



**COUNCIL: 18 October 2017**

**CABINET: 7 November 2017**

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**Report of: Director of Leisure and Wellbeing**

**Relevant Portfolio Holder: Councillor Kevin Wright**

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**SUBJECT: HOUSING AND PLANNING ACT 2016: CIVIL PENALTIES & RENT REPAYMENT ORDERS**

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Wards affected: Borough wide

## **1.0 PURPOSE OF THE REPORT**

- 1.1 To inform Council of new powers provided to Local Authorities under the Housing and Planning Act 2016 (the Act), specifically, civil penalties and rent repayment orders (RROs).

## **2.0 RECOMMENDATIONS**

- 2.1 That Council approves an amendment to the constitution at 4.2D part viii, Private Sector Housing, paragraph 18; as outlined at Appendix 1; and authorises the Director of Leisure and Wellbeing and officers designated by him to implement the new powers.
- 2.2 That Council agrees that landlords, on receipt of a Notice of Intent to issue either a civil penalty or a RRO, can make written representations to the Director of Leisure and Wellbeing, who in accordance with the Rent Repayment Orders Policy (Appendix 3) will determine whether to impose a civil penalty, and if so, the amount of the penalty, or apply for a RRO.
- 2.3 That Council agrees to the Housing Civil Penalties Policy as outlined at Appendix 2.
- 2.4 That Council agrees to the Rent Repayment Order Policy as outlined at Appendix 3.
- 2.5 That Council refers the report to Cabinet for consideration of an update to the current Private Sector Housing Enforcement Policy, originally approved by

Cabinet, to include appropriate coverage of the civil penalties and rent repayment orders as outlined at Appendix 2 and 3.

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### **3.0 BACKGROUND**

- 3.1 The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords. The following measures were brought into force on the 6 April 2017:
- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences
  - Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences.
- 3.2 The Government intends to bring further measures into force in October 2017 including a database of rogue landlords and banning orders for the most serious and prolific offenders. We await guidance on these measures.
- 3.3 The introduction of this new legislation and associated powers, means that the current Private Sector Housing Enforcement Policy requires updating. The current policy was agreed by Cabinet therefore, following consideration of this report, a report will be taken to Cabinet to request that that body consider updating the Policy to take account of the amendments as outlined in Appendix 2 and 3 as agreed (or otherwise) by Council.

### **4.0 CIVIL PENALTIES**

- 4.1 Under s.126 of the Act, a local housing authority has the power to impose a civil penalty on an individual or organisation as an alternative to prosecution for the following housing offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice (s.30)
  - Offences in relation to licensing of Houses in Multiple Occupation (s.72)
  - Offences in relation to licensing of houses under Part 3 of the 2004 Act (s.95) (selective licensing schemes only)
  - Offences of contravention of an overcrowding notice (s.139)
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation (s.234)
- 4.2 As the enforcing authority, the Council must serve a Notice of Intent to impose a financial penalty. A person served such a notice has 28 days to make written representations to the Council. If after the expiry of the period for representations, the Council decides to impose a financial penalty, it must give the person a Final Notice requiring that the penalty is paid within 28 days. A person served with a Final Notice may appeal to the First-tier Tribunal. If an appeal is lodged, the Final Notice is suspended until the appeal is determined or withdrawn.
- 4.3 The maximum penalty is £30,000, no minimum level has been set. The amount of penalty is to be determined by the local housing authority in each case. Where both a landlord and letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution.

4.4 In setting the penalty at an appropriate level, the following factors should be taken into account:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence

The Council has also examined the charging policies of other local authorities.

4.5 Whilst taking into account the factors mentioned above the Housing Civil Penalties Charging Policy (the Policy) contains a table of proposed fines for the various offences. The fines are subject to the discretion of the Director of Leisure and Wellbeing following consideration of the information provided at Stage 3 of the Policy and prior to the Final Notice being served.

4.6 The penalty will be enforceable on the order of the County Court and where proceedings are necessary for recovery of the penalty, a certificate signed by the Council's Chief Finance Officer stating that the amount due has not been received by a specified date will be taken as conclusive evidence that the penalty has not been paid.

4.7 If a person receives a civil penalty, that fact can be taken into account in considering whether he/she is a fit and proper person to be the licence holder for a House in Multiple Occupation (HMO) or any other property subject to licensing.

## **5.0 RENT REPAYMENT ORDERS**

5.1 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed. RROs are a means by which a tenant or local authority can seek to have up to 12 months of rent repaid in addition to other enforcement action. The Housing and Planning Act 2016 has extended the range of situations in which rent repayment orders can be used.

5.2 Rent repayment orders are being extended to cover the following situations:

- Failure to comply with an Improvement Notice (s.30 (1) Housing Act 2004)
- Failure to comply with a Prohibition Order (s.32 (1) Housing Act 2004)
- Using violence to secure entry to a property (s.6 (1) Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (s.1(2), 3, or 3A Protection from Eviction Act 1977)
- Offences in relation to licensing of Houses in Multiple Occupation (s.72 (1) (failure to licence))
- Offences in relation to licensing of houses under Part 3 of the Act (s.95 (1) (selective licensing))

- 5.3 A rent repayment order can be applied for when the landlord has committed an offence, irrespective of whether he/she has been convicted of the offence. However, where an application for a rent repayment order is made and the landlord has not been convicted of the relevant offence, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. Where the landlord has been convicted of a relevant offence, the Tribunal must award the order and must require that the maximum amount of rent is repaid.
- 5.4 Applications for a rent repayment order must be made to the First-tier Tribunal. The local housing authority can apply where the rent paid to the landlord was via housing benefit or universal credit. The tenant can apply where they have paid the rent directly. The maximum amount of rent that can be recovered is capped at 12 months. If there are multiple tenants in the property, each must apply for a RRO to recover the rent they have paid.
- 5.5 Any recovered funds can be retained by the authority provided it is used to further the statutory functions in relation to enforcement activities covering the private rented sector.
- 5.6 Where the landlord has committed one of the following offences:
- Failure to comply with an Improvement Notice
  - Offences in relation to licensing of Houses in Multiple Occupation (s.72 (1) (failure to licence)
  - Offences in relation to licensing of houses under Part 3 of the Act (s.95 (1) (selective licensing)
- The local authority can impose a civil penalty and apply for a rent repayment order as both sanctions are available for these offences. The local authority can also prosecute a landlord and seek a rent repayment order for the same offence.
- 5.7 Before applying for an order, the local housing authority must give the landlord a notice of intended proceedings, served within 12 months of the date on which the landlord commits the offence to which it relates. The notice must explain why the authority proposes to apply for the order, state the amount that authority is seeking to recover and invite the landlord to make representations within a period specified (at least 28 days).
- 5.8 The local authority must consider any representations made within the notice period and must not apply to the First-tier Tribunal until the period in the notice has expired
- 5.9 Generally, each party bears its own costs however the Tribunal may award costs where a person has acted unreasonably in bringing, defending or conducting proceedings.
- 5.10 A landlord may appeal against a decision of the First-tier Tribunal to the Upper Tribunal provided permission has been given.

- 5.11 Where a landlord refuses to pay, the case can be referred to the County Court. If necessary, County Court bailiffs can be used to enforce the order and recover the debt.

## **6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 6.1 The actions contained in the strategy will help to improve the quality and management of housing in the private rented sector. The strategy also links to the sustainable living key objective of the Sustainable Community Strategy.

## **7.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 7.1 The authority will incur costs in implementing these regulations in relation to the First-tier Tribunal fees. It is anticipated that the cost will be met by the income generated from both the civil penalties and rent repayment orders (where the Council recovers housing benefit payments).
- 7.2 Any income received from a civil penalty or rent repayment order can be retained by the Council provided it is used to further the Council's functions in relation to private sector housing enforcement activities.

## **8.0 RISK ASSESSMENT**

- 8.1 The actions referred to in this report are covered by the scheme of delegation to officers and any necessary changes have been made in the relevant risk registers.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

There is a direct impact on members of the public, employees, elected members and / or stakeholders; therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report

### **Appendices**

1. Amendments to the Constitution
2. Housing Civil Penalties Charging Policy
3. Rent Repayment Orders Policy
4. Equality Impact Assessment

## Appendix 1

### Amendment to 4.2D part (viii) of the Constitution

Paragraph 18 to be amended as follows (changes to be made are in bold):

To administer relevant provisions, give authorisations, directions, serve notices, enforce, carry out works in default, raise and recover charges, set and impose penalty charge notices, review and determine penalty charges where representations are made, **authorise applications for rent repayment orders, determine representations made against the notice of intent to serve a rent repayment order**, review, determine and impose civil penalties, issue formal cautions and to lay information and complaints to the Court in relation of offences in appropriate cases under the following elements and any Act or Acts extending or amending the same or incorporating them and under any order of regulations made upon the said Act or Acts:

- Public Health Act (s) 1936 and 1961
- Prevention of Damage by Pests Act 1949
- Caravan Sites and Control of Development Act 1960
- Caravan Sites Act 1968
- Local Government Act 1972
- Local Government (Miscellaneous Provisions) Acts 1976 and 1982
- Building Act 1984
- Housing Act 1985
- Housing Act 2004 (with effect from the appropriate enactment dates for each section of the Act)
- Local Government and Housing Act 1989
- Environmental Protection Act 1990
- Housing Grants, Construction and Regeneration Act 1996
- Protection from Eviction Act 1977
- Home Energy Conservation Act 1995
- Local Government Act 2000
- Regulations Reform (Housing Assistance) (England and Wales) Order 2002
- Town and Country Planning Act 1990 (Sections 215, 216 and 219)
- Enterprise and Regulatory Reform Act 2013
- The Energy Act 2013 -The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (only)
- **Housing and Planning Act 2016**

## **Appendix 2**

### **Housing Civil Penalties Charging Policy**

#### **1.0 Introduction**

- 1.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 provides local authorities with the power to impose a civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice (s.30)
  - Offences in relation to licensing of Houses in Multiple Occupation (part 2 s.72)
  - Offences in relation to licensing of houses under Part 3 of the 2004 Act (part 3 s.95, selective licensing schemes)
  - Offences of contravention of an overcrowding notice (s.139)
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation (s.234)
- 1.2 The Council has the power to impose a civil penalty of up to £30,000 with a level of civil penalty imposed in each case in line with this policy.
- 1.3 A civil penalty can be issued as an alternative to prosecution for each separate breach of HMO regulations. Each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.
- 1.4 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.
- 1.5 Both the letting agent and landlord can also be issued a civil penalty if they have committed the same offence.
- 1.6 Only offences committed on or after the 6 April 2017 are covered by this policy.
- 1.7 This guidance outlines the Council's policy in setting the level of civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.

#### **2.0 Statutory Guidance**

- 2.1 The Government has issued statutory guidance and local authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties.

2.2 The actual amount levied in any particular case should reflect the:

- a) **Severity of the offence** – the more serious the offence the higher the penalty
- b) **Culpability and track record of the offender** – repeat offenders, those with a history of non-compliance and those who ought to have known their legal responsibilities should face higher penalties
- c) **Harm caused to the tenant** – the greater the harm or potential harm to the tenant the higher the penalty should be
- d) **Punishment of the offender** – a civil penalty should not be regarded as an easy or lesser option compared to prosecution
- e) **Deter the offender from repeating the offence** – the level of penalty should be set at a high enough level that it is likely to deter the offender from repeating the offence
- f) **Deter others from committing similar offences** – the issuing of a civil penalty will not be in the public domain, however, it is possible that other landlords will become aware informally when someone has received a civil penalty therefore the level of penalty should be high enough to deter others
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence** – the principle here is to ensure that the offender does not benefit as a result of committing an offence i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed

### **3.0 Schedule of Financial Penalty Codes for relevant housing offences under the Housing Act 2004**

- 3.1 The tables below outline the level of penalty to be issued based on the nature of the offence and any aggravating factors.
- 3.2 Second and subsequent offences do not need to be for the same address. Where the landlord or agent has committed any of the offences below, Officers must take into account whether the same landlord or agent has committed the same offence previously and apply the correct penalty.



Offence	Civil Penalty	
<b>Failure to comply with an improvement notice (S.30 Housing Act 2004)</b>	1 <sup>st</sup> Offence	£5,000
	2 <sup>nd</sup> Offence	£10,000
	Subsequent offences by same person/company	£30,000
<b>Failure to comply with an overcrowding notice (s.139 (7) Housing Act 2004)</b>  Note- this applies to HMOs which DO NOT require to be licensed under mandatory licensing (Part 2)	1 <sup>st</sup> Offence	£5,000
	2 <sup>nd</sup> Offence	£10,000
	Subsequent offences by same person/company	£20,000
<b>HMO licensing offences (s.72 Housing Act 2004)</b>  Applies to the person having control of or managing a HMO which is required to be licensed		
Failure to obtain a HMO licence	1 <sup>st</sup> Offence	£10,000
	2 <sup>nd</sup> Offence	£20,000
	Subsequent offences by same person/company	£30,000
Permitting another person to occupy the property knowing this will result in the property being occupied by more persons than is authorised by the licence	1 <sup>st</sup> Offence	£5,000
	2 <sup>nd</sup> Offence	£10,000
	Subsequent offences by same person/company	£20,000
<b>Failure to comply with mandatory license conditions 1 to 4 (failure of license holder)</b>		

To produce to the Local Authority their annual gas safety certificate	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To display a copy of the gas safe certificate in a prominent position in the HMO OR provide a copy to each tenant	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
To keep electrical appliance and furniture provided in a safe condition	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To supply to the Local Authority a declaration as to the safety of all appliances and furniture	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To ensure a smoke alarm is installed on each storey of the living accommodation and is kept in proper working order	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> and subsequent offences by same person/company	£5,000
To supply to the Local Authority a declaration as the condition and position of the smoke alarms	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To ensure a carbon monoxide alarm is installed in any room used as living accommodation which contains a solid fuel appliance and is kept in property working order	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> and subsequent offences by same person/company	£5,000
To provide each tenant a copy of the tenancy agreement which includes the terms and conditions	1 <sup>st</sup> Offence	£250
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000

<b>Additional licence conditions 1-5 (failure of licence holder)</b>  Schedule 3 Regulation 8: prescribed standards for deciding the suitability of occupation of any HMO by a particular number of households or persons under s.65 Housing Act 2004		
To keep the Local Authority informed of changes to their postal address, change in managing agent	1 <sup>st</sup> Offence	£250
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000
If the license holder is a managing agent; to inform the Local authority if they change their main contact, or no longer manage the HMO	1 <sup>st</sup> Offence	£250
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000
To inform the Local Authority in writing if they or any person or company appointed to manage the property commits a relevant offence or unlawful discrimination or breached any provisions of housing or landlord and tenant law	1 <sup>st</sup> Offence	£250
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000
<b>Additional License Conditions 6 (failure of licence holder)</b>		
The licence holder must provide every tenant of the licensed property with the following within 28 days of receipt of their license: <ul style="list-style-type: none"> <li>Name of the licence holder or managing agent</li> <li>A contact address, daytime telephone number</li> <li>An emergency contact telephone number</li> </ul>	1 <sup>st</sup> Offence	£250
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000

<b>Additional License Conditions 7 and 8 (failure of licence holder and/or manager)</b>		
To take reasonable steps to prevent antisocial behaviour and cooperate with the Council over any action being taken to resolve the issues	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£1,500
	Subsequent offences by same person/company	£2,500
To have procedures to receive and respond to formal complaints about tenant behaviour	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£2,000
<b>Additional License Conditions 9 and 12 (failure of licence holder and/or manager)</b>		
To allow access to Officers of the Council at all reasonable time to enable them to perform their functions	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£2,000
Co-operate with the Council when investigating complaints about breach of License Conditions	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£2,000
Attend training as directed by the Council if they deem this necessary for the performance of your duties	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£2,000

<b>Additional License Conditions 13 and 15 (duty of licence holder and / or manager)</b>		
To provide arrangements for disposal of refuse and ensure that there are adequate facilities for the storage of household refuse between collections	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
To outline to the tenants, their responsibilities in respect of refuse storage and disposal, including any recycling arrangements, which the Council may be operating	1 <sup>st</sup> Offence	£200
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000
To provide any necessary information regarding their tenants, including names, dates of birth, to assist the Council in the performance of its functions and duties	1 <sup>st</sup> Offence	£200
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000
<b>Additional License Conditions 16 and 17 (duty of licence holder)</b>		
To ensure bedrooms are of an adequate size for the number of occupants. No persons over the age of twelve years and of opposite sexes shall be allowed to sleep in the same room unless they are cohabitants	1 <sup>st</sup> Offence	£5,000
	2 <sup>nd</sup> Offence	£10,000
	Subsequent offences by same person/company	£20,000
To ensure bedrooms are private and should not be used by other residents and visitors to access other bedrooms, common living areas, bathrooms or kitchens	1 <sup>st</sup> Offence	£5,000
	2 <sup>nd</sup> Offence	£10,000
	Subsequent offences by same person/company	£20,000

<b>Additional License Conditions 18 and 20 (duty of licence holder)</b>		
To provide sufficient bathroom and toilet facilities for the number of occupants and keep these in good condition, providing adequate ventilation, electric lighting and heating	1 <sup>st</sup> Offence	£2,000
	2 <sup>nd</sup> Offence	£3,000
	Subsequent offences by same person/company	£5,000
To provide sufficient kitchen facilities for the number of occupants, with adequate space for the storage and preparation of food and keep these in good condition	1 <sup>st</sup> Offence	£2,000
	2 <sup>nd</sup> Offence	£3,000
	Subsequent offences by same person/company	£5,000
<b>Additional License Conditions 22 and 23 (duty of licence holder and / or manager)</b>		
To provide suitable and sufficient heating, which is safely and properly installed and maintained and is controllable by the tenants	1 <sup>st</sup> Offence	£2,000
	2 <sup>nd</sup> Offence	£3,000
	Subsequent offences by same person/company	£5,000
To ensure all amenities, facilities and equipment provided for occupants are adequately maintained and remain available for use at all times	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
<b>Additional License Conditions 24 to 29 (duty of licence holder and / or manager)</b>		
To provide the main entrance doors and bedrooms (if required) with locks which are sufficiently secure and can be easily opened without the use of a key in the case of fire e.g. thumb turn locks	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£1,500
	Subsequent offences by same person/company	£2,500

To provide a suitable and sufficient fire alarm system for the property as directed by the Local Authority	1 <sup>st</sup> Offence	£2,000
	2 <sup>nd</sup> Offence	£3,000
	Subsequent offences by same person/company	£4,000
To test and maintain the fire alarm system in accordance with the relevant section of BS 5839 and the manufacturer's instructions and keep a record of any weekly or monthly tests and servicing records which must be made available for inspection on the request of the Council.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To provide a system of emergency lighting for the property as directed by the Local authority.	1 <sup>st</sup> Offence	£2,000
	2 <sup>nd</sup> Offence	£3,000
	Subsequent offences by same person/company	£4,000
To carryout routine monitoring and servicing of the emergency lighting, and keep a record of this, which must be made available for inspection on the request of the Council	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To provide fire escape exit routes with directional signing for means of escape purposes, as directed by the council.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To upgrade the fire separation for the dwelling to provide a fire protected escape route (including upgrading doors, walls, floors/ceilings, stair case soffit and spandrel) if deemed necessary by the Council.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
<b>Additional License Conditions 30 to 34 (duty of licence holder)</b>		
The licence holder must supply to the authority,	1 <sup>st</sup> Offence	£200

on demand, a plan/layout of the property	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000
<p>The licence holder and/or their nominated manager shall ensure that the following installations in common use or serve any part of the house in common use, are kept in a clean condition are properly maintained and kept in good working order:</p> <ul style="list-style-type: none"> <li>• Installations for the supply of gas and electricity, for lighting and for space heating or heating water</li> <li>• Sanitary conveniences, baths, sinks, wash hand basins and installations for cooking and storing food</li> </ul>	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
<p>The licence holder and/or their nominated manager shall ensure that all parts in common use are in and are maintained in repair (including, where appropriate decorative repair), a clean condition and good order</p>	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
<p>The licence holder and/or their nominated manager shall ensure that such parts of the house in common use as comprise staircases, passageways, corridors, halls, lobbies, balconies and entrances (including entrance doors, porches and steps) are kept reasonably free from obstructions</p>	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£1,500
	Subsequent offences by same person/company	£2,000
<p>The licence holder and/or their nominated manager shall ensure that every outbuilding, yard area and forecourt, which belongs to the house and is in common use, is in and is maintained in repair, clean condition and good order and that any garden in common use belonging to the house is kept in a reasonable condition</p>	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
<b>Additional License Conditions 35 (duty of licence holder and / or manager)</b>		
The licence holder and/or their nominated	1 <sup>st</sup> Offence	£1,000



manager shall engage a suitably qualified electrician to carry out an electrical installation condition report for the property at least once every 5 years.	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
A copy of the electrical installation condition report must be provided to the Local Authority within 7 days of any written request.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
A copy of the inspection report shall be displayed in a suitable location within the property or given to the tenants.	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
Remedial works recommended in the electrical installation condition report must be completed in accordance with the recommended time frames and agreed with the Council.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
The licence holder and/or or their nominated manager shall respond immediately to any reports of electrical faults or damage to the electrical installation by engaging a suitably trained and competent person to investigate and carryout all necessary works.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
<b>Failure to comply with HMO Management Regulations s.234</b>		
(Regulations apply to all HMOs except s.257 HMOs)		
<b>SI 372 Reg 3:</b> Duty of manager to provide information to occupiers	1 <sup>st</sup> Offence	£250
	2 <sup>nd</sup> Offence	£500
	Subsequent offences by same person/company	£1,000
<b>SI 372 Reg 4:</b> Duty of manager to take safety measures	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000

<b>SI 373 Reg 5:</b> Duty of manager to maintain water supply and drainage	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
<b>SI 372 Reg 6:</b> Duty of manager to supply and maintain gas and electricity:		
Failure to supply LA copy of current gas safety certificate within 7 days of a written request	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
Failure to ensure that every fixed electrical installation is inspected and tested at intervals not exceeding 5 years by a person qualified to undertake the inspection and testing	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
Failure to supply LA copy of the electrical installation condition report to the Local Authority within 7 days of any written request.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
Failure to ensure the gas and electric supplies are not unreasonably interrupted.	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
<b>SI 372 Reg 7:</b> Duty of Manager to maintain common parts, fixtures, fittings and appliances  Requires manager to keep all common parts in good and clean decorative repair, in safe working condition and kept clear of obstructions, the manager must particularly ensure:		
Handrails, banisters, stair coverings are kept safe	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences	£3,000

	by same person/company	
All windows and ventilation in common parts to be maintained	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
The provision of adequate light fittings	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
Fixtures, fittings or appliances (used in common) are maintained	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
Outbuildings yards and forecourts (used in common) are maintained	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
Gardens belonging to the HMO are safe and tidy	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
Boundary walls, fences and railings are safe and maintained	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
All bathrooms and kitchens (in common use) are maintained in good and clean decorative repair and in safe and working condition	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000

<p><b>SI 372 Reg 8:</b> Duty of manager to maintain living accommodation</p> <p>The following duties will not apply in all circumstances e.g. if an electrical appliance is outside the control of the manager or if a fixture or fitting belongs to the tenants, or if disrepair has been caused by the tenant</p>		
Failure to ensure each unit of living accommodation (including furniture supplied) is clean at the beginning of the tenancy	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
Failure to maintain the internal structure in good repair	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To maintain fixtures, fittings and appliances in good repair, and in clean and good working order	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
To maintain windows and ventilation in good repair	1 <sup>st</sup> Offence	£1,000
	2 <sup>nd</sup> Offence	£2,000
	Subsequent offences by same person/company	£3,000
<b>SI 372 Reg 9:</b> Duty to provide waste disposal facilities		
Failure to provide sufficient bins	1 <sup>st</sup> Offence	£500
	2 <sup>nd</sup> Offence	£1,000
	Subsequent offences by same person/company	£1,500
If necessary, make further arrangements for the disposal of refuse and litter	1 <sup>st</sup> Offence	£150
	2 <sup>nd</sup> Offence	£200

	Subsequent offences by same person/company	£500

## **4.0 Process for imposing a civil penalty and the right to make representations**

### **Stage 1 – serve a notice of intent**

The notice must set out:

- The amount of the proposed financial penalty
- The reasons for proposing to impose the penalty
- Information about the right of the landlord to make representations

The notice must be served no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates or at any time when the conduct is continuing.

### **Stage 2 – right to submit written representations**

The person served with the notice of intent may make written representations to the Director of Leisure and Wellbeing about the intention to impose a financial penalty. Any representations must be made within 28 days from when the notice was given.

### **Stage 3 – end of written representation period**

Once the 28 day period for receiving written representations has expired, the Director of Leisure and Wellbeing must decide whether to impose a penalty, and if so, the amount of the penalty. If a financial penalty is to be imposed, a final notice must be served.

### **Stage 4 – final notice**

The final notice must set out:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information about how to pay the penalty
- The period for payment of the penalty (28 days)
- Information about rights of appeal
- The consequences of failure to comply with the notice

### **Stage 5 – right of appeal**

A person who receives a final notice may appeal to the First-tier Tribunal against:

- The decision to impose a penalty
- The amount of the penalty

If the person appeals, the final notice is suspended until the appeal is determined or withdrawn.

## **5.0 Withdrawing or varying a Notice of Intent or Final Notice**

5.1 The Council can at any time:

- Withdraw a notice of intent or final notice; or
- Reduce the amount specified in a notice of intent or final notice

## **6.0 Refusal to pay**

6.1 Where the person refuses or fails to pay a civil penalty, the Council should refer the case to the county court for an official Order of that court. If necessary, county court bailiff's can be used to enforce the order and recover the debt.

6.2 A certificate signed by the Chief Finance Officer stating that the amount due has not been paid by a specified date will be treated by the courts as conclusive evidence of that fact.

## **7.0 Works in default**

7.1 The Council can still carry out works in default, s.31 and Schedule 3 of the Housing Act 2004 are not affected by the Housing and Planning Act 2016.

## **8.0 Rogue landlords database**

8.1 The rogue landlords' database is due to be brought in during October 2017. Where a person receives two or more civil penalties over a 12-month period, the Council may include their details in the database. It is not compulsory to do so but it is encouraged to ensure all local authorities are aware of any enforcement action that has been taken.

## **9.0 Fit and proper person test**

9.1 The issuing of a civil penalty can be taken into account when deciding whether someone is a fit and proper person to be a licence holder for a HMO.

## **Appendix 3**

### **Rent Repayment Orders Policy**

#### **1.0 Introduction**

- 1.1 The Housing Act 2004 introduced rent repayment orders (RROs) to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically HMOs. RROs are a means by which a tenant or local authority can seek to have up to 12 months of rent repaid in addition to other enforcement action.
- 1.2 RROs have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences.
- 1.3 RROs can now be applied for to cover the following situations:
  - Failure to comply with an Improvement Notice (s.30 Housing Act 2004)
  - Failure to comply with a Prohibition Order (s.32 Housing Act 2004)
  - Breach of a banning order made under s.21 Housing and Planning Act 2016
  - Using violence to secure entry to a property under s.6 Criminal Law Act 1977
  - Illegal eviction or harassment of the occupiers of a property under s.1 Protection from Eviction Act 1977
- 1.4 Applications for an order must be made to the First-tier Tribunal.
- 1.5 Where the offence was wholly committed before 6 April 2017 or the commission of the offence started before the 6 April 2017 and ended no later than 5 April 2018, the provisions in the Housing Act 2004 continue to apply.
- 1.6 Where the offence was wholly committed on or after 6 April 2017, the provisions in the Housing and Planning Act 2016 and this guidance should be used.
- 1.7 An order can be applied for when one of the above offences has been committed, whether or not the landlord has been convicted. Where the landlord has not been convicted of the relevant offence, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.
- 1.8 If the Council paid the rent through either housing benefit or universal credit, any rent recovered must be repaid to the Council. If the tenant paid the rent in full (no HB or UC) any amount recovered must be paid to the tenant. If the rent was paid partly through HB/UC and by the tenant, the amount recovered must be repaid on an equivalent basis to each party. If there are multiple tenants in the property, each must apply for a RRO to recover the rent they have paid.

- 1.9 The maximum amount of rent that can be recovered is capped at 12 months.
- 1.10 Any income received from a RRO can be retained by the Council provided it is used towards private sector housing enforcement activities.

## **2.0 When to apply for a RRO**

- 2.1 The Council will apply for a RRO in all cases where the landlord has been convicted of a relevant offence and some or all of the rent was paid through housing benefit/universal credit.
- 2.2 Where a landlord has not been convicted, the Council will take the following factors into account in deciding whether a RRO is appropriate and how much should be recovered:
- a) **Punishment of the offender** – RROs should have a real economic impact on the offender. The Council will consider the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has been convicted of similar offences
  - b) **Deter the offender from repeating the offence** – the level of the penalty should be set at a high enough level to deter the offender from repeating the offence
  - c) **Dissuade others from committing similar offences** – the issue of a RRO will be in the public domain therefore robust and proportionate use of the orders is likely to help others comply with their responsibilities
  - d) **Remove any financial benefit the offender may have obtained as a result of committing the offence**

## **3.0 Who is named on the RRO?**

- 3.1 A RRO can only be applied for in the name of the landlord of the property.

## **4.0 Civil Penalty and RRO**

- 4.1 The Council can impose a civil penalty and apply for a RRO for the following offences:
- Failure to comply with an Improvement Notice (s.30 Housing Act 2004)
  - Offences in relation to licensing of HMOs (s.72(1) failure to licence)
  - Offences in relation to licensing of houses under Part 3 of the Housing Act 2004 (s.95(1), selective licensing)

## **5.0 Prosecution and RRO**

- 5.1 The Council can prosecute a landlord and seek a RRO for the same offence.

## **6.0 Process for applying for a RRO**



## **Stage 1 – serve a notice of intent**

Before applying for a RRO, the landlord must be served with a Notice of Intent. The notice must be served within 12 months of the date on which the landlord committed the offence to which it relates.

The notice must:

- Inform the landlord the Council is proposing to apply for a RRO and the reasons why
- State the amount the Council is seeking to recover
- Invite the landlord to make representations within a period specified in the notice which must be at least 28 days

## **Stage 2 – right to submit written representations**

The landlord may make written representations to the Director of Leisure and Wellbeing about the intention to apply for a RRO. Any representations must be made within 28 days from when the notice was given. The Council cannot apply for a RRO during this period.

## **Stage 3 – end of written representation period**

Once the 28 day period for receiving written representations has expired, the Council can apply for the RRO.

## **Stage 4 – right of appeal**

The landlord can appeal against the decision of the First-tier Tribunal to the Upper Tribunal provided permission to appeal has been given by either the First-tier or Upper Tribunal.

### **7.0 Refusal to Pay**

- 7.1 Where the landlord fails to pay the RRO, the Council or tenant can refer the case to the County Court for an Order of that Court. County Court bailiffs can be used to enforce the Order and recover the debt.

### **8.0 Tenants and RROs**

- 8.1 Tenants can apply directly for a RRO providing that:

- The offence relates to housing that was occupied by the tenant at the time of the offence; and
- The application for a RRO is made within 12 months of the date that the offence has been committed

- 8.2 The tenant does not have to go through the same process as the Council. The tenant only needs to submit a claim form to the First-tier Tribunal which sets out the reasons for the claim and the dates to which it relates.

- 8.3 There is no statutory obligation on the Council to support the tenant in making a claim, however, where the Council has evidence in support of the tenant's case, it will make this available to the tenant for the purposes of the claim.

## **9.0 RROs and Universal Credit**

- 9.1 The Council will not have access to UC data, therefore, where the Council wishes to apply for an RRO and some or all of the rent has been paid via UC, the tenant will need to provide the information from their benefit statements or request the information required direct from the DWP.
- 9.2 The following formula should be used to calculate the amount of rent that should be repaid to the tenant and the amount to the local authority. This information should be on the tenant's benefit statement.

$$a/c*d = x (y=x-b)$$

a = rent liability

b = rent allowance


c = maximum UC award

d = net UC award

x = amount to be retained by Council

y = amount to be paid to tenant (x-b)

## Appendix 4

<h1 style="color: red;">Equality Impact Assessment Form</h1>		
<b>Directorate: Leisure &amp; Wellbeing</b>	<b>Service: Private Sector Housing</b>	
<b>Completed by: Laura Lea</b>	<b>Date: 15 August 2017</b>	
<b>Subject Title: Housing and Planning Act 2016: Civil Penalties and Rent Repayment Orders</b>		
<b>1. DESCRIPTION</b>		
Is a policy or strategy being produced or revised:	Yes <span style="float: right;"><i>*delete as appropriate</i></span>	
Is a service being designed, redesigned or cutback:	No	
Is a commissioning plan or contract specification being developed:	No	
Is a budget being set or funding allocated:	No	
Is a programme or project being planned:	No	
Are recommendations being presented to senior managers and/or Councillors:	Yes	
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty ( <b>Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations</b> ):	No	
Details of the matter under consideration:	<p>The introduction of civil penalties as an alternative to prosecuting for certain housing offences.</p> <p>The extension of the circumstances where a rent repayment order can be applied for.</p>	
<p><i>If you answered <b>Yes</b> to any of the above <b>go straight to Section 3</b></i></p> <p><i>If you answered <b>No</b> to all the above <b>please complete Section 2</b></i></p>		
<b>2. RELEVANCE</b>		
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	Yes/No* <span style="float: right;"><i>*delete as appropriate</i></span>	
If <b>Yes</b> , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered <b>Yes</b> go to <b>Section 3</b></i>		
If you answered <b>No</b> to both Sections 1 and 2 provide details of why there is no impact on these three		

groups: <i>You do not need to complete the rest of this form.</i>	
<b>3. EVIDENCE COLLECTION</b>	
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	Private sector landlords and lettings agents in West Lancashire.
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?	N/A
Which of the protected characteristics are most relevant to the work being carried out?	<i>*delete as appropriate</i>
Age Gender Disability Race and Culture Sexual Orientation Religion or Belief Gender Reassignment Marriage and Civil Partnership Pregnancy and Maternity	Yes No No No No No No No No
<b>4. DATA ANALYSIS</b>	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	Tenants in the private rented sector, specifically those occupying houses in multiple occupation (HMOs) use the service to complain about property and management standards
What will the impact of the work being carried out be on usage/the stakeholders?	Improve the condition and management of HMOs
What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	N/A
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	N/A
If any further data/consultation is needed and is to be gathered, please specify:	N/A
<b>5. IMPACT OF DECISIONS</b>	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	Young people, predominantly students occupy HMO accommodation. The ability to impose a financial penalty on a landlord and or recover rent payments will help drive up standards in this type of accommodation.
<b>6. CONSIDERING THE IMPACT</b>	
If there is a negative impact what action can be	Landlords may choose to exit the market,

taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	reducing the available number of HMOs
What actions do you plan to take to address any other issues above?	<p>None. There is significant new developments of purpose built HMOs that are of a high standard to compensate for any landlords exiting the market.</p> <p><i>If no actions are planned state no actions</i></p>
<b>7. MONITORING AND REVIEWING</b>	
When will this assessment be reviewed and who will review it?	<b>Laura Lea – October 2018</b>