
EXECUTIVE MEMBER FOR ADULT SOCIAL CARE, PUBLIC HEALTH, PUBLIC PROTECTION AND DIGITAL INCLUSION

A meeting of the Executive Member for Adult Social Care, Public Health, Public Protection and Digital Inclusion was held on Thursday 20 October 2022.

PRESENT: Councillors , D Coupe

PRESENT BY INVITATION: Councillors

ALSO IN ATTENDANCE:

OFFICERS: S Blood and J Hedgley

APOLOGIES FOR ABSENCE: Councillors

22/3

APPROVAL OF THE FRAMEWORK FOR CALCULATING THE LEVEL OF CIVIL PENALTY CHARGE IN RELATION TO BREACHES OF THE TENANT FEES ACT 2019 AND RELEVANT LETTING AGENCY LEGISLATION

The Director of Adult Social Care and Health Integration submitted a report, the purpose of which was to seek approval for the framework to calculate the financial penalty charges for breaches of relevant letting agency legislation by landlords, letting agents and property management companies.

The report advised that the ability to issue financial penalty charges was an alternative to prosecution and was in accordance with Public Protection Regulatory Services Enforcement Policy and follows Tenant Fees Act Statutory Guidance for enforcement authorities.

The framework has been developed in line with national guidance however, the method for calculating the financial penalty charge was not prescribed in law or by Government. It lies with local authorities to develop their own framework.

The implications of the recommendation(s) have been considered by the appropriate officers of the Council and were set out in the main body of the report. This report falls within the Terms of Reference of this Committee as the policies proposed will impact on all wards within the Borough and represents a change in the policy on the approach of enforcement.

OPTIONS

Other potential decision(s) and why these have not been recommended

1. Do not introduce a civil penalty charge. If this is not introduced there would be no change to current enforcement practices in that prosecution action would be taken for offences, where appropriate. This is a time consuming process for officers and Legal Services, it can take many

months or years to achieve an outcome and does not always achieve the desired results in terms of level of penalty or a deterrent.

2. The use of civil penalties offers a reduced cost enforcement option that will act as an immediate and more effective deterrent. This enforcement tool will address the poor management of properties and unfair business practices in the private rented sector and drive up standards and levels of compliance. The framework for calculating the level of charge will provide transparency and consistency in this approach.

ORDERED

1. That the Executive approves the framework for calculating the civil penalty charges in relation to the Act and associated legislation.

REASONS

The decisions were supported by the following reasons:

1. Using a civil penalty charge instead of prosecution is considered to deal more effectively with breaches of law, to encourage compliance, drive up standards in private rented accommodation and deter unfair practices. It also provides an alternative way for the Council to deal with criminal, rogue and irresponsible landlords, letting agents and property management companies.
2. The Civil penalty charge can be up to £5,000 for first breaches in respect of prohibited payments, non-publication of lettings fees, transparency issues in relation to membership of redress and client money protection schemes, and up to £30,000 for subsequent breaches or for other offences including non-membership of redress or client money protection schemes. Establishing a means for calculating the level of penalty is designed to ensure transparency, consistency and fairness.
3. The use of civil penalties will not remove the Council's ability to take legal action and for the most serious breaches this option will be considered first. Any enforcement decision will be made in accordance with the Council's Public Protection Enforcement Policy.

APPROVAL OF THE FRAMEWORK FOR CALCULATING THE LEVEL OF CIVIL PENALTY CHARGE FOR BREACHES OF LANDLORD DUTIES UNDER PRIVATE SECTOR HOUSING LAWS

The Director of Adult social care and health integration submitted a report that sought approval for a framework for calculating financial penalty charges for offences committed by persons who have duties under housing laws, which includes landlords, lettings agents, managing agents and license holders. The use of penalty charges has been brought into effect under the provisions of the Housing and Planning Act 2016 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. The ability to issue financial penalty charges is an

alternative to prosecution, in accordance with the Public Protection Regulatory Services Enforcement Policy.

The report advised that where conditions in a rented property do not meet legal standards or there is a failure to meet statutory obligations such as with regard to the management of properties, the Council (Public Protection Service) has power to serve enforcement notices to require remedial action, including physical improvement to properties, better management of shared accommodation or to invoke prohibitions on the use of properties. The Housing and Planning Act 2016 amends the primary housing legislation (the Housing Act 2004) to enable local authorities as the enforcing authority under the housing laws to impose a financial penalty as an alternative to prosecution for certain offences. Similarly, penalty charges imposed under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will be determined using the framework approved for civil penalty charges.

The method for calculating the financial penalty charges was not prescribed in law or by Government and it lies with local authorities to develop their own framework.

The implications of the recommendation(s) have been considered by the appropriate officers of the Council and are set out in the main body of the report. This report falls within the Terms of Reference of this Committee as the policies proposed will impact on all wards within the Borough and represents a change in the policy on the approach housing enforcement.

OPTIONS

Other potential decision(s) and why these have not been recommended

3. Do not introduce civil penalty charges. If they are not introduced there would be no change to current enforcement practices in that prosecution action would be taken for offences, where appropriate. This is time consuming process for officers and Legal Services, it can take many months or years to achieve an outcome and does not always achieve the desired results in terms of level of penalty or a deterrent.
4. The use of civil penalties offers a reduced cost enforcement option that will act as an immediate and more effective deterrent. This enforcement tool will address the poor management of properties in the private rented sector and drive up standards and levels of compliance. The framework for calculating the level of charge will provide transparency and consistency in this approach.

ORDERED

That Executive approves the framework for calculating the civil penalty charges in relation to housing offences.

REASONS

The decisions were supported by the following reasons:

5. The Housing and Planning Act 2016 provides Local Authorities an alternative to prosecution for certain housing offences. The civil fixed penalty charge can be up to £30,000, enabling the local authority to determine the level of penalty rather than the courts. The process is designed to ensure transparency, consistency and fairness, and will allow the council to deal with unlawful acts by persons with duties under the Housing Act 2004. If a landlord or other person receives a civil penalty this may influence whether they may be deemed to be a fit and proper person to be the holder of a licence for the operation of a House in Multiple Occupation (HMO) or for a property in a selective licensing area. If a person receives two or more civil penalties over a 12 month period, the council can apply to include that person of a national 'rogue landlord's' database, which can be viewed by other local authorities.

6. The benefit of using a civil penalty charge as opposed to prosecution is to deal more effectively with breaches of housing law, drive up standards in private rented accommodation and deter poor management of dwellings. The use of civil penalties will not remove the Council's ability to take legal action and for the most serious breaches this option will be considered first. Any enforcement decision will be made in accordance with the Regulatory Services Enforcement Policy.

The decision(s) will come into force after five working days following the day the decision(s) was published unless the decision becomes subject to the call in procedures.