

Environmental Health Enforcement Policy Update

Angela Lax, Cabinet Member for Legal & Regulatory Services

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Agenda Item: 16

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Key Decision? YES

Local Ward

Members Affects all Wards



COUNCIL

1. Executive Summary

- 1.1 The Enforcement Policy currently in place for Regulatory Services dates back to 2015.
- 1.2 It was reviewed in October 2017, at which point the Housing Civil Penalties Annexe was added. This enables the Authority to apply a Financial Civil Penalty of up to £30,000 due to Housing related offences, as an alternative to Court action.
- 1.3 This report follows a further review of the Enforcement Policy, the bulk of which remains broadly unchanged. What has been changed to a much greater degree is the Housing Civil Penalties Annexe. This follows experience gained in Housing Tribunals across the Midlands and a move to the Nottingham model which has been shown to be robust in Tribunals.
- 1.4 The updated Enforcement Policy and Housing Civil Penalties Annexe were considered and supported by the Regulatory and Licensing Committee at its meeting on 28th September 2020 which recommended that these be adopted by Council and that delegated authority be given to the Regulatory and Licensing Committee to make any required amendments to this policy in the future.

2. Recommendations

- 2.1 That Council adopts the updated Regulatory Services, Housing and Wellbeing Enforcement Policy including the Annexe on Housing Civil Penalties.
- 2.2 That Council gives delegated authority to the Regulatory and Licensing Committee to make any required amendments to this policy in the future.

3. Background

- 3.1 Regulatory Services Housing and Wellbeing (RSHW) is one of the Council's sections with a range of regulatory powers. Having an enforcement policy in place ensures that we enforce these regulations in a fair, consistent and transparent way.
- 3.3 The policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by RSHW or anyone authorised to act on their behalf.

- 3.4 The current Enforcement Policy is considered concise and remains generally appropriate for the future, with simple minor alterations to take account of restructures and legislative changes or guidance updates.
- 3.5 In 2017 a new Annexe to the Enforcement Policy was added to take account of the new Housing and Planning Act 2016, from which a range of new powers had come into force. One of these powers was the ability for the Council to issue a Civil Financial Penalty on landlords as an alternative to Court prosecution in relation to certain offences. The new Annexe followed the same route as most other Staffordshire Authorities in terms of our policy on Civil Penalties.

4. Comparisons with other Local Authorities

- 4.1 Since the introduction of Civil Penalties, a number of authorities have had the robustness of their policies tested in Tribunals. This has included Staffordshire authorities who follow the same basic policy on Civil Penalties as this Council currently does.
- 4.2 Unfortunately it seems that in Tribunals the Staffordshire model has been found to be less persuasive than other authorities' policies. In one case, for example, a Civil Penalty of £7000 was reduced to £700 by the Tribunal.
- 4.3 By comparison, Nottingham City Council's Civil Penalty Policy has stood up to scrutiny and they have a highly successful record in Tribunals with their Policy. So much so in fact, that they have started training other Authorities on their Policy and permitting them to use the same Policy wording throughout. Of particular note is the flexibility of Nottingham's Policy, which allows penalties to be lowered to take account of actions by the landlord. This is not something which was originally included in the Staffordshire model.

5. Proposals

- 5.1 It is proposed only to make minor alterations to the main Enforcement Policy.
- 5.2 It is, however, proposed to replace the Housing Civil Penalties Annexe with the Policy wording of Nottingham City Council's, following agreement from them. It is hoped that this will provide a better footing for defending any Tribunals which the Council may be brought to in the future.
- 5.3 The proposed amended Regulatory Services Enforcement Policy is in Appendix A.
- 5.4 The proposed re-written Civil Penalty Annexe to the Enforcement Policy is in Appendix B.

Alternative Options

1. Keep the Enforcement Policy and Civil Penalties Policy as it currently is. Whilst the Enforcement Policy remains broadly the same, it references a Department which no longer exists. The Council's current Civil Penalties Policy has been found wanting at Tribunals and it's considered appropriate to move to a policy which has been well tried and tested and shown to be robust.

Consultation

1. The Regulatory and Licensing Committee recommend on the 28th September 2020 that the Policy and Annexe be adopted at Council.
2. No public consultation has been undertaken but the Enforcement Policy is and will continue to be placed on our website for public viewing.

	3. The same Housing Civil Penalties Policy has been in place at Nottingham since 2017 and has proven robust at Tribunals.
Financial Implications	1. The new Civil Penalties Policy can generate income for use within Private Sector Housing. By comparison with the original Policy it seems likely to better stand up to scrutiny at Tribunal and be less likely to lead to any penalties being reduced or overruled.
Contribution to the Delivery of the Strategic Plan	1. Shaping Place: to keep it clean, green and safe.
Equality, Diversity and Human Rights Implications	1. The Enforcement Policy and Annexe relate to all the work of RSHW and are not envisaged to have any negative implications in terms of equality, diversity and human rights. On the contrary, the policy is in part designed to ensure fairness in all these aspects.
Crime & Safety Issues	1. It is considered that the proposals will positively impact on our duty to prevent crime and disorder within the District. 2. In particular, it is envisaged that the changes to the Civil Penalties Policy will improve our position should we be challenged in a Housing Tribunal.
GDPR/Privacy Impact Assessment	1. Not considered necessary.

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Ability to carry out enforcement duties	Maintain an up to date and relevant Policy in place at all times to ensure enforcement can take place	Likelihood: Green Impact: Yellow Severity of Risk: Green
B	Legal	Ensure that the Policy is legally robust	Likelihood: Green Impact: Yellow Severity of Risk: Green
C			
D			
E			