

**Report of: Executive Member for Housing and Development**

Meeting of:	Date	Ward(s)
Executive	18 October 2018	All

	Non-exempt
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## **SUBJECT: Adoption of Additional Enforcement Powers against Rogue Landlords and Letting Agents - Financial Penalty Charging Policy**

### **1. Synopsis**

- 1.1 The Housing and Planning Act 2016 allows local authorities to impose a Financial Penalty up to £30,000, as an alternative sanction to prosecution, on landlords who fail to comply with their legal responsibilities to provide safe rented accommodation for their tenants.
- 1.2 This report sets out the Council’s proposed arrangements for charging landlords a financial penalty for non-compliance and the proposed approach to charging.

### **2. Recommendations**

- 2.1 To agree to adopt the proposed Financial Penalty Charging Policy at Appendix 1.
- 2.2 To agree to delegate authority to the Corporate Director of Environment and Regeneration, in consultation with the Executive Member for Housing and Development, to make future changes to the financial penalty policy as considered appropriate.

### **3. Background**

- 3.1 The Housing and Planning Act 2016 introduced a number of new measures for Councils to tackle poor landlords and letting agents including the option to issue a financial penalty up to a maximum of £30,000, for the following offences:
  - Failure to comply with an improvement notice served under the Housing Act 2004
  - Failure to licence or be licensed in respect of Houses in Multiple Occupation (HMOs)
  - Failure to licence or be licensed in respect of a Selective Property Licensing Scheme

- Failure to comply with licensing conditions
- Failure to comply with an overcrowding notice
- Failure to comply with HMO regulations
- Breaching a banning order

3.2 Financial penalties are a useful enforcement tool to encourage and secure sustained compliance by landlords that fail to manage their properties to the required standard. However, they are not intended to replace prosecutions against rogue landlords and lettings agencies whose actions, or lack of action, are so serious and significant that they should be fully held to account by the courts.

3.3 Where it is an appropriate enforcement outcome to issue a financial penalty on a non-compliant landlord the Council is required to take into account the following factors:

- a. Severity of the offence
- b. Culpability and track record of the offender
- c. The harm caused to the tenant
- d. Punishment of the offender
- e. Deter the offender from repeating the offence
- f. Deter others from committing similar offences
- g. Remove any financial benefit the offender may have obtained as a result of committing the offence.

3.4 The Financial Charging Policy at Appendix 1 uses this assessment criterion to calculate a minimum indicative tariff, and that is then adjusted to take into account other relevant or aggravating factors. The combined scores are then used to indicate the level of financial penalty payable.

3.5 Whilst financial penalties can provide a quicker route for enforcement they are unlikely to reduce the amount of work involved in an investigation because financial penalties cannot be issued unless the evidence gathered by the enforcement officer has met the criminal standard of proof used for prosecution cases.

Once the evidence has been gathered and the officer has determined that a financial penalty is the most appropriate course of action they are required to service a Notice of Intention to issue a financial penalty, consider any representations submitted by the recipient before issuing the final Notice at least 28 days later. The recipient of the Notice has the ability to appeal to the Residential Property Tribunal where a full hearing will consider all the evidence collected by the enforcement officer as well as the landlord's case before determining whether to confirm, vary or quash the Financial Penalty Notice.

3.6 In view of the procedural requirements that must be followed, financial penalties are most likely to be used where non-compliance could be remedied within a reasonable timescale and sustained compliance is a likely outcome.

3.7 To reflect the reduced cost to the Council, the Financial Charging Penalty Policy provides two discounts:

- a. 20% discount if the non-compliance with legal requirement is remedied prior to the Notice being issued.
- b. 20% discount if the Financial Penalty is paid within 28 days of the Notice being issued

3.8 100% of the income from financial penalties can be retained by the Council and used to fund further regulatory activity in the private rented sector.

## 4. Implications

### 4.1 Financial implications:

There are no costs associated with adopting these new enforcement powers, however the income generated must be used to fund private sector housing enforcement activities.

Based on 2017/18 enforcement activities, use of financial penalties could generate income up to £15,000 per year but this figure is likely to increase if the proposal to extend property licensing to other parts of the borough is adopted in 2019.

## **4.2 Legal Implications:**

4.2.1 The power to impose a financial penalty as an alternative to prosecution was introduced by sections 23 and 126 and schedule 9 of the Housing and Planning Act 2016.

4.2.2 The offences covered by financial penalties are:

- Failure to comply with an improvement notice [Housing Act 2004 section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under part 2 [Housing Act 2004 Section 72]
- Offences in relation to the Selective Licensing of 'houses' under part 3 [Housing Act 2004 section 95]
- Failure to comply with an Overcrowding Notice [Housing Act 2004 section 139]
- Failure to comply with a regulation in respect of an HMO [Housing Act 2004 section 234]
- Breach of a Banning Order (section 21 of the Housing and Planning Act 2016)

4.2.3 A landlord can appeal to the First-tier Tribunal against the decision to impose a financial penalty and/or the amount of the penalty. The First-tier Tribunal has the power to confirm, vary (increase or decrease) the size of the penalty or cancel it.

4.2.4 The Ministry of Housing, Communities & Local Government has issued statutory guidance which the Council must have regard to in the exercise of its functions in respect of financial penalties under the Housing Act 2016.

## **4.3 Environmental Implications**

This report isn't considered to have specific environmental implications.

## **4.4 Resident Impact Assessment:**

The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed on 28 August 2018 and the conclusion was that the Financial Penalty Charging Policy is not likely to be discriminatory in any way for people with any of the protected characteristics. It will also have neutral impacts on equality of opportunity for people with protected characteristics, have neutral impact on good relations between communities and the rest of the population of Islington, and has no safeguarding and human rights risks.

## **5. Reason for recommendations**

Financial penalties are an additional enforcement tool against landlords and letting agents. They do not replace prosecution proceedings against the worst offenders but allow for quicker enforcement for offences which may include poor property management or failure to licence a property.

The proposed methodology for calculating financial penalties is based upon best practice and is consistent with the approach taken by other London Boroughs.

**Appendix 1**                      Financial Penalty Charging Policy  
**Appendix 2**                      Resident Impact Assessment

Final report clearance:

**Signed by:**

*Diarmuid Ward.*

10 October 2018

Executive Member for Housing and Development      Date

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