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22nd September 2017

Dear Sir/Madam

REGULATORY AND LICENSING COMMITTEE

A meeting of the above mentioned Committee has been arranged to take place on **MONDAY 2nd OCTOBER 2017 at 6.00 p.m.** in the **COMMITTEE ROOM**, District Council House, Lichfield to consider the following business.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Turner', is written over a light grey rectangular background.

Neil Turner BSc (Hons) MSc
Director of Transformation & Resources

To: **Members of Regulatory and Licensing Committee:**

Councillors B Yeates (Chairman), O'Hagan (Vice Chairman), Mrs Bacon, Mrs Constable, Drinkwater, Mrs Evans, Miss Fisher, Humphreys, Leytham, Salter, Miss Shepherd, Mrs Stanhope MBE, A. Yeates.



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AGENDA

1. Apologies for Absence
2. Declarations of Interest
3. To approve as a correct record the Minutes of the Meeting held on the 4th July 2017 (copy attached)
4. Street Collections 2018 (copy attached)
5. New Enforcement Measures to Tackle 'Rogue Landlords' (copy attached)
6. Work Programme (copy attached)



REGULATORY AND LICENSING COMMITTEE

4 JULY 2017

PRESENT: Councillors B.W. Yeates (Chairman), O'Hagan (Vice-Chairman), Mrs Bacon, Drinkwater, Mrs Evans, Humphreys, Leytham, Miss Shepherd and A. Yeates

AN APOLOGY FOR ABSENCE was received from Councillor Miss Fisher.

41 DECLARATIONS OF INTEREST

Councillor Smedley declared personal interest in Item 5 Street Trading Policy as he is a Member of Lichfield City Council

42 MINUTES

The minutes of the meetings held 8th February 2017 and 11th April 2017, as printed and previously circulated were taken as read, approved as a correct record and signed by the Chairman. It was noted that the Street Trading Task Group had met and agreed a Terms of Reference.

43 AIR QUALITY ACTION PLAN FOR LICHFIELD

The Committee received a report seeking approval for the draft 2017 Air Quality Action Plan (AQAP) for the Lichfield District prior to consultation and submission to DEFRA for initial appraisal.

It was reported that there were two Air Quality Management Areas (AQMA) at Muckley Corner on the junction of the A5 and A461 Walsall Road and the other along the stretch of A38 between Streethay and Alrewas. It was noted that these two areas were declared as such due to properties being close to the road frontage. It was reported that harmful nitrogen dioxide quickly dispersed and so any property with a garden or other buffer between the building and roadway were not above the permitted levels.

The Committee went through the recommendations from the AQAP report authors, Bureau Veritas and felt that they were very ambitious and unlikely to be completed partly as it relied on other organisations including public transport providers and Highways England. It was reported that the European Union had begun action against the UK Government for non compliance and so the national profile of air quality and the reduction in emissions had become higher. It was also noted that the implications of Brexit was not known and so Officers were continuing their work as before.

It was requested that reference was made in the report to the A38 AQMA including Alrewas and not just Fradley.

It was agreed that due to the large list of recommendations and the Committee's unease of the workload involved, that the AQAP be approved for consultation only and comments received be reported back to Members.

RESOLVED: That the draft Air Quality Action Plan for 2017 be approved for consultation and comments received be reported back the Committee.

44 ENVIRONMENTAL CRIME STRATEGY FOR LICHFIELD

The Committee received a report seeking approval on the proposed direction for the development of the Council's Environmental Crime Strategy along with a review of the current Dog Control Order.

It was reported that Environmental Crime included such offences as Flytipping, Dog Fouling and abandoned vehicles and that recent trends had remained constant except for flytipping which was on the increase.

Flytipping was discussed further and it was mainly household waste that was flytipped but this may include DIY material like bathroom refits. Members reported that businesses had been deterred from using local recycling centres even though they had paid to use the service due to the lack of staff support.

Dog fouling was then discussed and Members gave examples of local community campaigns that had been successful. Officers agreed that these campaigns were effective along with Council as the public input was vital to establish hot spots and recurrent offenders. It was also noted that it was not possible to do covert investigations as authorisation would not be forthcoming from the Magistrate Court for such low level crime.

It was reported that a full review was required for the service area considering new powers and resource levels. A Member Task Group was proposed comprising of Councillor O'Hagan, to be Chairman, along with Councillors Leytham and Salter.

It was noted that as Parish Councils were stakeholders, the item would be introduced at Parish Forum on the 6th July 2017.

- RESOLVED:** (1) That a Member Task Group comprising of Councillors O'Hagan, Leytham and Salter be established to review the Council's approach to environmental crimes and consult with stakeholders in order to make recommendations to the appropriate committees and Cabinet Members; and
- (2) That the scope of the Member task Group be approved.

45 WORK PROGRAMME

The work programme was considered and it was noted a report on new housing enforcement measures to deal with rogue landlords would be submitted for the October 2017 meeting and reports on Food Safety Plan and Health & Safety Plan for the February 2018 meeting.

RESOLVED: That the Work Programme as submitted be agreed.

(The meeting closed at 7.15 pm)

CHAIRMAN

STREET COLLECTION PERMITS 2018



Date: 2nd October 2017
Agenda Item: 4
Contact Officer: Susan Bamford
Tel Number: 01543 308170
Email: Susan.bamford@lichfielddc.gov.uk
Key Decision? NO
Local Ward Members

REGULATORY & LICENSING COMMITTEE

1. Executive Summary

- 1.1 To ask Members to approve the allocation of Street Collection Permits for 2018 and give delegated authority to the Chairman or Vice Chairman of Regulatory & Licensing Committee to approve any allocations not listed in appendix A.

2. Recommendations

- 2.1 That permits be issued by the licensing team to those charities listed in **APPENDIX A** in accordance with the criteria and procedures set out in section 3.
- 2.2 That the Chairman of Regulatory & Licensing Committee or Vice Chairman of Regulatory & Licensing Committee in their absence has discretion to approve the allocation of permits to organisations not listed in Appendix A.

3. Background

- 3.1 Street Collections are regulated by the Police Factories etc (Miscellaneous Provisions) Act 1916 with regulations drawn from The Charitable Collections (Transitional Provisions) Order 1974.
- 3.2 A list of charities that carry out street collections regularly is prepared annually and put before Members for their approval. The charities whose collections have been approved can then apply for a street collection permit for the year.
- 3.3 One permit is issued per week (Monday to Friday) and one for each weekend for individual areas of the district. An exception is made for the "Santa Float" collections which are carried out throughout December in the residential areas and do not interfere with the collections in the city or town centre. Permits are issued on a first come first served basis.
- 3.4 When requests for additional collections are received the Licensing Team check that the charity is registered with the Charity Commission and that the person applying has been given authority to apply on the charities behalf.
- 3.5 Collectors must be at least 16 years of age, must not receive payment and must use a sealed container clearly bearing the name of the organisation they are collecting for. After the collection is carried out the organisation completes a statement showing the amount collected and any expenses that have been deducted.

- 3.6 Only the collection of cash and the sale of goods are covered by the Act. Face to Face fundraisers asking for donations by direct debit are not. However, many do contact us as a matter of good practice to ensure that only one group of fundraisers is in the area at any one time.

Alternative Options	1. Not applicable.
Consultation	1. None undertaken.
Financial Implications	1. No financial implications for the Licensing Authority identified.
Contribution to the Delivery of the Strategic Plan	1. None identified.
Equality, Diversity and Human Rights Implications	1. None identified.
Crime & Safety Issues	1. Not applicable.

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	None identified.		State if risk is Red (severe), Yellow (material) or Green (tolerable) as determined by the Likelihood and Impact Assessment.
B			
C			
D			
E			

Background documents
Appendix A – organisations to be considered for permits in 2018

Relevant web links

Street Collections 2018

Lichfield

British Heart Foundation (Lichfield branch)

Lichfield Greenhill Bower

Lichfield Mysteries

Lichfield Round Table

Macmillan Cancer Support (Lichfield branch)

Burntwood

Rotary Club of Burntwood & District

Colton & Hill Ridware

Rotary Club of Rugeley

Fazeley and Mile Oak

Tamworth & District Round Table

Hopwas

Rotary Club of Tamworth 629

Handsacre & Armitage

Friends of Hayes Meadow School

Whole District

Royal British Legion

British Red Cross

Kidney Cancer Care
Salvation Army

Sense

St. Giles Hospice
Phoenix Children's Foundation

RNLI
Royal Air Forces Association

REPORT FOR DECISION

For: REGULATORY AND LICENSING COMMITTEE

Date: 2nd October 2017

Agenda Item: 5

Contact Officer: Jack Twomey

Telephone: 01543 308734

SUBMISSION BY GARETH DAVIES – HEAD OF REGULATORY SERVICES HOUSING AND WELLBEING

New Enforcement Measures to Tackle “Rogue Landlords”

1. Purpose of Report

- 1.1 To seek approval for a new Annex to the Council’s Regulatory Services Enforcement Policy which details new enforcement measures designed to deal with “rogue landlords” in line with the Housing and Planning Act 2016.

2. Recommendation

- 2.1 That the committee approves the new Enforcement Policy Annex.
- 2.2 That the Head of Regulatory Services, Housing and Wellbeing be given delegated authority to authorise relevant officers in relation to the new powers.

3. Summary of Background Information

- 3.1 The current Lichfield District Council Housing Strategy 2013 – 2017 has a vision:
- ‘To ensure that the housing stock meets existing and future housing needs and includes a wide choice of affordable homes in healthy, safe and sustainable communities.’*
- 3.2 The draft Building Research Establishment (BRE) Integrated Dwelling Level Housing Stock Modelling and Database for Lichfield District Council Report of July 2017 indicates that there are currently around 44,000 dwellings in the District and of these, around 5,000 are in the privately rented sector. This equates to just over 11% of the total stock.
- 3.3 The Environmental Protection team within Environmental Health is responsible for responding to complaints about the condition and standards of privately rented dwellings and also for proactively inspecting certain categories of dwelling.
- 3.4 Inspections take a risk based approach using a process referred to as the Housing Health and Safety Rating System (HHSRS). Following inspection the Authority *must* take action if any Category 1 Hazards are identified. Category 1 hazards are those which represent a serious and immediate risk to a person's health and safety. Other Hazards may be dealt with via a range of measures which may include enforcement notices for the worst, even if they are not Category 1 Hazards.

- 3.5 The BRE report estimates that over 750 dwellings in the private rented sector have category 1 HHSRS hazards. This equates to 15% of properties in the private rented sector. It is likely that many more than this have Category 2 or lower hazards.
- 3.6 For the last three years, the Private Sector Housing Officer within Environmental Protection has dealt with an average of around 230 complaints about privately rented housing conditions.
- 3.7 Some landlords are very good and proactively manage their properties, though clearly they are far less likely to have complaints made by tenants about the conditions within the properties. Naturally Private Sector Housing Officer has to deal with landlords who are often at the poorer end of the scale in terms of the private rented sector, and some can create a real challenge in gaining compliance with the ultimate tool being prosecution.
- 3.8 The Housing & Planning Act 2016 has introduced new measures to crack down on these rogue landlords. Elements of this have already been implemented in April 2017 and some are yet to come into force. The measures are:
- Banning orders for the prolific offenders (not yet in force)
 - A database of rogue landlords/property agents convicted of certain offences (not yet in force)
 - Civil (financial) penalties of up to £30,000 as an alternative to prosecution for specific offences
 - Extension of Rent Repayment Orders
 - Tougher Fit and Proper Person test for landlords (not yet in force)
 - Tenancy Deposit Protection Scheme data sharing
- 3.9 In relation to civil penalties, the legislation allows a maximum penalty of £30,000 to be imposed per offence.
- 3.10 In determining whether to impose a financial penalty the Council should take account of the local enforcement policy and relevant governmental guidance.

4. Current Situation

- 4.1 Lichfield District Council's Enforcement Policy was last reviewed in February 2015 and sets out broad objectives and methods to achieve regulatory compliance (see Appendix 1). It is a general enforcement policy covering all aspects of enforcement and does not cover the specific and unusual matter of financial penalties, thus there is a need to add to the policy with guidance on the new powers and how the Council will use them.
- 4.2 The proposed Annex (Appendix 2 of this report) to this is broadly similar to other local authority proposals as consultation has already been undertaken with regional housing enforcement groups. The charging table from page 4 of the Annex has been jointly devised and has been or will be adopted by all of the Staffordshire Local Authorities.
- 4.3 The rationale in relation to the financial penalty is in accordance with Magistrates Court procedures for imposing fine levels taking into account culpability and income from their housing related activities.
- 4.4 Any person who is issued with a financial penalty may appeal to a tribunal and the tribunal has the power to confirm, vary (up or down) or cancel the financial penalty issued by the Council.
- 4.5 The Rent Repayment Orders are an extension to the existing enforcement measures and do not require adoption or consideration for approval.

5. Financial Implications

5.1 Income received from a civil penalty can be retained by the Authority provided that it is used to further the Authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations.

Risk	Likelihood/ Impact	Risk Category	Countermeasure	Responsibility
Failure to implement resulting in only action available being court prosecution.	Likelihood: Low Impact: Medium	Tolerable	Implement the new measures	Head of Regulatory Services, Housing and Wellbeing & Environmental Protection and Housing Manager

Background Documents:

Report checked and approved:

Strategic/Corporate Director

APPENDIX 1



Community, Housing & Health and Leisure & Parks

Enforcement Policy

What you can expect when dealing with an
Officer from Community, Housing & Health
and Leisure & Parks

February 2015

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Introduction

This enforcement policy is designed to:

- Help you understand our objectives and methods for achieving compliance.
- Outline the criteria we consider when deciding what the most appropriate response is to a breach of legislation.

Lichfield District Council is committed to the principles of the Regulators' Code (Department for Business Innovation and Skills, April 2014).

The Regulators' Code states:-

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Regulators should base their regulatory activities on risk.
4. Regulators should share information about compliance and risk.
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
6. Regulators should ensure that their approach to their regulatory activities is transparent.

In certain instances we may conclude that the provision of the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence, and documented.

Lichfield District Council has signed both the Greater Birmingham and Solihull Local Enterprise Partnership Regulators' Charter and the Stoke-On-Trent and Staffordshire Local Enterprise Partnership Regulatory Charter. We are committed to the principles of both of these documents.

When undertaking enforcement action we will also have regard for:

- Requirements in guidance published by Government and the relevant professional bodies.
- The Human Rights Act 1998
- The Code for Crown Prosecutors 2013.

Our primary enforcement objective is to achieve regulatory compliance. There are a wide range of tools available to us to achieve compliance. Where enforcement action is deemed appropriate we will choose an enforcement method that is relevant and proportionate to the offence or contravention.

Activities Covered by the Policy

This document covers all enforcement activities carried out by Community, Housing and Health and Leisure & Parks staff under the delegated authority granted by Lichfield District Council.

'Enforcement' includes all actions taken by officers aimed at ensuring legal compliance. This is not limited to formal enforcement actions such as prosecution.

This policy applies to all legislation enforced by Community, Housing & Health and Leisure & Parks. Lists of these Acts and Regulations can be seen in Lichfield District Council's Constitution. The Constitution can be seen on the Council's website www.lichfielddc.gov.uk.

All officers carry authorisation cards with them that detail the legislation they are authorised to enforce, these are known as 'instrument of appointment' cards.

All officers are required to comply with this Enforcement Policy in full. Any proposed variation must be referred to the Strategic Director of Community, Housing and Health or the Director of Leisure and Parks in first instance or to the Chief Executive where the matter cannot be determined under existing terms of delegation to the (Strategic) Director.

Notification of policy

A copy of this policy is available on the Council's website, as well as an Enforcement Action Summary Leaflet. Enforcement Action Summary Leaflets may be distributed with formal letters and notices (Appendix A).

General Principles

Each case is unique and will be considered on its own facts and merits.

In arriving at a decision to recommend formal action officers will be fair, independent, and objective. They will not let any personal views about ethnic or national origin, sex, religious beliefs, political views, or sexual orientation of the suspect, victim or witness influence their decisions. They will not be affected by improper or undue influence from any source.

Officers will comply with the relevant codes of the Police and Criminal Evidence Act 1984. This Act applies to all enforcement bodies, such as Local Authority enforcement teams.

Deciding what level of enforcement action is appropriate

There are a range of potential enforcement outcomes. The option chosen varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action
- Informal Action
- Simple Caution
- Fixed Penalty Notices
- Formal Notice / Orders
- Seizure of goods / equipment
- Refusals / suspension/ revocation of a licence
- Prosecution
- Injunctive Actions

Informal Action

For minor breaches of the law we may give verbal or written advice. Officers will clearly identify those matters that are contraventions of the law and those that are simply recommendations. Persons receiving an informal action will be given the opportunity to discuss the requirements with the investigating officer. Regular contact with the investigating officer to assist the person or business as the works progress will be encouraged. Failure to comply could result in an enforcement action.

Criteria for Adopting Formal Action

The use of enforcement action will at all times be consistent with the principles set out in the Regulators' Code. In coming to a decision officers will have regard to:

- The seriousness of the offence
- The individual's or company's past history in terms of compliance.
- Confidence in management
- The consequences of non-compliance in terms of risk and harm to people, property, or the environment.
- The likely effectiveness of the various enforcement options, and
- The risk to public health.

Other factors that will be considered, where relevant, include:

- Case law
- The overall record of the company
- The significance of the proposed action in national terms, and
- The application of any legislative requirements, statutory guidance, codes of practice and guidance published by relevant professional bodies to the matter in question.

Fixed Penalty Notice

Certain offences are subject to Fixed Penalty Notices (FPNs) where permitted in legislation. FPNs are recognised as a low level enforcement tool. Paying fixed penalty notices within the permitted timescale gives the offender the opportunity to discharge the offence committed and does not result in a criminal conviction. Failure to discharge liability for the offence by payment of the fixed penalty notices may result in a prosecution.

Formal Notices

Certain legislation allows notices to be served requiring offenders to take specific action or cease certain activities. The time period stated on the notice will be reasonable.

Certain types of notice allow works in default to be carried out. This means if the notice is not complied with (known as a breach of notice) we may carry out the necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we will normally recover our costs from the person / business served with the notice, through the Courts if necessary. Every formal notice will be issued with clear guidance on your rights of appeal.

Seizure

Certain legislation enables authorised officers to seize goods equipment or documents. We can also seize goods that may be required as evidence for possible future court proceedings. If we seize goods we will give the person / business from whom the goods are taken a receipt.

Refusal, Suspension and Revocation of a licence

Certain individuals, premises, and / or businesses require a licence to operate legally. Licences may be refused, suspended or revoked following consideration with authorised supervisors / management. We will follow appropriate procedures and consideration of all relevant evidence and have regard to relevant guidance.

Simple Caution

The 'Simple Caution', may be used as an alternative to Prosecution. It is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

The aims of a simple caution are:

- To offer a proportionate response to low level offending where the offender has admitted the offence;

- To deliver swift, simple, and effective justice that carries a deterrent effect.
- To record an individual's offences for the reference in future formal action.
- To reduce the likelihood of re-offending;
- To increase the amount of time officers spend dealing with more serious offences and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case
- The offender must admit the offence
- It must be in the public interest to use a Simple Caution
- The offender must be 18 years old or over

The offender should not have received a simple caution for similar offence within the last 2 years.

The investigating officer in agreement with the delegated departmental manager or supervisor will determine if a Simple Caution is the most appropriate form of sanction having regard to the recommendations from the case meeting. The individual or company concerned will be advised of the decision and requested to confirm acceptance. The 'cautioning officer' for offences will be the delegated departmental manager or supervisor.

A record of the Simple Caution will be kept on file for 2 years. If the offender commits a further offence, the Simple Caution may influence our decision to proceed to prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales the caution may be cited in the court, and this may influence the severity of the sentence that the court imposes.

Prosecution

When considering whether or not to prosecute we will determine if there is sufficient evidence to prove the case and whether the intended action is 'in the public interest'.

The final decision to initiate Court proceedings will be taken by the appropriately delegated departmental manager following a case review.

Prosecution action is taken on the behalf of the public at large and not just in the interest of any particular individual or group. However, when considering the public interest test, the consequences to those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

As soon as the decision to prosecute has been made the investigating officer will instruct the Council's appointed Solicitors to commence proceedings.

Court Injunction

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences, injunctions may be used as an enforcement measure to deal with repeated offenders or dangerous circumstances.

Proceeds of Crime Applications

Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from the criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

Determining whether a Prosecution or Simple Caution is viable and appropriate

We apply the Full Code Test to determine whether a Prosecution or Simple Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests:

- The **Evidential Stage-**

There must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on charge.

- The **Public Interest Stage-**

There may be public interest factors which are in favour of, or are against prosecutions. These have to be weighed-up before enforcement action is taken.

A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

The Evidential Stage

The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the offender has put forward or on which he or she may rely. It means that an objective, impartial, and reasonable jury or bench of magistrates or judge hearing a case alone properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

When deciding whether there is enough evidence to prosecute, the Investigating Officer(s), along with the departmental Managers must consider the following questions:

- Can the evidence be used in Court?
- Is the evidence reliable?
- Is the evidence credible?

The Public Interest Stage

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

When deciding the public interest, prosecutors should consider each of the following questions:

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is the prosecution a proportionate response?

The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will vary according to the facts and merits of each case.

It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities will be coordinate with those of other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Juveniles

Juveniles are anybody under 18 years old. Where prosecution action takes place against a juvenile defendant the case is taken to the Youth Court. When dealing with a case involving a juvenile we will:

- Take appropriate and fair action.
- Liaise with the relevant youth offending body.
- We will comply with the relevant Government guidance.

Review of Enforcement Policy

This Policy will be reviewed following significant changes to relevant legislation or Government guidance.

APPENDIX 2

Annex 1 to the Community, Housing & Health and Leisure & Parks Enforcement Policy 2015

PRIVATE SECTOR HOUSING FINANCIAL PENALTIES POLICY (Approved October 2017)

This annex document should be read in conjunction with the Community, Housing & Health and Leisure & Parks Enforcement Policy (February 2015), which sets out the broad objectives and methods adopted by the Council to achieve regulatory compliance. The annex provides guidance on the new powers introduced by the Housing and Planning Act 2016, which includes the power to impose financial penalties for specified offences under the Housing Act 2004 and the use of Rent Repayment orders for an extended range of offences.

Financial Penalties

General Principles & Scope

The Housing and Planning Act 2016, (Section 126 & schedule 9) introduces powers to help the Councils deal robustly with rogue or irresponsible landlords, where they have committed specified offences under the Housing Act 2004. The financial penalty is intended to offer a robust and effective *alternative* to prosecution. The level of penalty, up to a maximum of £30,000 is determined by the Council, having regard to statutory guidance and local policy.

The relevant provisions of the Act came into force on 6th April 2017 and as a consequence, case law or other legal precedent is lacking. This policy is informed by the council's *Community, Housing & Health and Leisure & Parks Enforcement Policy 2015* and comprehensive guidance issued by DCLG [*Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities April 2017*].

Financial penalties can only be used as an *alternative* to prosecution. Once a penalty has been imposed, the offender cannot be prosecuted for the same offence. Similarly, a person who has been prosecuted for an offence cannot be issued a financial penalty.

Only one financial penalty can be issued per offence, except where the offence relates to a breach of the HMO management regulations (listed above), in which case a penalty can be issued for each separate breach of the regulations.

Where a landlord and a letting agent have committed the same offence a financial penalty can be imposed on both of them as an alternative to prosecution.

Where a landlord or property agent receives two or more financial penalties over a 12 month period the Council may include the persons details in the proposed 'database of rogue landlords and property agents convicted of certain offences', to be introduced at a later date.

Income from a financial penalty can be retained by the Council to help fund and support their enforcement activities in the private rented sector.

Offences where a Financial Penalty may be applied

The Council may impose a financial penalty as an alternative to prosecution for the following offences:

- Failure to comply with an improvement notice under *section 30 of the Housing Act 2004*
- Offences in relation to licensing of Houses in Multiple Occupation under *section 72 of the Housing Act 2004*
- Offences in relation to licensing of houses under *section 95 of the Housing Act 2004*
- Offences in contravention of an overcrowding notice under *section 139 of the Housing Act 2004*
- Failure to comply with management regulations in respect of Houses in Multiple Occupation under *section 234 of the Housing Act 2004*

Factors to consider in determining the appropriate sanction

The same burden of proof applies to proceedings to issue a financial penalty as for a prosecution. Before instigating formal proceedings the Council must satisfy itself that, if the case were to be prosecuted, they are able to demonstrate *beyond reasonable doubt* that the offence had been committed and that there was a realistic prospect of conviction.

Any decision to prosecute or issue a financial penalty will be undertaken in accordance with the Regulators Compliance Code, the Code for Crown Prosecutors and the Community, Housing & Health and Leisure & Parks Enforcement Policy. In reaching its decision, the Council would need to take account of factors such as:

- The seriousness of the offence
- The previous history of the party concerned
- The willingness of the party to prevent a recurrence of the problem
- Whether the issuing of a simple caution would be more appropriate or effective
- Whether the offence was committed deliberately, any evidence of obstruction of the officers in their lawful duty or of the investigation
- Financial considerations - the financial gain achieved from the alleged offending

Our Approach

The council will determine on a case by case basis, the most appropriate sanction to apply in respect of any offence. As a general rule, first consideration will be given to the issue of a financial penalty and only by exception will alternative measures such as prosecution or formal caution be considered.

The financial penalty, as an effective sanction is likely to be appropriate for cases where:

- the offender has failed to respond to an informal approach
- there is a history of repeat offending or non-compliance
- there has been a serious or flagrant breach of the law

Other relevant offences where the Council will consider their use includes:

- offences under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- offences under the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.)(England) Order 2014

Factors to consider in determining the level of financial penalty

In considering the use of the financial penalty the Council will have full regard to the statutory guidance issued by DCLG under Schedule 9 of the Housing & Planning Act 2016. The guidance sets out the factors that must be taken into account when determining an appropriate level of penalty:

- 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 last factor is important in order to create an effective sanction, which eliminates any profiteering from illegal and dangerous practices and helps to ensure that the offender pays for the cost of housing enforcement rather than the public purse or the many responsible landlords operating in the district.

A standard charging table for determining the value of Financial Penalties imposed under Housing Act 2004, is set out at the end of this document. The charging table has been jointly devised and adopted by all the Staffordshire Authorities, to ensure transparency and consistency of approach across the County.

In setting the level of financial penalty, the Council will be entitled to draw reasonable inferences about the offender's ability to pay. There will be an assumption that the offender is able to pay, unless sufficient and reliable information is provided to the contrary.

Right of Appeal

A person who has been issued with a financial penalty has a right of appeal to the First Tier Tribunal and this will involve a re-hearing of the Council's decision to impose the financial penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the financial penalty that the Council has issued.

Rent Repayment Orders

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. A rent repayment order may be granted in respect of an application by the Council or a tenant and permits rent payments to be recovered from a landlord, who has committed a qualifying offence. The sanction is intended to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Qualifying offences for rent repayment orders

Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences as follows:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force)
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

This is in addition to the original offences relating to the Licencing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licencing of houses under Part 3 of the Act (section 95(1)).

The Council will consider applying for a Rent Repayment Order, wherever it is obligated to do so, for example following the successful issue of a financial penalty and will do so in order to recover monies paid through Housing Benefit or through the housing element of universal credit.

The Council will take into account the statutory guidance issued by DCLG 'Rent repayment orders under the Housing and Planning Act 2016: Guidance for Local Housing Authorities' April 2017 in considering whether to apply for an RRO.

The Council will offer advice, support and guidance to assist tenants to apply for an RRO, where the tenant has paid the rent themselves.

Charging table for determining the value of Financial Penalties imposed under Housing Act 2004

Failure to comply with an Improvement Notice (Section 30)		£
1st offence	(note 1)	5000
2nd subsequent offence by same person/company	(note 2)	15000
Subsequent offences by same person/company	(note 7)	25000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 8)	+2500
Large housing portfolio (10+ units of accommodation)	(note 3)	+2500
Multiple Category 1 or high Category 2 Hazards	(note 4)	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	(note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences in relation to licencing of HMOs under Part 2 of the Act (Section 72)		£
Failure to obtain property Licence (section 72(1))	(note 1)	10000
2nd subsequent offence by same person/company	(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach	5000
Perpetrator demonstrates Income to be less than £440/week (note 6)	-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)	£
Failure to Licence (section 95(1)) (note 1)	10000
2nd subsequent offence by same person/company (note 2)	30000
Perpetrator demonstrates Income to be less than £440/week (note 6)	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach	5000
Perpetrator demonstrates Income to be less than £440/week (note 6)	-50%

Offences of contravention of an overcrowding notice (section 139)	£
1st relevant offences (note 1)	5000
2nd subsequent offence by same person/company (note 2)	15000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability (note 8)	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3)	+2500
Perpetrator demonstrates Income to be less than £440/week (note 6)	-50%

Failure to comply with management regulations in respect of HMOs (Section 234)	£
1 st relevant offences (note 1)	1000/offence
Second subsequent offences by same person/company for the same offence	3000/offence
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability (note 8)	+2500
Large housing portfolio (10+ units of accommodation) (note 3)	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week (note 6)	-50%

NOTES

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

At the time of publication this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over

Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates Income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

**REGULATORY AND LICENSING COMMITTEE
WORK PROGRAMME FOR 2017-18**

Item	4 JULY 2017	2 OCT 2017	6 FEB 2018	Purpose of the Report	Lead
Air Quality Action Plan	✓			To agree Action Plan	GD
Environmental Health 2017/18 Fees & Charges			✓	To agree the schedule of fees and charges for EH functions during 18/19	GD
Street collections 2017		✓			GD
New enforcement measures to tackle 'rogue landlords'		✓			JT
Street Trading Policy - review			✓	To note the report and adopt new street trading policy	GD/JR
Environmental Crime Strategy	✓		✓	Approve a new Environmental Crime Strategy. Approve any recommended Public Space Protection Orders for consultation and implementation	GD/JT
Food Service Delivery Plan			✓	To note the report and adopt the Plan	JR
Health and Safety Law Enforcement Plan			✓	To note the report and adopt the Plan	JR