

<b>This report is public</b>	
<b>Housing Civil Penalties Policy</b>	
<b>Committee</b>	Executive
<b>Date of Committee</b>	10 June 2025
<b>Portfolio Holder presenting the report</b>	Portfolio Holder for Housing - Councillor Nick Cotter
<b>Date Portfolio Holder agreed report</b>	27 May 2025
<b>Report of</b>	Assistant Director, Wellbeing and Housing, Nicola Riley

## **Purpose of report**

To seek approval for the new Housing Civil Penalties Policy.

### **1. Recommendations**

The Executive resolves:

- 1.1 To approve the new Housing Civil Penalties Policy.
- 1.2 By doing so, approving the changes to the reviewed Housing Standards Enforcement Policy as outlined within the report.

### **2. Executive Summary**

- 2.1 The Housing and Planning Act 2016 amended the Housing Act 2004 to allow councils discretion to issue financial penalties of up to £30,000 as an alternative to prosecution for certain housing offences. These powers and how they are discharged by the Council are outlined within the Housing Standards Enforcement Policy 2021.
- 2.2 The new civil penalty policy builds on recent tribunal decisions, legal precedents, and industry best practice to provide a more consistent, proportionate and transparent methodology for determining the value of each penalty. It is proposed that the new civil penalty policy be made standalone to ensure it is clear and robust. Consequential amendments and minor updates are therefore made to the Housing Standards Enforcement Policy.
- 2.3 The Council has partnered with Justice for Tenants, a not-for-profit organisation who have analysed all the significant tribunal and court judgements and, in collaboration with local authorities, have developed a template civil penalty policy and procedure and an online civil penalty calculator, which have been used to develop the new Civil Penalties Policy.

- 2.4 As a result of adopting the Housing Civil Penalties Policy, a number of consequential changes are necessary to be made to the Housing Standards Enforcement Policy due to the mentions of civil penalties within. These changes are reflected in the reviewed Housing Standards Enforcement Policy within the Appendix of the report.

## Implications & Impact Assessments

Implications		Commentary		
<b>Finance</b>		Having a standalone Civil Penalties Policy will mean accurate penalty calculations relevant to the offence and therefore, less risk of appeals and more ring-fenced income for furthering private sector enforcements works. Kelly Wheeler, Finance Business Partner, 30 April 2025		
<b>Legal</b>		Having an updated Civil Penalties Policy will ensure that recent tribunal decisions and legal precedents have been taken into consideration when determining the value of civil penalties. Civil penalties have proved to be an effective tool for the Housing Standards Team to uphold the principles of natural justice and hold poor-performing landlords and agents operating in the district to account. It is noted that the Policy will require review again in light of the soon to be enacted Renters' Rights Bill, however it is important to ensure the Council's approach to imposing civil penalties is robust and legally compliant in the meantime. Gurnam Bains, Litigation Solicitor – Legal, 8 May 2025		
<b>Risk Management</b>		Having a more robust policy will reduce risks from appeals and judicial review. Shona Ware, Assistant Director – Customer Focus, 7 May 2025		
Impact Assessments		Positive	Neutral	Negative
<b>Equality Impact</b>			x	
<b>A</b> Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		x		
		Revisions to the policy aim to provide a consistent, proportionate and transparent methodology for determining the value of penalties, which will benefit landlords who are subject to enforcement. A small number of landlords and property agents in Cherwell exploit tenants by letting out substandard properties that adversely affect the quality of life for tenants and the wider community. The efficient and effective use of civil penalties enables the Council to flexibility take cost-effective and proportionate enforcement action which will benefit tenants by deterring landlords from committing serious housing offences and help drive out rogue landlords from Cherwell's private rented sector.		

<b>B</b> Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		x		
<b>Climate &amp; Environmental Impact</b>		x		
<b>ICT &amp; Digital Impact</b>		x		Not applicable
<b>Data Impact</b>		x		Not applicable
<b>Procurement &amp; subsidy</b>		x		Not applicable
<b>Council Priorities</b>	Quality Housing and Place Making			
<b>Human Resources</b>	Not applicable			
<b>Property</b>	Not applicable			
<b>Consultation &amp; Engagement</b>	Not applicable			

## Supporting Information

### 3. Background

- 3.1 The Housing and Planning Act 2016 amended the Housing Act 2004 to allow Local Housing Authorities the discretion to impose financial penalties of up to £30,000 as an alternative to prosecution for certain housing offences. Certain other pieces of legislation also permit the imposition of civil penalties for housing-related breaches, for example the Minimum Energy Efficiency Standards.
- 3.2 Cherwell District Council was one of the first councils in England to adopt the use of civil penalties for housing offences in July 2018. This policy approach was incorporated with minor updates into the Housing Standards Enforcement Policy which was adopted by the Council in 2021. Statutory guidance requires the Council adopts a policy setting out its approach before imposing housing civil penalties.
- 3.3 Since 2018 the Council has issued 45 civil penalties to 34 landlords and agents at a total value of £250,000. Civil penalties have proved to be an effective tool for the Housing Standards Team to hold these poor-performing landlords and agents operating in the district to account. Income from civil penalties is ring fenced for furthering private sector housing enforcement work.

- 3.4 In the intervening seven years, a significant body of tribunal appeal decisions and legal precedents has developed that did not exist to inform the original policy development. We have also seen a trend of increased appeals which are extremely resource-intensive to defend.
- 3.5 Civil penalties will be an increasingly important enforcement tool under the proposed new Renters' Rights legislation. This legislation moves towards a 'polluter pays' enforcement principle, significantly expanding the number and variety of offences which the Council will have a duty to enforce via financial penalties. Having a robust and streamlined policy and procedure for imposing penalties will be vital.

## **4. Details**

- 4.1 The Housing Standards Enforcement Policy sets out our approach to investigation and decision-making of housing-related non-compliances and offences. The Housing Civil Penalties Policy sets out in detail the factors relevant to determining civil penalties.
- 4.2 The aim is to provide a comprehensive and robust policy that will withstand scrutiny by tribunals and a civil penalty calculator that will ensure all factors are considered when determining the value of the penalty and a level of consistency between officers within a local authority, and national consistency between local authorities.
- 4.3 The online penalty calculator is designed for officers to input all details relating to the offence, provide details about the level of harm or potential harm, culpability of the offender, and any mitigating factors. The calculator will produce the relevant penalty notices and covering letters, saving lots of officer time in drafting.
- 4.4 It is anticipated that this updated policy will make the process of issuing civil penalties more streamlined, efficient and consistent and result in fewer appeals or where appeals are made, reduce the likelihood of appeals being upheld or of penalty amounts being reduced.
- 4.5 Justice for Tenants is currently working with at least 90 local authorities who have already adopted or are also looking to adopt this model policy and civil penalty calculator. Nationally hundreds of civil penalties have been issued using the template policy and penalty calculator, and to date there have been no significant tribunal decisions questioning or criticising the template policy.
- 4.6 As the current civil penalty approach is contained within the body and appendices of the Housing Standards Enforcement Policy 2021, creation of a standalone civil penalty policy necessitates amendments to that policy. All references to the calculation of civil penalties have been removed from the enforcement policy and instead signpost to the new Civil Penalties Policy. Other minor and consequential amendments were made, summarised on page three of the updated Housing Standards Enforcement Policy.
- 4.7 The Renters' Rights Bill is set to create many new housing-related offences and imposes a duty on Local Housing Authorities to enforce those provisions via financial penalties or prosecution. The Council will need to report to government on the number and value of financial penalties issued. The income from civil penalties

is ring-fenced for furthering private sector housing enforcement work, and government expects this to income to increase significantly and be invested in expanding private sector housing enforcement over the coming years.

- 4.8 It is acknowledged that this new Civil Penalties Policy will need to be reviewed and re-approved by the Executive once the Renters' Rights Bill provisions are enacted, which is expected to be over the next 12-24 months. However, as outlined above it is important to ensure the Council's approach to imposing civil penalties is robust in the meantime, and additionally implementing now will give officers time to be trained and confident in its use with familiar scenarios before the expansion to novel duties. A thorough review of the Housing Standards Enforcement Policy will also need to be undertaken in light of the new duties imposed by the Renters' Rights provisions once this Bill receives Royal Assent and there is more certainty and guidance around these requirements.

## **5. Alternative Options and Reasons for Rejection**

- 5.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Not bring forward a new and amended policy.

Our current approach to determining civil penalties is not consistent with the recent Upper Tribunal decisions, in particular Leicester CC vs Morjaria. This means that our current approach to calculating penalties will be at increasing risk of challenge. Therefore updates to the civil penalties policy are necessary. Changes to the Housing Standards Enforcement Policy are necessary for the creation of the new, compliant policy. Furthermore, it is important the Council policies are reviewed regularly to ensure that they are able to meet customer needs, service needs and are legislatively sound. This option is therefore rejected.

Option 2: Amend but retain as a combined policy.

Owing to the level of detail and complexity contained within the new civil penalties policy, coupled with the benefits of being consistent with the approach taken by numerous other local authorities, means combining the policies would make both unwieldy, difficult to use and less effective. This option is therefore rejected.

## **6 Conclusion and Reasons for Recommendations**

- 6.1 It is important that the Council has up to date policies and procedures for its statutory and key service areas and it is important that they are legislatively and operationally sound. A periodic review of policies is therefore appropriate.

## **Decision Information**

<b>Key Decision</b>	Yes - Community threshold met
<b>Subject to Call in</b>	Yes

<b>If not, why not subject to call in</b>	Not applicable
<b>Ward(s) Affected</b>	All wards

## Document Information

<b>Appendices</b>	
<b>Appendix 1</b>	Housing Civil Penalties Policy
<b>Appendix 2</b>	Housing Standards Enforcement Policy
<b>Appendix 3</b>	ECIA – Housing Civil Penalties Policy
<b>Background Papers</b>	None
<b>Reference Papers</b>	None
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<b>Corporate Director Approval (unless Corporate Director or Statutory Officer report)</b>	Ian Boll, Corporate Director – Communities, 2 May 2025