

# Southend-on-Sea Borough Council

Report of Executive Director Neighbourhoods and  
Environment – Anna Eastgate

To

Cabinet

On

22nd February 2022

Report prepared by: Elizabeth Georgeou Head of Regulatory  
Services

Agenda  
Item No.

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## Civil Penalties Policy for Housing Offences

Cabinet Member: Councillor Ian Gilbert  
Part 1

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### 1. Purpose of Report

To seek approval of the draft policy for the use of civil penalties for certain specified offences under the Housing Act 2004.

### 2. Recommendations

- 2.1 To approve the draft Civil Penalties Policy for Housing Offences set out in *Appendix 1*.
- 2.2 To approve the date of implementation of the policy of 1<sup>st</sup> April 2022

### 3. Background

- 3.1 The Housing and Planning Act 2016 introduced civil penalties as an additional enforcement option to enable local housing authorities to regulate non-compliant landlords. The aim being to assist in the improvement, and standard of accommodation in the private rented sector (PRS).
- 3.2 The Government has stated that there are sufficient controls for proper regulation of the PRS but that councils in general were not making full use of them.
- 3.3 Civil Penalties under the Housing and Planning Act 2016 have not yet been implemented in Southend. Their introduction will assist in the regulation of the private rented sector by providing additional enforcement tools, and be in line with Government expectation.
- 3.4 The Council is not required to take formal enforcement action in many situations however there are a minority of cases where it is necessary. The introduction of Civil Penalties is not intended to increase the level of enforcement activity but to

allow a greater range of enforcement options when informal actions have failed. The intention is to achieve compliance and to demonstrate that the Council is ready and able to apply all sanctions provided to it by legislation.

- 3.5 Although the preparation for a Civil Penalty notice is rigorous, it is generally less onerous on resources than prosecution at court.
- 3.6 The PRS is an integral part of the housing market, and the introduction of penalties is not intended to impact negatively on compliant landlords.
- 3.7 Civil Penalties are a discretionary enforcement measure to be used as an alternative to prosecution for specified offences listed in the attached draft policy document. That draft policy also shows how it will be decided when a Civil Penalty is used instead of a prosecution.
- 3.8 The Housing and Planning Act 2016 set only a maximum level for the penalty amount of £30,000, councils are expected to set their own intermediary amounts of penalty based on the Government guidance. The attached draft policy sets out how the Council will arrive at these lower amounts. To compare with potential fines at court, the maximum fine for the specified offences is unlimited except for the offence of overcrowding, which is £2,500
- 3.9 Members are recommended to read the attached draft in conjunction with this report for details of the processes involved in the operation of a Civil Penalties policy in Southend. The draft policy has been developed by adhering to the Department for Levelling Up, Housing and Communities Guidance for Civil Penalties under the Housing and Planning Act 2016 dated April 2018. The guidance outlines the factors that are to be considered when applying a Civil Penalty and details the proposed methodology to arrive at a Civil Penalty charge based on the circumstances of each case. The matrix and fee structure have been developed for Southend but compare with similarity to the policies developed by other local authorities.
- 3.10 Where a Civil Penalty is to be applied, there is a right for the landlord to make representations to the Council regarding the offence and proposed penalty. If necessary, a landlord can then appeal against any final notice issued by the Council to the First-tier Tribunal. The process is contained in the draft policy.
- 3.11 In addition to the financial penalty, where a landlord receives two or more civil penalties over a 12-month period the Council can seek to have their details included on the Database of Rogue Landlords and Property Agents. Landlords and agents named on the database may find their ability to be considered a fit and proper person to hold a licence is affected.
- 3.10 Any income from Civil Penalties can be retained by the Council but may only be used to further the Council's statutory functions in relation to their enforcement activities covering the PRS.

#### **4. Other Options**

- 4.1 The alternative option would be to disregard the powers made available to the Council. This would reduce the tools available to Officers to enforce against

rogue landlords who knowingly rent out unsafe and substandard accommodation and may harm the reputation of the Council in regulation of the PRS.

## 5. Reasons for Recommendations

The adoption of a Civil Penalties policy provides transparent and consistent approach to the regulation of the private sector housing market. It enables the Council to apply a 'light-touch' for compliant landlords, creates a level playing field by tackling non-compliant landlords. The level of the Civil Penalty is set to seek to punish those that flout the law, to change their behaviours and eliminate financial gain or benefit from non-compliance.

## 6. Corporate Implications

### 6.1 Contribution to the Southend 2050 Road Map

Contributes to Council's Safe and Well outcome to provide a good quality, sustainable home that meets the needs of residents by increasing the enforcement tools available to the team regulating the privately rented sector.

### 6.2 Financial Implications

Operating costs will be covered within existing resources and by any penalty that would be charged. Any debt recovery for non-payment of the Civil Penalty charge within the specified timescales will be undertaken in line with the Council's Debt Recovery Policy.

### 6.3 Legal Implications

As indicated above, the statutory guidance forms the basis of the application of the provisions contained in the Housing and Planning Act 2016 and provides additional powers to officers within the Regulatory Services team.

### 6.4 People Implications

The licensing and enforcement activities will be undertaken within the resources that were identified.

### 6.5 Property Implications

There are no property implications.

### 6.6 Consultation

A consultation on the proposed descriptions to determine the levels of Civil Penalty was open for participation for a period of 6 weeks from 3 December 2021 until 14 January 2022 and included interested parties. The results of this consultation are included as **Appendix 2**. Matters raised by consultees are already incorporated in the determination of the Civil Penalties.

### 6.7 Equalities and Diversity Implications

There are no adverse equalities or diversity implications which would result from the introduction of civil penalties.

#### 6.8 Risk Assessment

There is a risk of legal challenge from landlords for the Civil Penalty, firstly to the Council after receiving the Notice of Intent and secondly to the First-tier Tribunal once the Final Notice has been received. This could be both a reputational risk and a financial one. The financial risk arises in the case of an award of costs in a successful challenge.

#### 6.9 Value for Money

The application of Civil Penalties as an alternative to prosecution may reduce the cost associated of enforcement activities for non-compliant landlords.

#### 6.10 Community Safety Implications

All tenants will have the opportunity to live in safer and well run private rented properties.

#### 6.11 Environmental Impact

The application of Civil Penalties to effect improvements aims to improve the environmental impact of poorly designed and insulated homes.

### 7. **Background Papers**

Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities. April 2018

### 8. **Appendices**

Appendix 1: Civil Penalties Policy for Housing Offences, Matrix and Process flow chart

Appendix 2: Consultation Result