct environmental implications, however, the improved enforcement of housing conditions and management in the private rented sector may have a positive impact on the visual environment and will reduce the imposition and enforcement of Community Protection Notices for fly tipping offences.

10.0 Human resources implications

- 10.1 The revised enforcement policy and additional income which may be achieved through the Civil Penalties may enable the Council to reorganise private sector housing priorities to undertake further proactive work with respect to private sector housing conditions.

11.0 Corporate landlord implications

- 11.1 There are no Corporate Landlord implications associated with this report.

12.0 Schedule of background papers

- 12.1 Housing Act 2004
Housing and Planning Act 2016
DCLG Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities

Appendix 1

City of Wolverhampton Council Private Sector Housing Enforcement Policy

1. Introduction

- 1.1. The City of Wolverhampton Council is committed to fair and effective enforcement, which protects both the economic interest and health and safety of the public, businesses and the environment.
- 1.2. The main objective of enforcement action is to ensure that non-compliance with relevant housing requirements in the local housing market is addressed in the most effective way to ensure that compliance is achieved for the benefit of all.
- 1.3. This document sets out the enforcement policy for the Council's City Housing Service when dealing with non-compliance of laws enforced by this Service.
- 1.4. The content of this Enforcement Policy has been written having regard to;

The Regulators Compliance Code – which promotes proportionate, consistent and targeted regulatory activity through transparent and effective dialogue and understanding between regulators and those they regulate. Regulators must have regard for this code when developing policies and procedures that guide their regulatory activity. A copy of the code is available on request or may be downloaded from <https://www.gov.uk/government/publications/regulators-code>. In certain situations the Council may decide that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

2. Human Rights and Equality Issues

- 2.1. Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.
- 2.2. Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender.

3. Purpose and Methods of Enforcement

- 3.1. The City of Wolverhampton Council expects full voluntary compliance with the law. We will help owners of housing to meet their legal obligations by providing clear and concise information about what they need to do comply. However, we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, against those who flout the law or act irresponsibly.
- 3.2. Enforcement includes any action aimed at ensuring compliance with the law. The range of action that will be considered include;

3.2.1. Informal Action – will be considered where one or more of the following circumstances apply:

- there is no legislative requirement to serve formal notice or an order and the circumstances are not serious enough to warrant formal action;
- past history suggests informal action will achieve compliance;
- there is confidence in the management or the individual;
- the consequences of non-compliance will not pose a significant risk to occupiers or others.

3.2.2. Serve a Statutory Notice / Order – This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice or order.

In relation to Part One offences under the Housing Act 2004 service of statutory notices / orders will be based on the hazards found and how serious they are deemed to be. This is assessed using the Housing Health Safety Rating System. The Council has a legal duty to take the most appropriate course of action available in relation to category 1 hazards. This is where the risk to health and/or safety is high.

There is a power for the Council to deal with category 2 hazards. The Council will take statutory action in respect of category 2 hazards where there is a significant threat to health, safety or wellbeing.

Notices/Orders will include reasonable time limits having regard to the seriousness of the defects and/or contraventions.

The notice/order will contain all required information as specified by the relevant Act or Regulation. All appropriate persons will be notified of the formal action, e.g. tenants, mortgagees etc. The types of notice/order that can be issued by the Council under the Housing Act 2004 include;

- Hazard Awareness Notice – notice advising the person on whom it is served of category 1 and/or category 2 hazard(s) at the property.
- Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the hazards found.
- Prohibition Order – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property.
- Emergency Prohibition Order – same as a prohibition order but the order will take effect immediately.
- Emergency Remedial Action – see 3.2.3 below

Other legislation is available to the City Council, for example the Environmental Protection Act 1990 which allows to the service of an Abatement Notice. Regardless of the legislation used the principles of this policy will be followed.

- 3.2.3. **Take Emergency Remedial Action** – this will be considered where there is an imminent risk of serious harm. The Private Sector Housing Team will take the action necessary to mitigate and/or remove this risk and formal action will be taken by the Private Sector Housing Team to recover the full costs incurred.

In circumstances where there is non-compliance with statutory provisions the City Council has powers to take further actions to both ensure that housing conditions are improved and to take other actions to act as a deterrent for further failures to comply.

- 3.2.4. **Suspend, revoke or refuse to renew or grant a licence or authorisation** – e.g. under the Licensing of Houses of Multiple Occupation provisions. This will be considered where licensing conditions are not being met.

Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and other Local Housing Authorities.

A Public Register of licensed HMOs, dwellings with interim/final/empty dwelling management orders and HMOs with temporary exemption Notices in force and will be available, upon request, for public inspection at the appropriate Council office, in line with the requirements of the legislation and guidance. If a copy of the register, in full or part is requested by a member of the public, this may be subject to a reasonable fee to cover administration costs

- 3.2.5. **Formal (Simple) Caution** – used to deal quickly and simply with less serious offences and to divert them away from the courts. There must be sufficient evidence of guilt to give a realistic prospect of conviction and the offender must formally admit to the offence. Simple cautions will be issued in accordance with the Ministry of Justice – Simple Cautions for Adult Offenders (Nov 2013) in consultation with the Councils Legal Services.

- 3.2.6. **Issue a Civil Sanction** – The Council may decide to use a civil sanction in conjunction with or instead of the principal legislation it enforces. This may be considered where persons/businesses have saved costs or gained an unfair advantage through non-compliance with the law. Options available include;

- **Fixed Monetary Penalty** – may be considered for low level, minor instances of regulatory non-compliance. It will not be considered for more serious cases of non-compliance. A "notice of intent" will be provided to the relevant party with all information required to be provided by law, including the right to make written representations or objections.

- 3.2.7. **Penalty Charge Notices** – under various legislation the Council enforces there is the ability to issue penalty charge notices to address non-compliance.

- 3.2.8. **Financial Penalty** – under s249A of the Housing Act 2004 as introduced by The Housing and Planning Act 2016 the Council may decide to impose a financial penalty on a person

if it is satisfied beyond reasonable doubt that the persons conduct amounts to a relevant housing offence. The amount of a financial penalty is determined by the City of Wolverhampton Council, but it must not be more than £30,000. This is subject to the Councils separate policy document – Housing Enforcement Civil Penalties which should be read in conjunction with this policy.

3.2.9. **Prosecution** – may be considered for more serious offences. It aims to punish wrongdoing, to avoid a reoccurrence of the offence and to act as a deterrent to others. The Council will take account of the Code for Crown Prosecutors (https://www.cps.gov.uk/publications/code_for_crown_prosecutors/) and will only prosecute where;

- There is sufficient admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction

AND

- The Council believes that it is in the public interest to do so.

The following factors will be considered in deciding whether or not to prosecute:

- Social, physical or economic, environmental or personal health and safety effect of the offence in order to quantify the serious nature of the offence,
- Failure to comply with the requirements of an improvement, enforcement, or prohibition notice
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.
- Excessive or persistent breaches of regulatory requirements,
- Foreseeability of the offence and the circumstances leading to it,
- Intent of the offender, individually and/or corporate body,
- History of offending,
- Attitude of offender,
- Deterrent effect of a prosecution on the offender and others,
- Culpability of the offender,
- A history of similar offences.
- Carrying out operations without a relevant licence,

- Failure to comply or to comply adequately with formal remedial requirements,
- Obstruction of an authorised officer

These factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment

- 3.2.10. **Rent Repayment Order** – if a landlord has been convicted of an offence under The Housing Act 2004 for failing to comply with an improvement notice, failing to comply with a prohibition order, being in control or managing an unlicensed HMO or house the Council has a duty to consider an application to the First Tier Tribunal for a rent repayment order. This is also applicable for convictions under Section 6(1) of The Criminal Law Act 1971 concerning violence for securing entry, section 1(2), (3) or (3A) of The Protection from Eviction Act 1977 concerning eviction or harassment of occupiers and section 21 of The Housing and Planning Act 2016 concerning a breach of a banning order.

Where the Council is satisfied beyond reasonable doubt that a relevant housing offence has been committed they may consider an application to the First Tier Tribunal for a rent repayment order irrespective of whether landlord has been convicted of an offence. In either case a notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations

- 3.2.11. **Works in Default** – may be considered as an alternative to, or in addition to the issuing of a Civil Penalty or prosecution. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the Courts. This will include where applicable, administration costs and officer time. The Financial Rules and Financial Operating Procedures of the Council will be fully adhered to. Where appropriate the costs will be placed against the property as a Charge. The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

4. Proceeds of Crime

- 4.1. The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. The City Council will use this legislation where appropriate and in consultation with legal services.

5. Delegation & Decision Making

- 5.1. Decisions about the most appropriate enforcement action to be taken will be made in line with this policy and based on professional judgement, legal guidelines and advice, statutory codes of practice and priorities set by the Council and/or Central Government
- 5.2. The relevant Strategic Directors have the delegated authority in accordance with the councils Scheme of Delegation to Officers within the Councils constitution to take

certain action under a range of legislation, e.g. the service of enforcement notices. The Head of Housing appropriately delegates these powers to other Officers.

- 5.3. A decision to issue a Civil Penalty or instigate a prosecution will be taken by the appropriate Manager (as delegated by Cabinet and the relevant Director) in consultation with the Council's Legal Services

6. Costs of Enforcement

- 6.1. The Council is able in certain circumstances to charge for enforcement action, e.g. service of an improvement notice. What can be charged for will depend on the type of action taken. Examples include; costs associated with determining whether to serve a notice, costs involved in identifying any action required and costs associated with serving a notice. When costs are to be charged an invoice will be sent to the relevant party outlining the amount to be paid, what it covers and the payment terms. The charge levied will only cover the cost of the enforcement action to the authority.
- 6.2. This is a separate payment and is not the same as a penalty charge which is issued as an enforcement mechanism to address non-compliance.
- 6.3. The Council will issue enforcement charges in cases where it is legally entitled to recover the costs.
- 6.4. The level of enforcement charges referred to above, may be reduced by up to 50% where the landlord/agent agrees to be registered with the Council's Rent with Confidence scheme and achieving a minimum 3 Star rating. The responsibility to impose this reduction is delegated to the Service Manager Private Sector Housing.

7. Appeals

- 7.1. Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate
- 7.2. Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant First Tier Tribunal (Property Chamber). Further details on this process are contained in the relevant notice/order.
- 7.3. All other appeals regarding enforcement action taken should be directed to the Magistrates Court or as directed on the notice/order served.
- 7.4. The Council will rigorously defend any appeals where the notice/order has been correctly served.

8. Complaints

- 8.1. The City of Wolverhampton Council provides a well-publicised, effective and timely complaints procedure. The procedure is accessible on the City Council website at <https://www.wolverhampton.gov.uk/complaints> Alternatively a complaint can be made via the following contact methods;
- in person by visiting the [Civic Centre](#)
 - in [writing](#) addressed to the Customer Engagement Manager
- 8.2. The complaints process is without prejudice to any formal appeal mechanisms. Where a formal appeal mechanism exists, that mechanism must be used. The complaints procedure cannot be used as a substitution for a formal legal appeal

9. Review

- 9.1. This Enforcement Policy will be subject to review and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest.

Appendix 2

CITY OF WOLVERHAMPTON COUNCIL HOUSING ENFORCEMENT CIVIL PENALTIES

Introduction

The Housing and Planning Act 2016 introduced the concept of civil penalties as an alternative to prosecution. Civil penalties are an alternative when a landlord fails to comply with:

- Section 30 – failure to comply with an improvement notice
- Section 72 – mandatory licensing of 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

In all cases the evidence and public interest test are still required to be met

The Government has laid out statutory guidance as to the process and the criteria that the Council needs to consider when determining Civil Penalties:

- 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

The statutory guidance indicates that the Council should ensure that the civil penalty acts as a punishment, takes into account any previous patterns of offending and no offender should benefit as a result of committing the offence.

The law allows a maximum financial penalty of £30k per offence. In determining the level of any penalty the Council will have regard to local circumstances, the relevant local enforcement policy and the relevant Government guidance detailing the factors to take into account, as shown above. It should be noted that the policy has the ability to impose the £30K maximum penalty level for the more serious offences as is the intention of central government. The overriding principle when considering issuing a civil penalty under this policy 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.

Process for Imposing a Civil Penalty

Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow this process.

A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:

- a. The amount of any proposed financial penalty
- b. The reasons for proposing the financial penalty
- c. Information about the right to make representation to the Council.

The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.

Following the 28 day period the Council will decide, taking into account any written representations:

- a. Whether to impose a financial penalty on the person, and
- b. The value of any such penalty imposed.

If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:

- a. the amount of the financial penalty,
- b. the reasons for imposing the penalty,
- c. information about how to pay the penalty,
- d. the period for payment of the penalty,
- e. information about rights of appeal to the First tier Tribunal
- f. the consequences of failure to comply with the notice.

Consequences of Non-Compliance and Miscellaneous Provisions

If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.

The Council may, at any time:

- a. Withdraw a Notice of Intent or Final Notice
- b. Reduce the amount of the financial penalty in a Notice of Intent or Final Notice
- c. Withdraw the Notice and instigate proceedings in the courts subject to it being in the public interest

Where the Council decides to take either action, it will write to the person to whom the notice was given.

Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

Determining the Level of the Civil Penalties

The Secretary of State has issued statutory guidance on what a Council should take into account when determining the level of any final penalty. The issues to consider are:

- 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

When considering the severity of any offence Section 143(1) Criminal Justice Act 2003 states “In considering the seriousness of any offence the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably caused” It also considers harm as encompassing those offences where harm is caused but also those where neither individuals nor the community suffer harm but a risk of harm is present.

When determining any level of financial penalty these issues are required to be addressed in any Council Policy, showing how the Council intends to address each of these criteria for it to be enforceable.

Level of Culpability

The level of culpability of a landlord will depend upon a number of factors

High level

A landlord will be deemed to be highly culpable when they intentionally breach, or wilfully disregard the law

In determining whether a landlord meets this criteria the following should be considered:

- They have a record of non-compliance
- Despite a number of opportunities to comply have failed to do so
- Have been obstructive as part of the investigation
- Failure to comply results in significant risk to individuals
- Are a Member of a recognised landlord association or accreditation scheme
- Are a Public figure who should have been aware of their actions
- Are an Experienced landlord with portfolio of properties failing to comply with their obligations
- Serious and/or systematic failure to comply with their legal duties

Medium level

A landlord fails through the failure to comply or act in a manner a reasonable person would not commit

In determining whether a landlord meets this criteria the following should be considered:

- It is a first offence
- Failure is not a significant risk to individuals
- Can demonstrate that they believed the responsibility was with a third party
- The landlord had systems in place to manage risk or comply with their legal duties but these were not sufficient or adhered to or implemented.

Low level

A landlord fails to comply or commit an offence with little fault or little risk to individual

In determining whether a landlord meets this criteria the following should be considered:

- No or minimal warning of circumstances/risk
- Minor breaches
- Isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance

Level of Harm

When considering the level of harm both the actual, potential and likelihood of the harm will be considered

High

A high level of harm constitutes

- Serious effect on individual(s) or widespread impact
- Provides a serious market advantage over rivals
- Harm to a vulnerable individual
- High risk of an adverse effect on an individual
- Serious level of overcrowding

Medium

A medium level of harm constitutes

- Adverse effect on an individual – not high level of harm
- Medium risk of harm to an individual
- Low risk of a serious effect

Low

- Low risk of harm or potential harm
- Little risk of an adverse effect on individual(s)

Determination of the Level of Penalty

By determining the level of culpability and harm the Council will use the table below as the initial determination of the penalty. This is subject to review and amendment.

DETERMINATION OF CIVIL PENALTY LEVEL		
	INITIAL FINE LEVEL	MINIMUM FINE LEVEL (when considering migrating factors)
LOW CUPLABILITY		
High harm	7500	3750
Medium Harm	5000	3750
Low Harm	2500	1250
MEDIUM CULPLABILITY		
High Harm	15000	7500
Medium Harm	7500	3750
Low Harm	5000	2500
HIGH CUPLABILITY		
High Harm	25000	12500
Medium Harm	15000	7500
Low Harm	7500	3750

Adjustments to the Initial Determination

In order to determine the final penalty the Council will consider both aggravating and mitigating factors in each case. These will adjust the initial level of the penalty based on these factors.

Below is a list of both aggravating and mitigation factors which will be considered as part of the determination. The list is not exhaustive and other factors may be considered depending on the circumstances of each case.

Aggravating factors could include:

- Previous convictions having regard to the offence to which applies and time elapsed since the offence
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of non-compliance
- Record of letting substandard accommodation
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash

When considering previous offences regard should be given to the guidance on Banning Orders as well as any relevant offence such as trafficking etc.

Mitigating factors could include:

- Co-operation with the investigation e.g. turns up for the PACE interview
- Voluntary steps taken to address issues e.g. submits a licence application
- Willingness to undertake training
- Willingness to join recognised landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence
- Good character and/or exemplary conduct

What is meant by a vulnerable individual?

The statutory guidance states that the harm caused and vulnerability of the individual are important factors in determining the level of penalty.

The Housing Act 2004 defines a vulnerable individual(s) as one who is at greater harm and therefore the penalty should be greater when vulnerability is an issue.

What would the Council potentially consider as a vulnerable individual(s).

- Elderly person
- Children
- Pregnant women
- Single parent families
- Receives domiciliary care
- Has health needs – mental health, drug dependency, alcohol dependency etc
- Requires assistance in conducting their own affairs
- Has payments made to him/her or to an accepted representative in pursuance of arrangements under the Health and Social Care legislation

- Receives a service or participates in any activity provided specifically for persons who have particular needs because of age, has any form of disability or has a prescribed physical or mental problem.
- Financial issues – low income/benefits
- Those who have difficulty in understanding, speaking or reading English
- An individual in a difficult situation such as bereavement or threat of deportation etc

The above list is not exclusive and other factors may affect vulnerability when considering the level of any penalty.

Totality Principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on [Offences Taken into Consideration and Totality](#).

'The total financial penalty is inevitably cumulative.

The Council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LA.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved.

For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no double-counting.'

Final determinate of the level of any civil penalty

The final determinate of any civil penalty MUST be the general principle:

THE CIVIL PENALTY SHOULD BE FAIR AND PROPORTIONATE BUT IN ALL INSTANCES SHOULD ACT AS A DETERRENT AND REMOVE ANY GAIN AS A RESULT OF THE OFFENCE

The statutory guidance states that a guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed must never be less than what it would have cost the landlord to comply with the legislation in the first place.

When determining any gain as a result of the offence the Council will take into account the following issues

- Cost of the works required to comply with the legislation
- Any licence fees avoided
- Rent for the full period of the non-compliance - reviewed in conjunction with any potential Rent Repayment Order
- Growth of portfolio based on income received
- Any other factors resulting in a financial benefit – potential cost of rehousing any tenants by the Council

When determining whether a penalty is fair and proportionate then the following issues need to be considered

- Impact of the financial penalty on the offender's ability to comply with the law
- Impact of the penalty on third party – employment of staff, customers etc
- Impact on the offender – is it proportionate to their means - loss of home etc.

Reduction for the admission of guilt

The Council may take into account a reduction in the level of the penalty for an admission of guilt.

The level of any reduction will be determined by the Council having regard to the Sentencing Guidelines which reduce any punishment by a third for a first offence when the any offender who admits guilt at the first opportunity and immediately remedies any outstanding issues.

Any reduction will only be implemented if the level of gain is below the civil penalty.

Offender's ability to pay

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary.

It is for the offender to disclose to a Council such data relevant to his financial position as this will enable it to assess and determine what they can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case. ***This may include the inference that the offender can pay any financial penalty.***

The Council will take into consideration that the offender may be a property owner and whether there is an opportunity to sell or refinance any property they own.

Recording of the decision

A record of each decision and the reasons for the financial penalty will to be made by the Council and how the amount of the penalty was obtained and the reasons for imposing it.