

Executive Decision Report

Civil Penalty Policy and Procedure Review

Decision to be taken by: Deputy City Mayor for Housing &
Neighbourhoods

Decision to be taken on/Date of meeting: 17 October 2024

Lead director/officer: Alison Lea, Service Manager,
Regulatory Services,

Useful information

- Ward(s) affected: All
- Report author: Alison Lea
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- Report version number: 1

1. Summary

1.1 The purpose of this report is to seek an executive decision to approve a revised civil penalty policy and procedure. First adopted by Leicester City Council in December 2019

1.2 The Housing and Planning Act 2016 amends the Housing Act 2004 to allow Local Housing Authorities a discretion to impose financial penalties, up to a maximum of £30,000, as an alternative to prosecution for certain offences

1.3 Leicester City Council adopted the use of civil penalties in December 2019. Since adoption they have been used as an alternative to prosecution primarily for the offence of failure to license a Mandatory HMO

1.4 The revised policy and procedure takes into consideration tribunal decisions that have been critical of local authorities policies and procedures and provides a more detailed and nuanced scoring matrix.

1.5 The revised policy and procedure will also provide a consistent, proportionate and transparent methodology for determining the value of penalty.

2. Recommended actions/decision

2.1 The Deputy City Mayor is requested to:

- i) Approve the amended civil penalty policy and procedure.

3 Background

- 3.1 The Housing and Planning Act 2016 amends the Housing Act 2004 to allow Local Housing Authorities a discretion to impose financial penalties, up to a maximum of £30,000, as an alternative to prosecution for certain offences
- 3.2 Leicester City Council formally adopted the use of Civil Penalties in December 2019
- 3.3 Since adoption Civil Penalties have been used as an alternative to prosecution for certain offences.
- 3.4 To date 71 Civil Penalties have been issued one for failure to comply with an Improvement Notice and the remainder for the offence of failure to license a Mandatory HMO.
- 3.5 Civil Penalties issued have ranged from £7,000-24,000 and have been imposed on both landlords and managing agents. Penalties have been imposed to the value of circa £400,000. Income from civil penalties is ring fenced for private sector housing enforcement work.
- 3.6 Civil Penalties have been used successfully by the Private Sector Housing Team and will be an important tool for the Selective Licensing Team, when investigating non licensed properties in the designated areas

4 Detailed report

4.1 What offences can Civil Penalties be used for ?

4.1.1 Civil Penalties can be imposed as an alternative to prosecution in respect of the following offences:

Housing Act 2004:

- Failure to comply with an Improvement Notice [section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 [section 72]
- Offences in relation to the Selective Licensing of 'houses' under Part 3 [section 95]
- Failure to comply with an Overcrowding Notice [section 139]

- Failure to comply with a management regulation in respect of an HMO [section 234]

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020:

- Regulation 11 provides local authorities with the power to impose a civil penalty in respect of breaches of Regulation 3.

Housing and Planning Act 2016:

- Section 23 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

4..2 Review of Policy and Procedure

4..2.1 The current civil penalty policy and procedure was adopted in late 2019.

4..2.2 With 4 years experience of using the current Policy and Procedure and taking into account the outcome of appeals made to the First-tier Tribunal and Upper Tribunal the Policy and procedure needs to be reviewed

4..2.3 The fundamental mechanics of issuing a civil remains the same:

Notice of Intent: this is issued advising of our intent to issue a civil penalty, the reasons why and the proposed amount. Recipients are invited to submit written representation to offer a 'reasonable excuse' as to why a civil penalty should not be issued and/or to provide mitigating circumstances to reduce the civil penalty.

Final Penalty: is issued after taking into consideration the representation.

First -tier Tribunal: Following the issue of a Final Penalty recipients can appeal to the First-tier Tribunal to ask for it to be reviewed.

4..2.4 Experience has found that the current policy and in particular the scoring matrix used to determine the proposed financial penalty does not always provide sufficient flexibility in being able to adjust the proposed civil penalty adequately.

4..2.5 LCC vs Morjaria: this case is of particular significance. Morjaria appealed a civil penalty to the First-tier Tribunal, following the FtT decision (which substantially reduced the penalty) LCC appealed to the Upper Tribunal.

4..2.6 Whilst upholding LCC's appeal and re-instating the penalty to a significant amount the Upper Tribunal was critical of our civil penalty policy.

- 4..2.7 The Upper Tribunal criticism centred on needing to consider the seriousness of each housing offence against a starting level and maximum level of penalty rather than a blanket ‘this is serious it needs a maximum penalty’
- 4..2.8 The *LCC vs Morjaria* Upper Tribunal decision has given rise for the need for most local authorities to review their civil penalty policies and in particular the scoring matrix used for determining penalties
- 4..2.9 A more compliant approach would:
- Rank the seriousness of offence and give a penalty starting point
 - Consider culpability in isolation
 - Consider harm in isolation
 - Consider aggravating and mitigating factors
- 4..2.10 To achieve better compliance with the Upper Tier Tribunal criticism a more detailed and nuanced civil penalty scoring matrix is required

4..3 Revised Policy and Penalty Calculator-Justice for Tenants

- 4..3.1 Justice for Tenants are a not for profit organisation who have analysed all the significant First-tier Tribunal and Upper Tribunal decisions, particularly where a Local Authority policy and procedure has been criticised or questioned
- 4..3.2 In collaboration with local authorities Justice for Tenants have developed a template Civil Penalty Policy and Procedure and an on-line Civil Penalty Calculator
- 4..3.3 Any civil penalty policy must be proportionate, transparent and consistent and the template policy and procedure developed by Justice for Tenants follows a step by step approach that is (relatively) easy to apply and will lead to higher levels of consistency and transparency
- 4..3.4 The template policy aims to provide a comprehensive policy that it is believed will withstand scrutiny by Tribunals and a civil penalty calculator that will ensure all factors are considered when determining the value of the penalty and a level of consistency both between officers within a local authority and national consistency between local authorities.
- 4..3.5 Justice for Tenants have been successful in securing funding from the charity Impact on Urban Health and are able to offer up to £5,000 to urban local authorities to support their civil penalty work.

4..3.6 LCC has been approved to receive support from Justice for Tenants. The support will include:

- access to the template policy and procedure
- tailoring of policy and procedure to be specific to Leicester City Council
- production of LCC branded Notice of Intent and Final Notices documents
- access and training in the use of the on-line penalty calculator.
- support on specific cases as needed.

4..3.7 The online penalty calculator is designed for officers to input all details relating to the offence, provide details about the level of harm or potential harm, culpability of the offender, and any mitigating factors. The portal will produce the Notice of Intent, Final Notices, covering letters for all parties.

4..3.8 It is anticipated that by using the updated policy and procedure the civil penalty procedure will be more streamlined, efficient and consistent and result in fewer appeals or where appeals are made less likelihood of appeal being upheld or penalty values reduced.

4..3.9 Justice for Tenants are working with 30 local authorities including:

Oxford City Council

London Boroughs of

Barking and Dagenham

Tower Hamlets

Kensington and Chelsea

Ealing

Islington

Haringey

4..3.10 Nationally over 500 civil penalties have been issued using the template policy and penalty calculator, to date there have been no significant tribunal decisions questioning or criticising the template policy

4..4 Revised Civil Penalty Policy and Procedure

4.4.1 The revised policy and procedure has been widened to include offences related to offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and Planning and Housing Act 2016 along with offences under the Housing Act 2004

4..4.2 The need for transparency and consistency in discharge of functions under the Housing Act 2004 is considered of primary importance. The revised policy improves transparency and consistency so that those managing and having control of rented properties will:

- (a) know how the Council will generally penalise relevant offences and
- (b) are assured that, generally, like cases will be penalised similarly, and different cases penalised differently

5 Implementation

It is proposed to implement the revised Policy and Procedure as soon as the decision takes effect.

6 Appendices

Appendix 1 Civil Penalty Policy and Procedure 2019

Appendix 2 Revised Civil Penalty Policy and Procedure 2024

Appendix 3 Summary of Changes

7 Financial, legal, equalities, climate emergency and other implications

7..1 Financial implications

Regulations made under The Housing and Planning Act 2016 specify that all of the income that a local authority receives from the imposition of civil penalties (and the recovery of Housing Benefit through Rent Repayment Orders) can be retained by the local authority to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

A First-Tier Tribunal would consider any appeal against the imposition of a civil penalty or a request (from tenants or the local authority) for a rent repayment order.

On appeal the parties are normally expected to bear their own costs and, in most cases, it is unlikely that the Council will be able to recover any costs in relation to such appeals.

Stuart McAvoy – Head of Finance, 454 4004

7.2 Legal implications

The Power to impose a civil penalty as an alternative to prosecution for certain offences was introduced by the section 126 and schedule 9 of the Housing and Planning Act 2016. This provision amended The Housing Act 2004 by inserting a new section 249A and Schedule 13A. The power came into force on 6th April 2017 and was adopted by Leicester City Council in December 2019.

The maximum penalty is £30,000. The amount of the penalty is to be determined by the council in each case and in determining an appropriate level of penalty the council should have regard to the Secretary of State Guidance – ‘Civil Penalties under the Housing and Planning Act 2016’.

The revised policy and procedure will rectify concerns raised by the Upper Tribunal in the LCC vs Morjaria case where it was felt the existing policy did not offer a sufficient flexibility to determine the most appropriate level of penalty.

Jeremy Rainbow, Solicitor, 4541452

7.3 Equalities implications

A number of landlords and property agents in Leicester exploit tenants by letting out unsuitable and/or dangerous properties that can impact adversely upon the quality of life for tenants and the wider community.

Revisions to the policy aim to provide a consistent, proportionate and transparent methodology for determining the value of penalties.

The use of civil penalties as an alternative to prosecution expands the enforcement choices for Leicester City Council and provides the Council with more flexibility to take cost-effective and proportionate enforcement action for specified housing offences.

Tenants

The use of the civil penalties as an enforcement tool will have a positive impact upon all groups of tenants as it will deter landlords from committing serious housing offences.

This alongside other regulatory measures will help to remove rogue landlords from the Leicester's private rented sector.

Landlords

The use civil penalties regime will have a positive impact upon all groups of landlords as it will help support a level playing field in the private rented sector market in Leicester. Public trust will be maintained and enhanced.

There are procedural and appeal provisions to safeguard a landlord from an inappropriate or disproportionate penalty.

Leicester City Council will continue to contribute to landlord awareness and knowledge of their responsibilities in the provision of rented accommodation in the City and will specifically provide information on these enforcement changes when these come into force.

Equalities Officer, Surinder Singh, ext. 454 4148

6.4 Climate Emergency implications

None

7. Is this a private report (If so, please indicate the reasons and state why it is not in the public interest to be dealt with publicly)?

No

8. Is this a “key decision”? If so, why?

Yes, this is a key decision as it effects on communities living or working in two or more wards in the City