

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:

2919

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Communities

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Subject:

The adoption of civil penalties as an enforcement option for specified offences under the Housing Act 2004

Total Value:

£0 (Type: Nil)

Decision Being Taken:

- (1) To approve the adoption of civil penalties as an enforcement option for specified housing offences under the Housing Act 2004, introduced within the Housing and Planning Act 2016.
- (2) To approve the Nottingham City Council, Housing Enforcement Guidance and Nottingham City Council, Civil Penalties Enforcement Guidance (See Documents Attached).
- (3) To delegate to the Director for Community Protection, in conjunction with the relevant Portfolio Holder, authority to amend the Nottingham City Council Housing Enforcement Guidance and the Nottingham Civil Penalties Enforcement Guidance.

**Reasons for the Decision(s)**

There are a number of landlords in Nottingham's private rented sector (PRS) who exploit tenants by letting out unsuitable and/or dangerous accommodation which impacts upon tenants' quality of life, e.g. reduced health outcomes. These poor landlord practices are evidenced in the sustained high numbers of complaints received by the Council on Nottingham's PRS. In addition the findings from the Building Research Establishment (BRE) Nottingham Housing Survey 2016 also demonstrate that housing disrepair in Nottingham's PRS is a widespread and persistent problem.

Nottingham City Council (NCC) has remained committed to tackling rogue landlords in order to protect tenants and improve local PRS standards. This has been achieved through a number of successful measures over the previous years:

NCC has prioritised improving PRS standards and protecting tenants in its Council Plan 2015 to 2019 and taken robust enforcement action against rogue landlords through both the Safer Housing and Housing Licensing & Compliance teams. NCC also introduced mandatory and additional licensing schemes to drive up standards of houses in multiple occupancy (HiMOs) and launched the Nottingham Standard Accreditation Scheme to ensure an overarching minimum standard for private rented accommodation across the city.

Furthermore NCC continues to work with Nottinghamshire Police and broader partners to identify and support tenants actively being exploited by criminal landlords, most recently NCC was successful in securing funding from the Department for Communities and Local Government (DCLG) in 2015 to undertake intelligence-led enforcement in our highest risk properties.

Despite these many successful measures NCC wants to go further to achieve safer housing across the local PRS and better protect its residents. In April 2017 the Government introduced civil penalties, a new discretionary enforcement measure, contained within the Housing and Planning Act 2016, designed to enable local housing authorities to impose a financial penalty as an alternative to prosecution for specified offences contained within the Housing Act 2004.

NCC is proposing to adopt the use of civil penalties as it believes it will provide the Council with a more cost-effective and proportionate alternative to prosecution for specified housing offences, whilst retaining the option to prosecute for the most serious housing offences.

If approved NCC will be able to impose a civil penalty of up to £30,000, as an alternative to prosecution, for each of the following offences contained within the Housing Act 2004:

- Failure to comply with an Improvement Notice (Section 30),
- Offences in relation to licensing of houses in multiple occupancy (Section 72),
- Offences in relation to licensing of houses under Part 3 of the Act (Section 95),
- Offences of contravention of an overcrowding notice (Section 139), and
- Failure to comply with management regulations in respect of HiMOs (Section 234).

A statutory framework for the implementation and use of civil penalties by local housing authorities has been published by the Department for Communities and Local Government (DCLG) (See Statutory Guidance Attached). The guidance sets a number of requirements that local housing authorities must adhere to when imposing a civil penalty.

Under the guidance local housing authorities are expected to develop and document their own procedure on when to prosecute and when to impose a civil penalty for specified housing offences. A detailed overview of Nottingham's proposed enforcement procedure for determining the appropriate imposition of a civil penalty can be found attached (See Proposed Nottingham Housing Enforcement Guidance).

Local housing authorities are also required to document their own policy on determining the appropriate level of civil penalty to be imposed (See Proposed Nottingham Civil Penalties Guidance Attached). 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.

NCC is proposing to introduce penalty bands of between £600 and £30,000, for specified housing offences. (See Proposed Guidance Attached). The procedure for imposing a civil penalty is set out in Schedule 9 of the Housing and Planning Act 2016. 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.

It is believed that civil penalties will act as 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 across Nottingham's PRS.

**Briefing notes documents:** Nottingham Housing Enforcement and Compliance Guidance.docx, Nottingham Civil Penalties Enforcement Guidance.pdf

**Other Options Considered:**

Option 1 - Continue to use current enforcement tools, e.g., simple cautions or prosecutions, for specified offences contained within the Housing Act 2004. Not suitable as bad practice will continue in the PRS sector.

Option 2 - Adopt the use of civil penalties in accordance with national legislation and statutory guidance.

**Preferred Option: Option 2**

The adoption of civil penalties would support the Council's aim to improve housing standards and protect tenants within Nottingham's PRS as contained within the Council Plan 2015 to 2019.

The cost of prosecuting an offender can be an expensive and time intensive process for the Council. Civil penalties will provide a more cost-effective means to enforce against serious offences, outside of the courts system, reducing demand on council officers and enabling the Council to recover full costs for further housing enforcement purposes.

All income obtained from civil penalties will be retained by Nottingham City Council and will be spent on housing enforcement functions; civil penalties will have the potential to be cost neutral. The income and enforcement costs will be reviewed periodically. The option to prosecute will remain for the most serious offences as outlined in the proposed Nottingham Housing Enforcement Guidance document.

**Background Papers:** DCLG Civil Penalties Guidance

**Unpublished background papers:** DCLG Civil Penalties Statutory Guidance .pdf

**Published Works:** Nottingham Housing Enforcement Guidance and Nottingham Civil Penalties Guidance.

**Affected Wards:** Citywide

**Colleague / Councillor Interests:**

**Consultations:**

Date: 02/08/2017

Ward Councillors: Toby Neal

Portfolio Holder approved to proceed with decision.

Those not consulted are not directly affected by the decision.

**Crime and Disorder Implications:**

It is believed that the adoption of civil penalties as an additional enforcement tool will help to further disrupt rogue landlords who commit serious housing offences, further protect tenants and help improve the overall standards of private rented sector housing across Nottingham.

**Equality:**

Please login to the system to view the EIA document: EIA Nottingham Housing Civil Penalties.doc

**Decision Type:**

Portfolio Holder

**Subject to Call In:**

Yes

**Call In Expiry date:**

23/08/2017

**Advice Sought:**

Legal, Finance, Equality and Diversity

**Legal Advice:**

As indicated in the body of the decision, the power to impose civil penalties for certain prescribed offences gives the Council a further and significant tool with which to address housing standards and meet Council priorities. The Government has set the framework within which such penalties can be used and legal advice has been given in the formulation of the Council's proposed Guidance documents. The approval of the recommendations is within the Council's powers.

Civil Penalties can only be imposed where sufficient evidence exists to meet the criminal burden of proof (ie that a prescribed offence has been committed beyond a reasonable doubt). A right of appeal exists against any penalty imposed. Although the civil penalty is retained by the Council parties to an appeal are normally expected to bear their own costs and in most cases it is unlikely that the Council will be able to recover any costs in relation to such appeals. Advice provided by Ann Barrett (Team Leader) on 11/08/2017.

**Finance Advice:**

The financial consideration for this decision is nil.  
This is because this decision is in relation to a policy adoption only, in line with current legislation

michelle.pullen@nottinghamcity.gov.uk Advice provided by Michelle Pullen (Commercial Business Partner) on 11/08/2017.

**Equality and Diversity Advice:**

The proposal clearly has merit for the needs of vulnerable citizens likely to be beneficially impacted if improvements are made in living accommodation which would impact positively on health, educational outcomes and other important indicators about quality of life. However, care needs to be made as regards implementation bearing in mind the current data trend identifying a high number of South Asian landlords. Implementation therefore should be led by awareness raising, training where necessary, transparency and equity. Advice provided by Adisa Djan (Equalities and Diversity Consultant) on 14/08/2017.

**Signatures**

Toby Neal (Portfolio Holder for Community & Customer Services)

SIGNED and Dated: 16/08/2017

**Andrew Errington (Director, Community Protection)**

**SIGNED and Dated: 16/08/2017**