
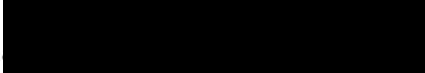


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**EXECUTIVE DECISION RECORD**

|                                  |                                                                                                                                                                         |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A1</b> Service Area           | Regulatory Service                                                                                                                                                      |
| <b>A2</b> Title                  | Housing Enforcement Policy and Civil Penalties Procedure Update                                                                                                         |
| <b>A3</b> Decision Taken By      | Deputy Leader                                                                                                                                                           |
| <b>A4</b> Chief Officer          | Please print name: Mark Rizk<br><br>Please sign name:                                 |
| <b>A5</b> Leader / Deputy Leader | Please print name: Cllr Bernard Peters<br><br>Please sign name:<br><i>B. Peters</i> |
| <b>A6</b> Date of Decision       | [ 25 <sup>th</sup> September, 2019 ]                                                                                                                                    |

**Confidentiality**

|                                                                                                                                         |                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| <b>A7</b> Is this Decision confidential by containing exempt information as described in Schedule 12A of the Local Government Act 1972? | No ( <i>please delete as appropriate</i> ) |
| <b>A7.1</b> If yes, please state relevant paragraph from Schedule 12A LGA 1972.                                                         | N/A                                        |


**Scrutiny**

|                                                                                    |                                         |
|------------------------------------------------------------------------------------|-----------------------------------------|
| <b>A8</b> Which Scrutiny Committee should this decision be submitted to?           | ( <i>Please tick as appropriate</i> ) ✓ |
| Scrutiny (Audit & Value for Money Council Services) Committee                      | <input checked="" type="checkbox"/>     |
| Scrutiny (Community Regeneration, Environment and Health and Well Being) Committee | <input checked="" type="checkbox"/>     |

|                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p><b>B1</b> What is the Decision?</p>                               | <p>Adoption of an amended Housing Enforcement Policy to incorporate an updated procedure and policy for the service of a Civil Penalty</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>B2</b> What are the reasons for the Decision?</p>              | <p>Case law and guidance requires a detailed consideration of all factors in the determination of the level of civil penalty issued for non-compliance. Within the current policy, only the income factor was able to be considered for determining the appropriate level of sanction for selective licensing breaches. Recent case law has highlighted the need to ensure that all factors are taken into account, which have been incorporated by the amendments to the updated policy. This helps to ensure that sanctions are determined fully in accordance with government guidance to reduce legal challenge and 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.</p> |
| <p><b>B3</b> What are the contributions to Corporate Priorities?</p> | <p>Value for Money Services &amp; Environment and Health and Wellbeing- The imposition of a civil penalty is an alternative to prosecution and acts as a deterrent to those that provide poor housing and do not comply with housing legislation. The use of civil penalties aims to drive up standards to improve the health and wellbeing for residents. It is a more cost effective enforcement option and will be used to fund future enforcement action providing a value for money service.</p>                                                                                                                                                                                                                                                                                      |
| <p><b>B4</b> What are the Human Rights considerations?</p>           | <p>There are no Human Rights issues arising from this decision.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

## Financial Implications

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| <p><b>B5</b> What are the financial implications?</p> | <p>The main financial issues arising from this decision are as follows:</p> <p>A civil penalty is a financial penalty of up to £30,000 that can imposed as an alternative to prosecution.</p> <p>If the penalty is not paid within 28 days that Council can recover the cost through the county courts with a certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate.</p> <p>Any income from Civil Penalties are retained by the Council which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to private rented housing.</p> |
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| <p>The finance section has been approved by the following member of the Financial Management Unit:</p> | <p>Please print name:<br/> <i>ANYA MURRAY</i></p> <p>Please sign name:<br/> </p> |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Policy Framework

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|---------------------------------------------------------------------------------------------|-----|
| <b>B6</b> Is the Decision wholly in accordance with the Council's policy framework?         | Yes |
| <b>B6.1</b> If No, does it fall within the urgency provisions (Part 3 of the Constitution)? | NA  |
| <b>B6.2</b> Has it got the appropriate approvals under those provisions?                    | NA  |
| <b>B7</b> Is the Decision wholly in accordance with the Council's budget?                   | Yes |
| <b>B7.1</b> If No, does it fall within the urgency provisions (Part 3 of the Constitution)? | NA  |
| <b>B7.2</b> Has it got the appropriate approvals under those provisions?                    | NA  |

## Equalities Implications

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| <b>B8</b> What are the Equalities implications:                                                                                                                                                                        |
| <b>B8.1</b> Positive (Opportunities/Benefits):<br>Positive impact on the quality of life for residents due to improved property conditions.<br>Increased compliance for housing standards in the private rented sector |
| <b>B8.2</b> Negative (Threats):<br>High number of Asian landlords which may be affected. Implementation therefore should be led by awareness raising, training where necessary, transparency and equity.               |
| <b>B8.3</b> The subject of this decision is a policy, strategy, function or service that is new or being revised. An equality impact assessment has been completed                                                     |
| <b>B8.4</b> NA                                                                                                                                                                                                         |

## Risk Assessment

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| <b>B9</b> What are the Risk Assessment implications:                                                                                                                                                                                                                                                                                                                                                                |
| <b>B9.1</b> Positive (Opportunities/Benefits):<br>The policy provides clear consideration of all factors that must be taken into account in the calculation of a civil penalty to ensure that the appropriate level of financial penalty is determined for each case                                                                                                                                                |
| <b>B9.2</b> Negative (Threats):<br>Any landlord who is receipt of a civil penalty can appeal to the First-tier property tribunal against the decision to impose the penalty or the amount of the penalty. The tribunal has the power to confirm, vary the size of the penalty or cancel the civil penalty. Where the tribunal rules against the Council this may have result in poor publicity against the Council. |
| <b>B9.3</b> The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.                                                                                                                                                                                                                                                              |

## Legal Considerations

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| <b>B10</b> What are the Legal Considerations: |
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**B10.1** The main legal issues arising from this decision are as follows:

Civil penalties provide a powerful deterrent for those landlords who might otherwise have considered that the financial benefits of non-compliance outweighed the risk of enforcement action against them. The power to impose civil penalties will encourage landlords to reconsider poor practices which will lead to greater levels of compliance and improved housing standards in East Staffordshire.

A statutory framework for the implementation and use of civil penalties by local housing authorities has been published by the MHCLG. The guidance sets a number of requirements that local housing authorities must adhere to when imposing a civil penalty and are expected to develop and document their own procedure on when to prosecute and when to impose a civil penalty for specified housing offences. In each case local housing authorities must consider the following factors to ensure the civil penalty is set at an appropriate level:

- Severity of the offence,
- Culpability and track record of the offender,
- Harm caused to tenant,
- Punishment of the offender,
- Deter the offender from repeating the offence,
- Deter others from committing similar offences, and
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

The Council's procedure for the imposition of a civil penalty has been amended to ensure thorough consideration of the factors that are considered for determining the level of financial penalty and is provided in the Housing Enforcement Policy and the Civil Penalties Procedure document which are attached.

The landlord/property agent will always have a right of appeal against a civil penalty to the First-tier Tribunal. The First-tier Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty imposed by the local housing authority.

Income received from a civil penalty will be retained by the local housing authority, provided it is used solely to further the local authority's statutory function in relation to their enforcement activities covering the PRS as specified in the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

This section has been approved by the following member of the Legal Team:

Please print name:

ANGELA WAKEFIELD

Please sign name:



### Sustainability Implications

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| <b>B11</b> What are the Sustainability implications:                                                                                                                                                                                             |
| <b>B11.1</b> The proposal would not result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures). The positive/negative impacts are set out below (please refer to guidance notes). |
| <b>B11.2</b> Positive (Opportunities/Benefits): NA                                                                                                                                                                                               |
| <b>B11.3</b> Negative (Threats): NA                                                                                                                                                                                                              |

### Health & Safety Implications

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| <b>B12</b> What are the Health & Safety implications:                                                                                                                                                |
| <b>B12.1</b> A Risk Assessment has not been carried out and entered into Harriet for all significant hazards and risks because there are no significant hazards or risks arising from this decision. |
| <b>B12.2</b> NA                                                                                                                                                                                      |
| <b>B12.3</b> NA                                                                                                                                                                                      |
| <b>B12.3.1</b> Positive (Benefits) NA                                                                                                                                                                |
| <b>B12.3.2</b> Negative (Threats) NA                                                                                                                                                                 |

## Key Decision

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| <b>B13</b> Is this a Key Decision?                                                                                                                                                                                                                                                                                                                                                                                             | No ( <i>please delete as appropriate</i> ) |
| <b>Note: A Key Executive Decision is one where:</b> <ol style="list-style-type: none"> <li>1. <b>REVENUE</b> – Any contract or proposal with an annual payment or saving of more than £100,000</li> <li>2. <b>CAPITAL</b> – Any capital project with a value in excess of £150,000</li> <li>3. <b>A decision which significantly affects communities living or working in an area comprising two or more wards.</b></li> </ol> |                                            |
| <b>B13.1</b> If this is a Key Decision, is this an urgent decision such that a delay caused by use of the Call-in Procedure would <u>seriously</u> prejudice the public interest?                                                                                                                                                                                                                                              | No                                         |
| <b>B13.2</b> If yes, has the Mayor or in his/her absence the Deputy Mayor or in his/her absence the Chair of the relevant Scrutiny Committee agreed that the decision will be exempt from Call-in?                                                                                                                                                                                                                             | NA                                         |

**NOTE: If this decision is subject to the Call-in Procedure it will come into force, and may then be implemented, on the expiry of 3 working days after publication – unless 10 Members of the Council call in the decision.**

Please send the original signed document to [andrea.davies@eaststaffsbc.gov.uk](mailto:andrea.davies@eaststaffsbc.gov.uk)

