

REPORT TO: STRATEGY & RESOURCES COMMITTEE

Date: 7th October, 2019

TOPIC: CIVIL PENALTY NOTICE POLICY – HOUSING AND PLANNING ACT 2016

REPORT BY: J W MANN; HEAD OF ENVIRONMENTAL HEALTH & HOUSING

1. INTRODUCTION

- 1.1 Powers to service Civil Penalty Notices (CPNs) and apply for Rent Repayment Orders (RROs) under the Housing and Planning Act came into force on the 6th April, 2017. The government's statutory guidance is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf

- 1.2 Until recently, NDC has not had the organisational capacity to implement these provisions. To be able to use these powers, the Council must firstly have its own policies in place. A draft NDC Civil Penalty Notice Policy has now been consulted on and Committee is asked to approve the new policy, set out in Appendix A.

2. RECOMMENDATIONS

- 2.1 Strategy and Resources Committee recommends that Council adopts the Civil Penalty Notice Policy in Appendix A, and gives delegated authority to the Head of Service for Environmental Health and Housing to use these powers in the 2016 Act, to serve Civil Penalty Notices and apply for Rent Repayment Orders.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To improve conditions in the Private Rented Sector. It is intended that the powers will be used as a deterrent against landlords and agents that commit certain offences, as the use of these powers will ensure that the penalties imposed outweigh any benefit of not complying with the legal requirements.

4. REPORT

4.1 CPNs

The Council can, as an alternative to prosecution, serve a CPN of up to £30,000 per offence on a landlord or agent where it can prove beyond reasonable doubt certain offences have been committed.

Once a decision to make a CPN has been made, an interim notice is served which the landlord or agent has an opportunity to make representations on. The Council must take into account any representation before deciding or not to serve the final CPN and set the amount of any penalty. There is a statutory right of appeal to the First-tier Tribunal (Property Chamber).

4.2 The statutory guidance on CPNs states it expects Councils to develop and document their own policy on when to prosecute and when to issue a civil penalty, and should then decide which option it wishes to pursue on a case-by-case basis in line with that policy.

4.3 A consultative policy was widely publicised to landlords, tenants and other stakeholders. Details of this communication are set out in Appendix B.

4.4 The analysis of the feedback received is detailed in Appendix C, and the recommended policy is in Appendix A.

4.5 Changes in relation to RROs.

Rent Repayment Orders (RROs) can be made by a First-tier Tribunal (Property Chamber) where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12 months' rent, either to a tenant for rent paid or a Council for housing benefit or universal credit paid in relation to the rent of a property. The relevant offences are:

- Violence for securing entry.
- Illegal eviction or harassment of occupiers.
- Failure to comply with an Improvement Notice or Prohibition Order.
- Failure to license a property which requires a licence.
- For breach of a Banning Order.

Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The Council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.

4.6 When deciding whether or not to apply for an RRO, the Council's proposed approach is to:

- Treat each case on its own merits.
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- The level of resources it will take to make a successful application.
- Whether it is more appropriate for the tenant to apply for the order themselves.

The Council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled, "*Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities*".

5. RESOURCE IMPLICATIONS

5.1 In relation to any revenue generated from the new powers, the statutory guidance states:

"Income received from a civil penalty can be retained by the local housing authority, provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulation¹."

This is reinforced in the regulations as any excess has to be paid back into a consolidated fund.

5.2 It is anticipated that the Council may be subject to a number of appeals to tribunals as a result of using these powers. A robust policy is important to assist at Tribunal. Where decisions are confirmed by a First-tier tribunal, there is a right of appeal to an Upper Tribunal. Once any appeal avenue is exhausted, the Council can use legal powers to recover unpaid debts from these civil penalties and the EH/H Service plans to work closely with colleagues in Accountancy Services to do so.

1. *The Rent Repayment Orders and Financial Penalties' Regulations 2017.*

6. EQUALITIES ASSESSMENT

- 6.1 Implementing this policy will have a positive impact for tenants whose landlords flaunt legal requirements, and for landlords and agents who comply with the law but are undercut by rogue landlords who seek to save money by avoiding their legal responsibilities. Often the poorest and most vulnerable are housed by non-compliant landlords.
- 6.2 A further effect of the enforcement of minimum housing landlords will be to cause landlords and agents to improve the energy efficiency of houses in the private rented sector. This will make the accommodation more affordable, and there will be an additional positive environmental impact of this proposal.

7. CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?
Part 3, Annexe 1, Paragraph 1	Delegated power

8. STATEMENT OF CONFIDENTIALITY

- 7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of the 1972 Act.

9. BACKGROUND PAPERS

- 9.1 The following background papers were used in the preparation of this report:
- Civil penalties under the Housing and Planning Act 2016. MHCLG, (April 2018).
 - Rent repayment orders under the Housing and Planning Act 2016. Guidance for LLAs, (April 2017).

The background papers are available for inspection and kept by the author of the report.

10. STATEMENT OF INTERNAL ADVICE

- 9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and Officers.

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