



Purpose: For Decision

Cabinet report

Date **14 OCTOBER 2021**

Title **HOUSING CIVIL PENALTIES**

Report of **DEPUTY LEADER AND CABINET MEMBER FOR COMMUNITY PROTECTION, DIGITAL TRANSFORMATION, HOUSING PROVISION AND HOUSING NEEDS**

EXECUTIVE SUMMARY

1. The ability to apply a civil penalty is an additional option to deal with certain Housing Act offences than currently exists, and provides for faster, more effective resolution of determining sanctions when compared with prosecution.
2. This can be more suitable for lighter touch sanctioning, whilst still able to deal with more serious offences.
3. There is less demand on resources of other departments, particularly the legal section, with reduced need for court attendance.
4. It may be more beneficial to the local authority as any income received is retained by local housing authority, provided that it is utilised to further the local housing authorities statutory functions in relation to their enforcement activities covering the private rented sector (as specified in regulations).
5. Civil penalties are required to be proportionate, fair and consistent. Our proposed weighted penalty system is based on the governments key guidance for civil penalties, which will mitigate the chances of appeal as they are proportionate to the offence.
6. It is recommended the civil penalties policy be adopted by the Local Authority in regard to housing act enforcement as this is more beneficial to the Local Authority than the current alternatives by being less resource heavy, more proportionate, will expedite the resolution of offences, allow for the growth of the Housing Renewal Section and assist in raising the standards of the Islands Housing rental stock.

RECOMMENDATION

7. To approve the civil penalties policy and associated financial charging process.

BACKGROUND

8. The Island has approximately 17,000 rented sector households. We aim to support good landlords who provide decent homes and avoid unnecessary regulation which increases costs and red tape for landlords and also pushes up rents for tenants.
9. However, a small number of rogue landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords and disrupt their business model.
10. Powers in the Housing and Planning Act 2016 allow a local authority to impose a civil penalty on the individual or organisation as an alternative to prosecution when certain offences are committed under the Housing Act 2004.
11. 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.
12. When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.
13. The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. In determining an appropriate level of penalty, local housing authorities should have regard to the guidance in "Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities". This document sets out the factors to take into account when deciding on the appropriate level of penalty. Only one penalty can be imposed in respect of the same offence.
14. A civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Hence, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.
15. Where both the letting agent and landlord can be prosecuted for failing to obtain a licence for a licensable property, then a civil penalty can also be imposed on both the landlord and agent as an alternative to prosecution. The amount of the civil penalty may differ depending on the individual circumstances of the case.
16. Where both a landlord and a letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case.
17. The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

18. To actually achieve a conviction in the magistrates' court, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.
19. The Council will decide which option it wishes to pursue on a case-by-case basis in line with the Neighbourhoods Enforcement Policy that would utilise an authority panel process.
20. When presenting a case to an authority panel, the case officer will also have regard to the following factors;
 - Severity of the offence
 - Culpability and track record of the offender
 - Resources needed to prosecute
 - Light touch sanctioning is appropriate
 - Ability for the sanction to act as a deterrent
 - Ability for offender to continue business
21. If a civil penalty is the chosen sanction numerous factors will be considered in each case to help ensure that the penalty is set at an appropriate level. This will be calculated by the case officer prior to the authority panel and proposed as part of that process. It is based on a weighted scoring process ensuring that amount is proportionate, as well as offering a transparent and easy to follow system for all parties.
22. The scoring process which has been designed to form the level of civil penalty is titled Housing Financial Guide for Civil Penalties and will be published with the policy on the website for public access.
23. In forming the Housing Financial Guide for Civil Penalties the Commissioner of Housing Renewal has researched a number of other authorities processes and taken the best and most effective aspects from these to suit the Island situation. He has also tested the weighting by applying the process on real cases to create notional penalties allowing calibration of realistic and appropriate penalty levels.
24. This report seeks to inform cabinet of the powers and introduce the option of imposing a civil penalty by approving this policy along with the associated financial charging process.
25. The policy will support the current Neighbourhoods Enforcement Policy and act as a sub policy in any relevant cases. The overarching principles of the enforcement policy apply to the application of the civil penalties policy, including the important process peer reviewing decisions to apply a civil penalty by use of an Authority Panel.
26. Without this policy the existing available sanctions for Housing Act 2004 offences consist of prosecution, works in default and formal warning.
27. Prosecution can be a lengthy, resource heavy process, both on the Housing Renewal Section and the Legal section, which ultimately can leave a disproportionate charge

to the offender, with all proceeds being retained by the Court system. If the prosecution route is taken by the authority it cannot then decide to issue a civil penalty.

28. Works in default can be used to resolve the hazards with the building in question that gives rise to the offence and can still be used alongside a civil penalty process if desired. This again is a resource heavy process for the Housing Renewal Section, and ultimately results in a financial outlay by the Local Authority to complete the required works. The expense is repayable by the owner of the property in question and would be registered as a land charge. It is not always clear cut that the authority will receive all or any of the funds outlaid due to different factors, however the authority is permitted to charge interest annually on any outstanding balance.
29. Formal warning may/may not be effective in resolving the physical works and does not discourage a repeat offence. A formal warning often needs further monitoring of the situation and may need to be followed up by further sanctions listed above, to resolve matters.

STRATEGIC CONTEXT

30. The civil penalties policy supports the corporate priorities in the following ways;
 - Growth by facilitating income opportunities related to enforcement duties.
 - Regeneration by ensuring sub-standard homes in the private rented sector are fit for human habitation and free from unnecessary hazards.
 - Opportunity by upholding appropriate housing standards which would otherwise negatively affect the occupiers and impact other aspects of their lives through accidents, ill health, or social isolation.
 - Wellbeing by positively engaging and enforcing satisfactory housing standards to enable the vulnerable people to live safe and well in their home
31. Isle of Wight Housing Strategy 2020-2025 states in Priority Three: *Private sector housing – Ensuring that the private housing sector provides enough good quality market housing through support for landlords and, where necessary, robust quality control and regulation.* The ability to impose civil penalties will enhance the Housing Renewal section's ability to achieve this priority.

CONSULTATION

32. Consultation with the landlords forum took place in 2018 and further in 2020 with the cabinet member for Housing, Barry Abraham. Barry was supportive of the policy and the landlord forum members provided no comment.

FINANCIAL / BUDGET IMPLICATIONS

33. Undertaking civil penalties would not require any additional resources beyond those already utilised for the alternative sanctions, and in the majority of cases will likely use less resources.
34. The utilising of civil penalties would likely create a sizeable income for Housing Enforcement purposes, with the possibility of enabling additional resources for the undertaking of housing standards regulation.
35. The charge is VAT exempt.

36. Using a sample group of recent cases, the service has undertaken notional civil penalty charge calculations as follows all of which would attract a civil penalty:
- Landlord not complying with an Improvement Notice for 2 hazards in a block of flats. Uncooperative attitude, prolonged case (over 12 months) carried out works to single hazard after determination of the Notice, second hazard remains in place.
 - Landlord not complying with Improvement Notice, household containing 3 children, 9 hazards present.
 - HMO licence holder breach of conditions, vulnerable occupiers, considerable informal intervention, reckless attitude towards safety, 4 significant hazards and multiple breaches of licence conditions, no intention from landlord to resolve.
 - HMO licence holder failing to comply with provision of Gas Safety Certificate under licence conditions, negligent act.
37. On the basis of the sample cases it is not unreasonable to consider £10,000 annual charges made.

CARBON EMISSIONS

38. Whilst this policy will not directly reduce council carbon emissions to any notable extent it will indirectly improve carbon emissions within the private rented sector through interventions in relation to poorly insulated properties. This will contribute to a reduction in Island carbon emissions and support the Climate & Environment Strategy.

LEGAL IMPLICATIONS

39. Powers in the Housing and Planning Act 2016 allow a local authority to impose a civil penalty on the individual or organisation as an alternative to prosecution when certain offences are committed under the Housing Act 2004.
40. Statutory guidance will be followed to set the level of the penalty.

EQUALITY AND DIVERSITY

41. An EIA has been undertaken which has concluded there is generally no impact under the protected characteristics and the procedures allow for suitable adjustments for any disability related access to service difficulties.

PROPERTY IMPLICATIONS

42. There are no council owned property implications.
43. There are positive implications for properties in the residential rented sector where landlords have committed certain offences under the Housing Act 2004 in that it provides for a punitive response to the non-compliance which sends a message to the landlord in question as well as other landlords operating unsatisfactorily. The aim is to improve the standard of the Island's rented housing market.
44. Any property regulated against under the Housing Act powers will have appropriate checks carried out in terms of ownership and persons responsible, and ultimately liable to be the subject of the civil penalties policy.

45. The local authority are permitted to consider undertaking work in default of a housing notice should it choose, which will still be an option whether prosecution or a civil penalty route is taken.

SECTION 17 CRIME AND DISORDER ACT 1998

46. The proposed civil penalties policy is another sanction option for cases where certain criminal offences have occurred. It will help satisfy our statutory responsibilities in dealing with criminal matters.

OPTIONS

47. The Local Authority may decide to approve the civil penalties policy and associated financial charging process. If a civil penalty route is taken by the authority it cannot then decide to prosecute the same offence.
48. The Local Authority could decide to not approve the policy for civil penalties and continue with the existing available sanctions, which consist of prosecution, works in default and formal warning.

RISK MANAGEMENT

49. There is a risk that a civil penalty is issued on the wrong person or at the wrong address. Currently the sanction of prosecution requires internal checks, a regulatory authority panel check and legal peer checks, all following the Neighbourhoods Enforcement Policy and it is proposed that this remain in place for the civil penalties process (which is identified in that policy).
50. The comprehensive procedural checks will also mitigate any reputational risk.
51. There is a risk that a civil penalty is issued without the appropriate evidence and case oversight. A civil penalty can be appealed and may be challenged at the Residential Property Tribunal and will require the same level of evidence as a prosecution. The enforcement procedures will ensure that this level of evidence is achieved to minimise any risk of successful appeal.
52. There is risk that the person issued a civil penalty does not pay and the authority must chase the debt to receive the money. This will be mitigated by applying proportionate penalty amounts, rather than trying to elevate the charge to maximum levels consistently. It is hoped that proportionate charging will encourage settlement of the debt. In addition to this there is a procedural point where the authority are obliged to assess the offenders ability to pay, which will moderate the level of charge. Further to this we will encourage early payment by offering a reduction in cost for early payment, which will hopefully avoid unnecessary appeals and debt recovery, as well as offer a fair opportunity for reasonable landlords.
53. There will be risks involved in any debt collection decision should any case need to progress that far, and these will be considered on a case by case basis at the time.

54. There is risk that the issuing and payment of a civil penalty does not resolve the physical work, and tenants may still be suffering the hazards. This can be mitigated by either carrying out work in default of the notice (if that is the offence), or by undertaking separate housing standards enforcement again. Should the offender repeat the offence it will have a significant effect on any subsequent civil penalty by increasing it. Also, further separate enforcement action may take the form of a different housing notice and could result in prosecution and not a civil penalty. The Housing Renewal Section do not cease intervention until the physical issues have been resolved.

EVALUATION

55. The one option is being recommended as it is a simple yes or no choice to allow officers to impose civil penalties by approving the civil penalty policy and associated housing financial guide.
56. This option will enable more cost-effective regulation, a proportionate approach, the ability to utilise any income within the housing regulation service, and contribute to the council's corporate priorities.

APPENDICES ATTACHED

Appendix 1- Civil Penalties Policy

Appendix 2 - Housing Financial Guide for Civil Penalties

Appendix 3 - EIA in connection with the report

BACKGROUND PAPERS

[Civil penalties under the Housing and Planning Act 2016 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/).

Neighbourhoods Enforcement Policy 2021-2024 [Document Library \(iow.gov.uk\)](https://www.iow.gov.uk/document-library/)

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