

Civil Penalties Policy



Report to:	Cabinet
Date:	19 March 2025
Portfolio Holders:	Councillor Joel Charles, Portfolio Holder for Public Protection Councillor Nicky Purse, Portfolio Holder for Environment and Sustainability
Lead Officer:	Tanusha Waters, Assistant Director Planning and Garden Town (01279) 446595
Contributing Officer:	Sally Haggerstone, Private Sector Housing, Environmental Protection and Disabled Facilities Grants Manager (01279) 446165
Key Decision:	No
Forward Plan:	Forward Plan number I018131
Call In:	This item is subject to call in procedures
Corporate Missions:	Protect our communities Transform Harlow's housing
Wards Affected:	None specifically

Executive Summary

A This report seeks to adopt a standalone Civil Penalties Policy to the Private Sector Housing Enforcement Policy 2023. A civil penalty is a financial penalty imposed by the local housing authority as an alternative to prosecution. Following recent case law, it has become necessary to revise guidance on the use, justification and determination for setting fines under the Housing and Planning Act 2016. These revisions are required to ensure penalties are set fairly. It will be easier to amend a standalone policy following changes in legislation and case law.

Recommended that Cabinet:

- A** Approves the separate Civil Penalties Policy under the Housing and Planning Act 2016 and the Electrical Safety Standards in The Private Rented Sector (England) Regulations 2020 as set out in Appendix A.
- B** Approves the amendment to the Private Sector Housing Enforcement Policy 2023 (attached as Appendix B to the report) to remove Appendix A (the current Civil Penalties

Policy) and any references to the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

C Adopts and implements the Civil Penalties Policy.

Reason for decision

- A** The powers provided by the Housing and Planning Act 2016 and the Housing Act 2004 enable the council to improve the quality of private rented accommodation in Harlow and proportionate scope to act against landlords, letting agents and property managers who knowingly rent out unsafe and substandard accommodation.
- B** Recent case law means that changes must be made to the positioning and application of many civil penalties policies. The council has made robust changes to its proposed new standalone policy as a result of the legal interpretation shifting significantly.
- C** The policy required updating following changes to legislation and case law, driven by a landmark tribunal case judgement. It was felt that a standalone policy would be easier to amend than the overarching private sector housing policy, particularly if additional case law requires further changes in the future.

Other Options

- A** The alternative option is to leave the current policy on the use of Civil Penalty Notices as it is and not take account of the judge's decision in the case of Leicester City Council v Morjaria. If the decision is not to adopt the revised policy, the council would be likely to have Civil Penalty Notices appealed and challenged. The result of this could be a failure to uphold Civil Penalty Notices and the associated fines.

Background

1. The private rented sector is an important part of Harlow's housing market and there is a commitment to improving standards within it. The council wants to support good landlords who provide decent, well-maintained homes, but will take action against those landlords who knowingly rent out unsafe and substandard accommodation.
2. The Housing and Planning Act 2016 provides powers that permit local authorities to impose a civil penalty of up to £30,000 as an alternative to prosecution for a range of offences under the Housing Act 2004, and where a landlord or property agent has breached a banning order under the Housing and Planning Act 2016.
3. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Electrical Safety Standards Regulations') gives the council the power to impose civil penalties of up to £30,000. It is for the council to determine the level of any civil penalty up to this maximum.

Issues/Proposals

4. The Private Sector Housing Enforcement Policy outlines the council's approach and how it will tackle poor housing conditions and address non-compliance with legislation. The current Private Sector Housing Enforcement Policy was adopted in 2023 and incorporates the use of civil penalty notices as an alternative to prosecution.
5. Following recent case law, *Leicester City Council V Morjaria*, it is thought that many civil penalties policies do not comply with the new legal position and have become outdated very quickly after their inception.
6. Civil penalty policies that do not align with recent case law are being appealed and challenged at the First and Upper Tier Tribunal which presents a risk to the council.
7. The Civil Penalties Policy has been drafted by a non-profit organisation, Justice for Tenants, and provides a model framework based on government guidance, the crown code for prosecutors, sentencing guidelines and the precedents that have been identified as impacting financial penalty procedural matters.
8. By putting in place an amended Civil Penalties Policy, the council strives to promote proportionality, transparency, and consistency in the imposition of financial penalties and reduce the likelihood of appeals to civil penalties. The Civil Penalties Policy will deliver a more robust process for issuing Civil Penalty Notices.
9. The current Civil Penalties Policy is contained within the Private Sector Housing Enforcement Policy, as an appendix. It is proposed that the updated Civil Penalties Policy is a standalone policy that can be updated when legislation changes, for example the implications of the Renters Rights Bill later this year.
10. It is proposed that the existing civil penalties section of the Private Sector Housing Enforcement Policy and all references to it, including the Electrical Safety Standards, are removed.

Implications

Equalities and Diversity

A full Equality Impact Assessment will be required at a later date.

Climate Change

None.

Finance

Financial implications and proposed civil penalty notices are included within the policies attached within the appendices.

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Governance

The proposed policy makes use of powers available under sections 23 and 126 and Schedule 9 of the Housing and Planning Act 2016. Local Housing Authorities are expected

to develop, and document, a policy on determining the appropriate level of civil penalty in particular circumstances and this requirement is met through the recommendations within the report.

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Appendices

Appendix A – Civil Penalties Policy

Appendix B - Private Sector Housing Enforcement Policy

Background Papers

Leicester City Council V Morjaria

www.casemine.com/judgement/uk/64a2efe88fa1977797a312c8

Glossary of terms/abbreviations used

None.