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Ref: Cabinet/Agenda
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CABINET

14 MARCH 2019

A meeting of the Cabinet will be held at **7.00 pm on Thursday, 14 March 2019** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Bayford (Chairman); Councillors: Savage, Ashbee, Game and I Gregory

AGENDA

Item
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST**

To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest form attached at the back of this agenda. If a Member declares an interest, they should complete that form and hand it to the officer clerking the meeting and then take the prescribed course of action.

3. **MINUTES OF PREVIOUS MEETING** (Pages 3 - 4)

To approve the summary of recommendations and decisions of the Cabinet meeting held on 29 January 2019, copy attached.

4. **CORPORATE PERFORMANCE REPORT QUARTER 3 2018-19** (Pages 5 - 28)

5. **POLICY FOR IMPOSING FINANCIAL PENALTIES UNDER THE HOUSING ACT 2004 AND HOUSING AND PLANNING ACT 2016** (Pages 29 - 60)

6. **HOUSEHOLD WASTE DUTY OF CARE FIXED PENALTY NOTICES** (Pages 61 - 66)

7. **Q3 BUDGET MONITORING** (Pages 67 - 78)

8. **PETITION RESPONSE - MARGATE MUSEUM AND THE MAYOR'S PARLOUR** (Pages 79 - 86)

Declaration of Interest form - back of agenda

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CABINET

Minutes of the meeting held on 29 January 2019 at 7.00 pm in Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Present: Councillor Bayford (Chairman); Councillors Savage, Ashbee, Game and I Gregory

In Attendance: Councillors Campbell, Connor, Crow-Brown, Dexter, Edwards, S Piper, Rogers, Rusiecki, D Saunders, M Saunders, Shonk, Townend, Wright and Jaye-Jones

553. APOLOGIES FOR ABSENCE

There were no apologies received at the meeting.

554. DECLARATIONS OF INTEREST

There were no declarations of interest.

555. MINUTES OF PREVIOUS MEETING

Councillor Savage proposed, Councillor Ashbee seconded and Members agreed the minutes as a correct record of the meeting that was held on 15 January 2019.

556. BUDGET 2019-20 REPORT

This item was withdrawn.

557. CONTAMINATED LAND STRATEGY - REVISED OCT. 2018

Cabinet considered the proposed strategy that was aimed at fulfilling the Council's statutory obligations, particularly in relation to Part IIA of the Environmental Protection Act 1990. The Act placed a statutory duty on local authorities to identify land which posed an unacceptable risk to human health or other named receptors. The revised Contaminated Land Strategy had to reflect current best practice and provide a framework for prioritisation of potential sites of concern. It would also be used for conducting commercial research upon request.

Whilst this strategy was a statutory requirement under this Act, it was also linked to Thanet District Council's Planning Policies and Corporate Priorities. The strategy was reviewed in line with changes to legislation, guidance and budget restrictions.

Councillor Campbell spoke under Council Procedure Rule 20.1.

Councillor Game proposed, Councillor Savage seconded and approved the Contaminated Land Strategy 2018-2023.

558. ASSET MANAGEMENT - SURPLUS PROPERTY AND LAND

Cabinet was requested to progress for disposal and retention a number of properties and land listed in the Annex 1 and Annex 2 to report. Cabinet agreed that the assets listed for Community Asset transfer would be transferred using the appropriate framework detailed in the Community Asset Transfer Policy that took into account community use. On the other hand, Cabinet also agreed to dispose the other properties using the approved disposal framework.

The following Members spoke under Council Procedure Rule 20.1:

Councillor S. Piper;
Councillor Crow-Brown;
Councillor Campbell.

Councillor Gregory proposed, Councillor Savage seconded and Cabinet agreed the following:

1. To progress the following property and land listed in the report for Community Asset transfer using the appropriate framework. All assets will be transferred following the Community Asset Transfer policy. They will not be transferred at nil value but at a value taking into account the community use;
 - i. Garlinge Pavillion Margate, Hartsdown Pavillion Margate and Northdown Park Pavillion Margate to an established Sports and Social club;
 - ii. Victoria Gardens Broadstairs to Broadstairs & St Peters Town Council;
 - iii. Albion Gardens Ramsgate to Ramsgate Town Council or other qualifying community organisation;
 - iv. Newgate Gap Shelter Margate to a qualifying community organisation;
 - v. Land and Toilets Minster Plot 1 and Plot 2 to Minster Parish Council;
 - vi. Land and property at the Oval Cliftonville to a qualifying community organisation;
 - vii. To approve a consultation to appropriate land for community and social use at Hartsdown Margate adjacent to Margate football club.

2. To progress the following property and land listed in the report through the approved disposal framework.
 - i. Land at the rear of the Tudor house Margate taking into account the grade 2 listed status of the adjacent property;
 - ii. The closed toilet at Beresford Gap, the closed toilet at Marina Road Ramsgate, the closed toilet at Minnis Bay Birchington, the closed toilet at Park Road Margate;
 - iii. The closed toilet at Margate Cemetery but restricted to bereavement use;
 - iv. The closed toilet at Albion street Broadstairs to Broadstairs & St Peters Town Council;
 - v. Transfer only part of the title of the land to the owner of the Nayland Rock Hotel. The part to be retained by Council is the access/egress from Canterbury Road adjacent to Canterbury Crescent. The area fronting the Nayland Rock will be transferred to the owner of the Nayland Rock Hotel.

Meeting concluded: 7.15 pm

Corporate Performance Report Quarter 3 2018-19

Cabinet	14 March 2019
Report Author	Tim Willis, Deputy Chief Executive and S.151 Officer
Portfolio Holder	Councillor Ian Gregory, Cabinet Member for Financial Services and Estates
Status	Information
Classification:	Unrestricted
Key Decision	No
Ward:	All Wards

<p>Executive Summary: This report presents the latest Corporate Performance Report up to 31 December 2018 setting out the performance of the Council against the Corporate Plan.</p>
<p>Recommendation(s): To note the Council's performance for the period up to 31 December 2018.</p>

CORPORATE IMPLICATIONS	
Financial and Value for Money	All activities listed have been planned within the Council's agreed budget. Remedial actions will usually be carried out within existing budgets, where this is not possible funding proposals will be taken through the appropriate channels in keeping with the Council's established financial controls.
Legal	There are no legal implications directly arising from this report.
Corporate	This is the monitoring report against the Corporate Priorities as agreed at Council on 15 October 2015 and details the performance against the targets set.
Equalities Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p>

	Please indicate which aim is relevant to the report.	
	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it	✓
	Foster good relations between people who share a protected characteristic and people who do not share it.	
<p>The report looks to monitor the performance of the Council across all the residents within the District.</p> <p><i>An Equalities Impact Assessment has been undertaken and there is no reason to state at this time that the content of the Corporate Priorities will negatively impact on any groups with protected characteristics. The priorities focus on improving the quality of life in Thanet for all. Opportunities to further the aims of the Duty will be investigated during equality impact analysis of individual projects, plans and strategies arising from the priorities.</i></p>		

CORPORATE PRIORITIES	
A Clean and Welcoming Environment	✓
Promoting Inward Investment and Job Creation	✓
Supporting Neighbourhoods	✓

CORPORATE VALUES	
Delivering Value for Money	✓
Supporting the Workforce	✓
Promoting Open Communications	✓

1.0 Introduction and Background

- 1.1 The Council's Corporate Plan (CP) 2015-2019 was approved by Council on 15 October 2015. It sets out three key priorities the Council will focus on over the next four years with three corporate values that identify the way the council will work in order to deliver its priorities.
- 1.2 Annex 1 shows trend information on Key Performance Indicators and contextual information to ascertain the progress of the District against the corporate priorities and values.

2.0 Current Performance

2.1 The information attached outlines the Council's performance for the quarter ending December 2018. The following table summarises performance against targets:

Section of Report	R	A	G
Clean and Welcoming Environment	2	1	3
Supporting Neighbourhoods	5	1	4
Promoting Inward Investment and Job Creation	1	0	2
Statistical Information	2	2	6
Total	10	4	15

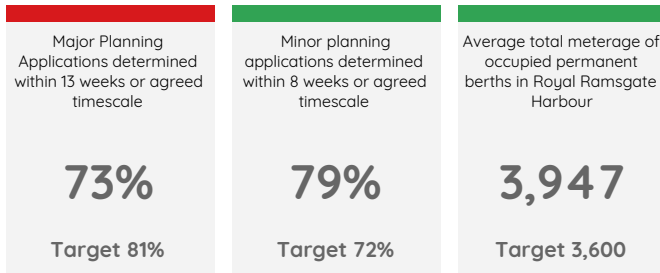
2.2 A Clean and Welcoming Environment

% of Environmental Health service requests responded to in the service standard response time	Missed Bins as % of bins collected	% of household waste sent for reuse, recycling and composting	% streets with litter below acceptable levels	% streets with detritus below acceptable levels	% streets with graffiti below acceptable levels
96%	0.16%	36%	10%	5.1%	0.3%
Target 95%	Target 0.15%	Target 36.4%	Target 5%	Target 7%	Target 1.4%

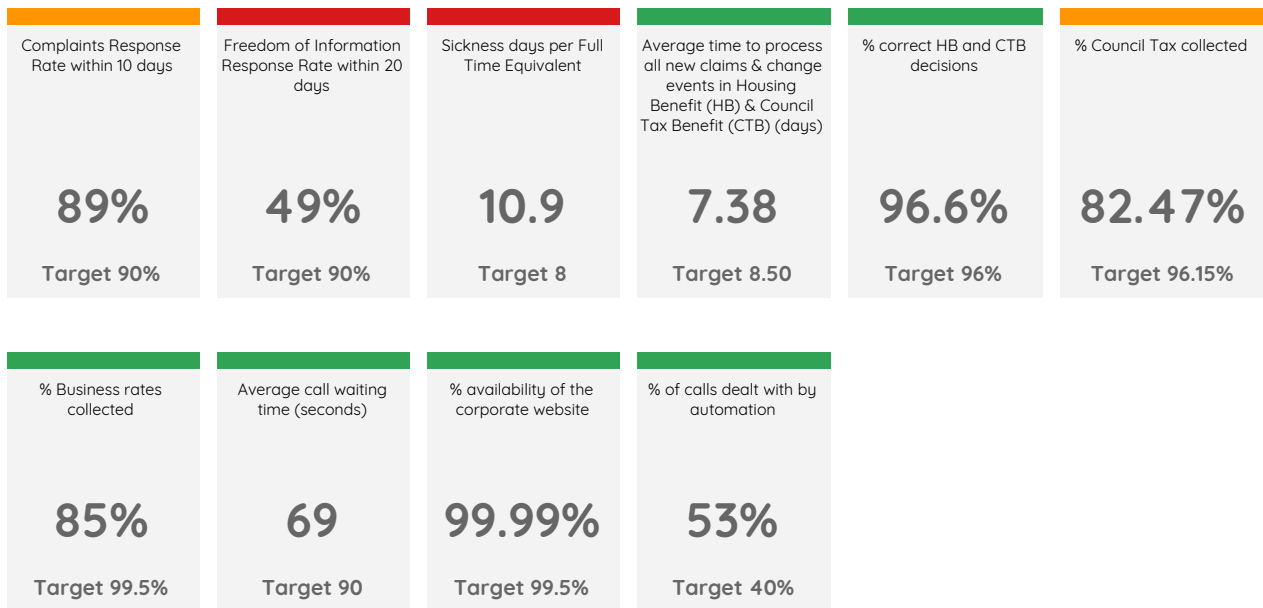
2.3 Supporting Neighbourhoods

% of anti-social behaviour service requests responded to in the service standard response time	Empty homes brought back into use	Number of dwellings where action taken to improve living conditions	Number of homeless cases prevented	Average time taken to make homelessness decisions
92%	37	80	123	54
Target 95%	Target 31.75	Target 71	Target 76	Target 28
Average number of days in hotel accommodation	Average re-let time in days (all stock including major works)	Current tenant arrears as a percentage of the projected annual rental income	Overall customer satisfaction with day to day repairs	Percentage of HRA capital programme spent
88	22.41	4.48%	99.7%	26.4%
Target 38	Target 20	Target 1.5%	Target 98%	Target 100%

2.4 Promoting Inward Investment and Job Creation



2.5 Statistical Information



3.0 Options

3.1 Cabinet to note the content of this report.

Contact Officer:	Hannah Thorpe – Head of Communications and Digital
Reporting to:	Tim Willis – Deputy Chief Executive and S.151 Officer

Annex List

Annex 1	Annex 1 – Key Performance Trends
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Background Papers

Title	Details of where to access copy
Corporate Priorities 2015-2019	http://tdc-mgapp-01:9070/ieListDocuments.aspx?CId=141&MId=4084&Ver=4
Corporate Priorities 2015-2019, Equalities Impact Assessment	Email: Carol.cook@thanet.gov.uk

Corporate Consultation

Finance	Matthew Sanham, Interim Head of Finance and Procurement
Legal	Tim Howes, Director of Corporate Governance & Monitoring Officer

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Annex 1 Corporate Performance Report - Performance Indicators

Thanet District Council

Update from the Chief Executive

At the end of Quarter 3 we've continued to see steady performance against our key corporate priorities with 15 targets meeting or exceeding their target.

Highlights this quarter include some areas recording their highest levels of performance during the four year plan period which is encouraging to see and is thanks to the continued dedication of our staff.

As an example, the district's recycling rate has continued to increase and is now at its highest level in the plan period. Information to the public and training of our staff have ensured that levels of

contaminated waste have reduced and as a result we expect the target to be met next quarter. The levels of Environmental Health service requests responded to within the service standard are now exceeding target at 96%, which is another service high thanks to a fully resourced team.

The numbers of empty properties brought back into use are well above target and a plan period high, with 143 homes brought back into use over the past 12 months. Despite the increasing challenge of homelessness at both a local and national level, additional resources within the housing team have also meant that the number of homeless cases being prevented are well beyond the expected target and the highest level on record - with 213 cases prevented for both quarters in 2018 compared to 99 for the same period in 2017. Although the average time taken to make homelessness decision and the number of days in hotel accommodation remains below target, significant progress is being made and the trend is now moving in the right direction.

We will continue to review the areas where performance is below target to ensure that available resources are being directed to priority services.



The targets are RAG rated

Red	Below target.
Amber	Actuals are within 5% of the target.
Green	At target or above target.
	Does not have a target for information.

A Clean and Welcoming Environment

We want to encourage pride in our district by keeping Thanet clean. We are determined frontline services get it right.



Green

% of Environmental Health service requests responded to in the service standard response time
(LI369) (rolling 12 months)



The team has worked hard to continually increase their response times. Having a fully resourced team continues to have a positive impact on the figures with the target being exceeded.

Target 95% Higher figure is best

Red

Missed Bins as % of bins collected
(rolling 12 months)



We continue to work hard to keep missed bins to a minimum despite challenging issues, such as vehicle maintenance and [ongoing road access issues](#). The vehicle replacement programme is helping to tackle this as the new vehicles are more flexible and agile. The missed bin collection still averages around 50 missed bins per day out of around 18,000 successful daily collections

Target 0.15% Lower figure is best

Amber

% of household waste sent for reuse, recycling and composting

(NI 192) (rolling 12 months)



This is the best recycling rate in the service plan period. We're working hard to improve overall performance through regular training of staff, by not contaminating recycling streams, issuing information to the public regarding contamination and ongoing education on recycling to increase [resident participation](#).

Target 36.4% Higher figure is better

Number of dumped rubbish incidents reported on council-owned land

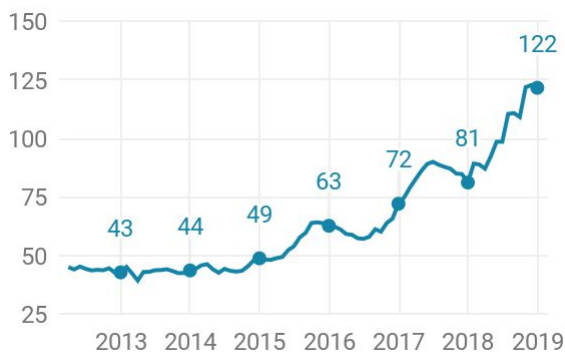
(LI364) (rolling 12 months sum)



We are continuing to use more powers to enforce against dumped rubbish and are making it easier for the public to [report dumped rubbish incidents](#), hence the continued increase in reports. Our long-term plan is to increase targeted enforcement and court prosecutions to start to reduce the number of incidents.

Number of street scene enforcement actions

(LI362) (rolling 12 months)



1,460 street scene enforcement actions were carried out in the last 12 months. This now includes all enforcement actions undertaken. We continue to utilise more of the legislative tools and powers available to the enforcement team.

Number of enforcement actions (Litter Fixed Penalty Notices - Environmental Enforcement Contract)

(LI362) (rolling 12 months)



1,675 Litter Fixed Penalty Notices have been issued over the last 12 months.

Number of combined street scene enforcement actions
(LI362) (rolling 12 months)



3,135 street scene enforcement actions were carried out in the last 12 months

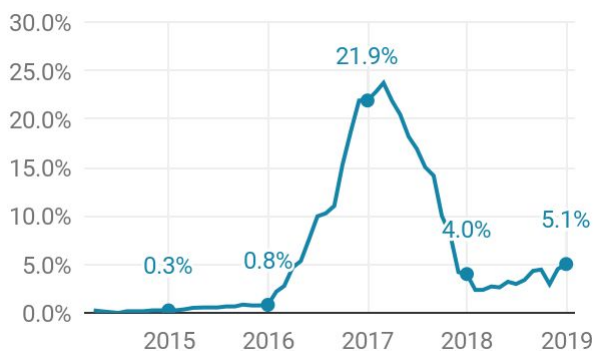
Red
% streets with litter below acceptable levels
(NI195a) (rolling 12 months)



This quarter has seen an increase due to a rise in the amount of general litter being left on the streets. All available resources are deployed 7 days a week to tackle this increasing problem in high footfall areas. We now carry out more stringent inspections, which is helping us to continue to target our resources more effectively. We will continue to work hard in targeting our resources to enable us to achieve the target.

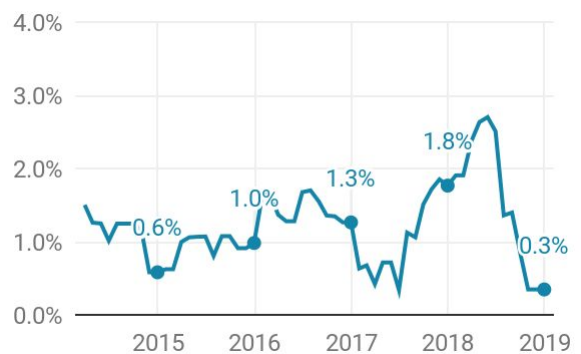
Target 5.0% Lower figure is better

Green
% streets with detritus below acceptable levels
(NI195b) (rolling 12 months)



Our fleet of Mechanical sweepers, which became operational in 2017 still significantly contribute to the improvement in our performance.

Green
% streets with graffiti below acceptable levels
(NI195c) (rolling 12 months)



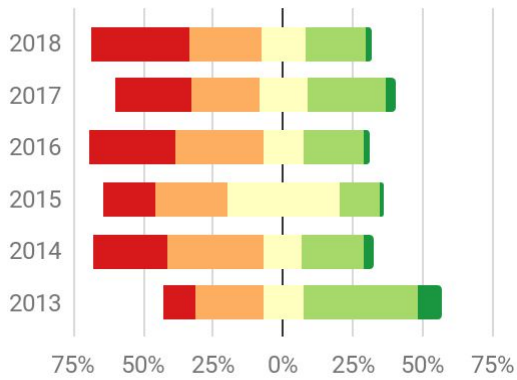
We have seen previously an increase of graffiti incidents, however, our new graffiti cleaning and enforcement service is starting to reduce these figures.

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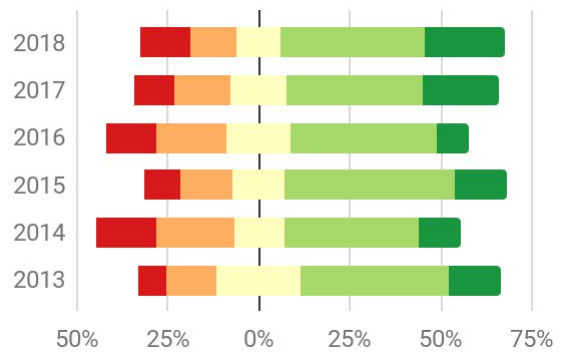
Target 7.0% lower figure is better

Public opinion of the Street Cleaning Service (annual survey)

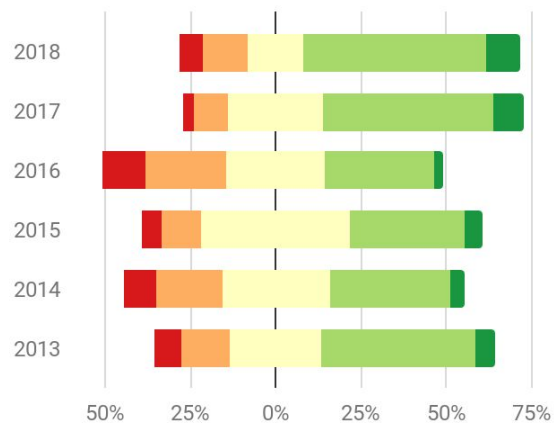


Target 1.4% lower figure is better

Public opinion of the Recycling Service (annual survey)



Public opinion of Parks and Open Spaces (annual survey)



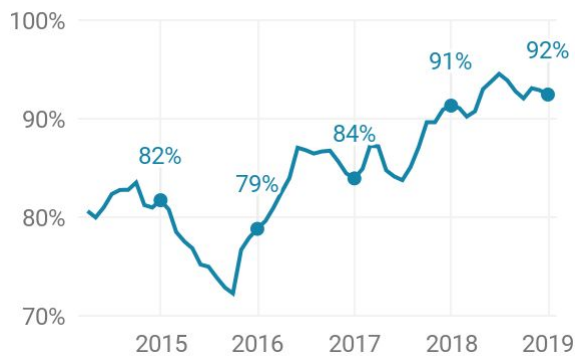
Supporting Neighbourhoods

We will work with partner agencies through the Thanet Health and Wellbeing Board to support people to make better lifestyle choices and operationally through our range of services provided directly to residents.



Amber

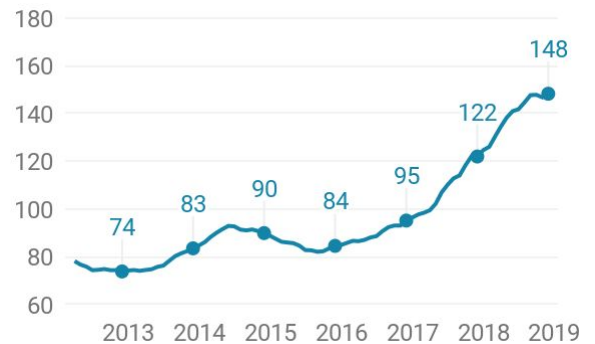
% of anti-social behaviour service requests responded to in the service standard response time
(rolling 12 months)



The team has worked hard to increase the number of cases which are receiving response rates within the service standard. We aim to continue to improve this and introduced this indicator specifically to address this.

Target 95% Higher figure is best

Number of Crimes per 1,000 of the population
(rolling 12 Months) (LI300)



At the November Executive, Policy & Community Safety Scrutiny Panel, the District Commander, Chief Inspector Adley explained that the changes in crime recording processes were continuing to contribute to the increases in crime across the whole of Kent

The figures now reflect the extent of offences committed against a victim.

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Green

Empty homes brought back into use

(per quarter) (LI401) (rolling 12 months)



The empty property team has continued to see strong results in the quarter and have exceeded their rolling target for the period, with 143 empty homes brought back into use over the past 12 months. The team's work combines support and encouragement for owners with robust enforcement when appropriate. We have a dedicated email address for empty property reports; empty.homes@thanet.gov.uk. A short video is available online to further raise the initiative's profile:

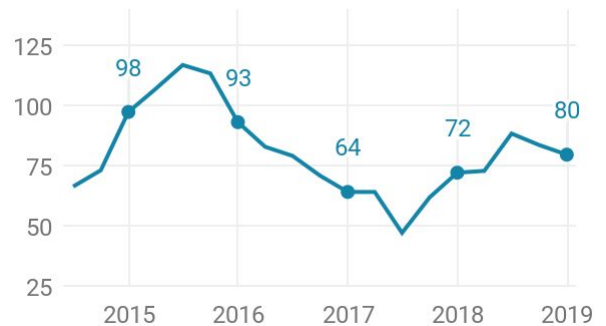
<https://www.thanet.gov.uk/your-services/using-empty-properties/empty-property/>

Target 31.75 Higher figure is best

Green

Number of dwellings where action taken to improve living conditions

(category 1 and 2 hazards) (LI543)



A strong performance during the first two quarters of 2018/19 has seen the rolling average increase to 84, exceeding the target. During the first two quarters, a total of 194 homes were improved, compared to 179 for the same period last year. The team continues to pursue proactive initiatives, including a selective licensing inspection programme and a number of rogue landlord interventions that have increased the number of homes that have been inspected. We continue to take a robust approach to enforcement when we identify hazards in homes that we inspect, and ensure that successful prosecutions are highlighted with the media.

Target 71 Higher figure is best

Green

Number of homeless cases prevented

(LI405D) (per quarter) (rolling 12 months)



The Homelessness Reduction Act 2017 has been in place for 3 quarters and the new focus on homeless prevention has proven successful. Over the last 12 months, we have had the highest figures on record and are working to increase this number further. Most have been achieved through access to discretionary housing payments and we have piloted deploying a dedicated Landlord Liaison Officer as an outreach worker to enhance the relationships with landlords. The new duties have made a positive impact and the aim is to increase prevention activity further.

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Target 76 Higher figure is best

Red

Average time taken to make homelessness decisions

(rolling 12 months)



This quarter has shown a further reduction of the average time to make a homelessness decision. All legacy cases have been reviewed and the majority of cases concluded.

The Homelessness Reduction Act 2017 provides an opportunity for investigations to be completed earlier in the process, and as a result, we anticipate that there will be a further reduction in the time taken to make decisions.

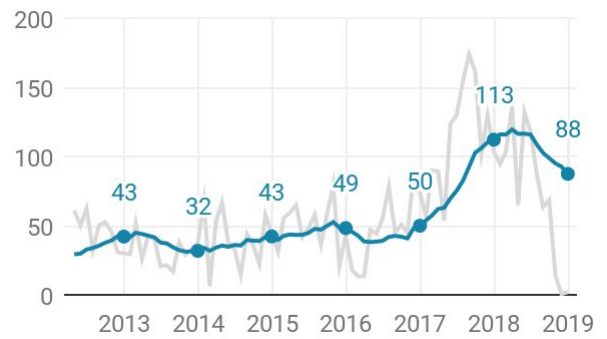
This is an area of work that is operationally being monitored weekly and we, therefore, anticipate that this indicator will improve.

Target 28 Lower figure is better

Red

Average number of days in hotel accommodation

(rolling 12 months)



This is a priority and is monitored monthly within the service. The service continues to work hard to ensure that households are not placed in hotel accommodation and alternative arrangements are made if a placement is required.

There have been no placements of families in this type of accommodation within the quarter and only one household placed at the quarter end.

There will always be some form of reliance on this type of accommodation for out of hours emergencies when no other options are available.

Target 38 Lower figure is better

Number of empty homes in the district

(empty for more than 6 months)

Description	Mar-2016	Sep-2018	% change since Mar 2016	Change since Mar 2016
Second Homes (Unoccupied and furnished)	1,370	1,622	18%	
Unoccupied and unfurnished	614	522	-15%	-92
Unoccupied and unfurnished for more than 2 years	244	261	7%	17
Unoccupied and unfurnished, requires or undergoing major repair and/or structural alteration	106	217	105%	111
Property left empty by a deceased person, waiting for probate or letters of administration to be granted	103	218	112%	115
Other	51	63	24%	12
Total (Excluding Second homes)	1,118	1,281	15%	163
Total (including second homes)	2,488	2,903	17%	415

Since March 2016 the overall number of empty properties in the district has increased by 18%. This is despite the continued good work completed by the housing service to bring empty homes back into use. The most significant increase has been for those properties that require or are undergoing major repairs or alterations. The financial viability of these projects is often a barrier to owners completing the work and the service targets the most problematic empty properties for proactive intervention. There has also been an increase in the number of properties empty and waiting for probate to be granted. The underlying causes of these increases are complex, but background economic issues, linked to the local housing market play a significant role. Over a longer time period, since 2008 the overall number of empty properties has fallen. Second homes have also been increasing over this period.

Red

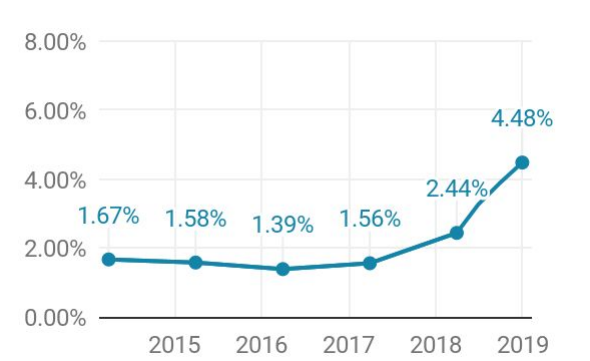
Average re-let time in days (all stock including major works)



Performance is outside target. During this period there have been a number of properties that have required extensive building works before they were able to be

Red

Current tenant arrears as a percentage of the projected annual rental income



Performance is outside target, with Universal Credit (UC) continuing to have a negative impact on arrears. As at the end of Dec 2018, there were 662 UC cases in Thanet and these

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re-let. These works have included new kitchens, bathrooms, internal structural works and damp treatments. We have joint weekly meetings with all parties to deliver improvements although individual properties requiring extensive works have had a disproportionate impact on turnover times.

made up £381,762 of the arrears. EKH has been working with the four client Councils to develop proposals which would provide additional support for households moving to UC. This is to ensure that suitable resources are available to manage the continued rollout of UC and to revise the performance measures for rent collection. These proposals have been approved by Cabinet and are being considered by the other Client Councils.

Target 20 Lower figure is better

Target 1.5% Lower figure is better

Green

Red

Overall customer satisfaction with day to day repairs

Percentage of HRA capital programme spent



26.4%

Satisfaction has met target for the quarter reflecting the high level of performance overall from our main repairs contractor, Mears.

The figures are reflective of delays in developing larger scale projects and programmes.

£936,203 has been committed within the 2018/19 financial year and a detailed review has also taken place with TDC Finance to reduce projected spend for the remainder of the year.

EKH has been working with the four client Councils to develop proposals which will improve performance and delivery. These proposals have been approved by Cabinet and are being considered by the other Client Councils.

Target 98% Higher figure is better

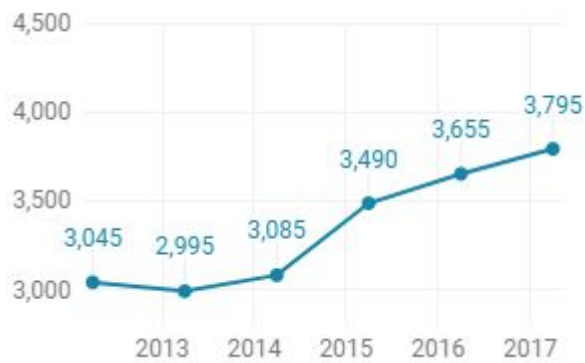
Target 100% (Year End Target) Higher figure is better

Promoting Inward Investment and Job Creation



Source: Jeff Spicer/Getty Images

Count of Enterprises in Thanet
(nomis data)



Thanet has seen 27% increase in the number of enterprises from March 2012. This increase is more than the South East increase of 20% and the Kent increase of 21%

Higher figure is better

All people - Economically active - In employment
(nomis data)



The figures show a decrease in the number of those economically active (in employment).

Higher figure is better

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Red

Major Planning Applications determined within 13 weeks or agreed timescale

(NI157a) (rolling 12 months)



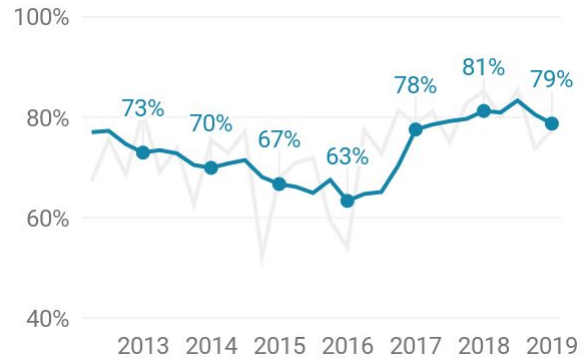
Although this quarter 78% of major applications were determined in time, due to the increased rate of major applications and the large scale of the applications currently under consideration (including a strategic allocation at Westwood Cross), it is unlikely that the target will be reached by the end of the financial year. The expectation is for 75% to be in time. The amount of major applications determined has now increased above the total number determined last year.

Target 81% Higher figure is better

Green

Minor planning applications determined within 8 weeks or agreed timescale

(NI157b) (rolling 12 months)



77% of minor applications determined in time or as agreed within Q3 which has improved on the Q2 performance. On target to achieve year rolling target.

Target 72% Higher figure is better

Visitor Nights

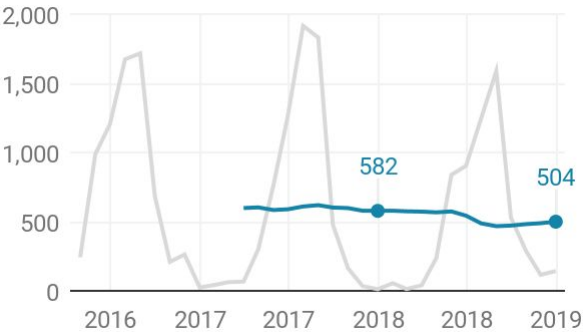
(LI730) (rolling 12 months)

Green

Average total meterage of occupied permanent berths in Royal Ramsgate Harbour

(LI137) (Average rolling 12 months)

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Higher figure is better

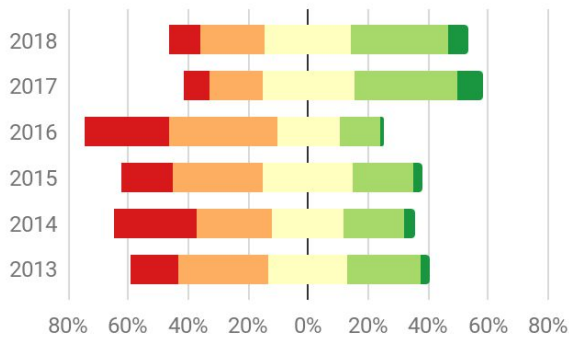


We are currently above the target.

Target 3,600 Higher figure is better

Statistical Information

Public opinion of whether the council provides Value for Money
(annual survey)



Although a slight decrease, this result is still positive in comparison to the trend in recent years, with 39% agreeing or strongly agreeing that the council provides value for money.

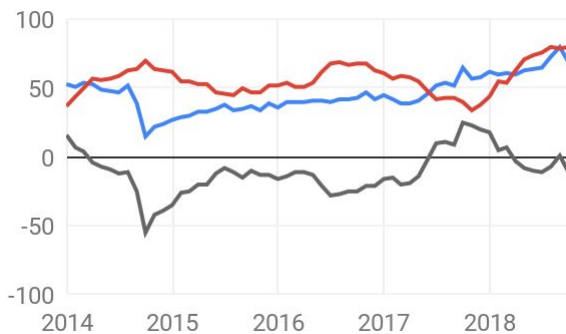
Higher figure is better

Thanet District Council Full time Equivalent count



Higher figure is better

Staff Starters and Leavers headcount
(rolling 12 months totals)



Over the last 12 months there have been:

* **75 Leavers**

* **72 Starters**

Meaning a net decrease of 3 staff.

Registration rate for voting following annual canvas (%)
(LI456)



Higher figure is better

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Number of complaints made to the Standards Committee (LI519)



Lower figure is better

Number of complaints (rolling 12 months)



Following a review of systems, processes and resources, a large number of complaints were identified in 2017 as being excluded from the statistic. These are now being reflected in the numbers, which are based on a rolling 12 months.

Lower figure is better

Amber

Complaints Response Rate within 10 days (rolling 12 months)



Due to a new centralised process and additional monitoring there has been an improvement in response times. This measure is expected to reach the 90% target next quarter..

Target 90% Higher figure is better

Red

Freedom of Information Response Rate within 20 days (rolling 12 months)



Since the last quarter there has been a slight improvement due to a refresh in the way in which FOI and SAR requests are dealt with. The expectation is that these changes will ensure that performance will continue to improve.

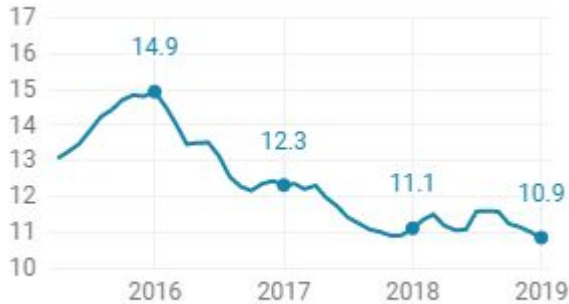
Target 90% Higher figure is better

Agenda Item 4

Annex 1

Red

Sickness days per Full Time Equivalent (quarterly)

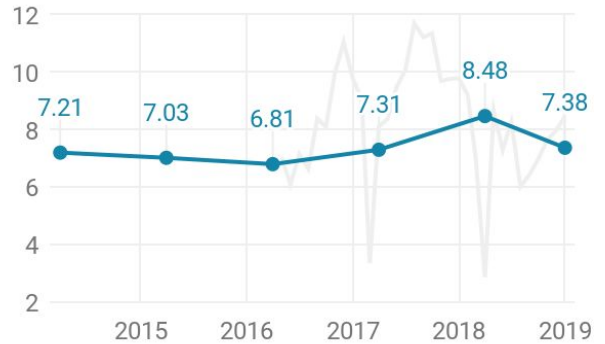


The target is 8 days per year. Performance remains below the target but has improved markedly after management action.

Target 8 Lower figure is better

Green

Average time to process all new claims & change events in Housing Benefit (HB) & Council Tax Benefit (CTB) (days)

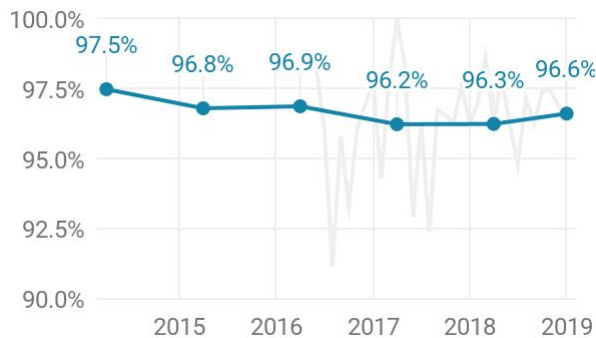


Speed of processing at Thanet continues to trend positively with YTD performance ahead of target

Target 8.50 Lower figure is better

Green

% correct HB and CTB decisions



Target 96% Higher figure is better

Amber

% Council Tax collected

82.47%

Day to day collection of Council Tax is on track. The percentage this quarter has dropped due to one off activity which didn't apply last year. This has included a review of the Single Person Discount Scheme. Proactive recovery is underway and Universal Credit Council Tax Support customers are being contacted to maximise collection and meet end of year target.

Target 96.15% (Year End Target) Higher figure is better

Agenda Item 4 Annex 1

Green

% Business rates collected

85%

Target: 99.5% (Year End Target) Higher figure is better

Green

% availability of the corporate website



Target 99.5% Higher figure is better

Green

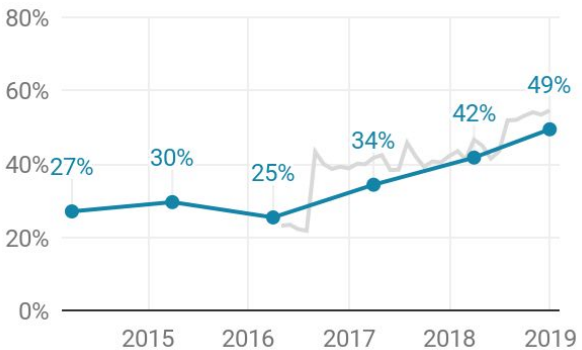
Average call waiting time (seconds)



Target: 90 Lower figure is better

Green

% of calls dealt with by automation



Performance remains above profile for the month and YTD.

Target 40% Higher figure is better

Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016

Cabinet: **14 March 2019**

Report Author: **Richard Hopkins, Private Sector Housing Manager**

Portfolio Holder: **Cllr Lesley Ann Game, Cabinet Member for Housing and Safer Neighbourhoods**

Status: **For Decision**

Classification: **Unrestricted**

Key Decision: **No**

Ward: **All Wards**

Executive Summary:

The council has a statutory duty to ensure that all private sector homes in the Thanet area are maintained in a safe condition and in pursuance of that duty it undertakes a range of enforcement activities. Owing to recent legislative changes, the council now has the power to impose a financial (civil) penalty of up to £30,000 as an alternative to prosecution for certain housing offences.

This report seeks the agreement of Cabinet to adopt a policy that would allow the council to impose such penalties for certain housing offences committed on or after 01 April 2019.

Recommendation(s):

That Cabinet:

1. Approves the adoption of the proposed “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” annexed to this report.
2. Delegates authority to the Head of Housing and Planning, in consultation with the Cabinet Member for Housing and Safer Neighbourhoods, to approve minor amendments to the policy.

CORPORATE IMPLICATIONS

<p>Financial and Value for Money</p>	<p>The Government introduced these new powers as it is keen to see more enforcement action taken by local authorities against rogue landlords. The financial implications for the council are therefore positive.</p> <p>At present, any fines arising from successful prosecutions are collected by the courts and passed to the Treasury. The council may be awarded some or all of its prosecution costs. If the proposed policy is adopted, the council will be entitled to retain all monies collected, with the only proviso being that they are used to fund private sector housing enforcement activities.</p>
<p>Legal</p>	<p>Section 126 and Schedule 9 of the Housing and Planning Act 2016 amended the Housing Act 2004 to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences. Financial penalties of up to £30,000 may now be imposed under section 249A of the Housing Act 2004.</p>

	<p>The Housing and Planning Act 2016 also introduced banning orders. A person who breaches a banning order commits an offence under section 21(1) and is liable on summary conviction to imprisonment, or to a fine, or to both. However, a local housing authority may instead impose a financial penalty of an amount not exceeding £30,000 under section 23.</p> <p>In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016. The Ministry of Housing, Communities & Local Government issued such statutory guidance in April 2018, namely: <i>Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities</i>.</p> <p>The guidance requires local housing authorities to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty, and the level of financial penalty it should impose in each case. Having regard to the statutory guidance, the council has developed the proposed policy.</p>
<p>Corporate</p>	<p>The Government expects local housing authorities to adopt a financial penalties policy to help them improve housing conditions in the private sector. While it is not mandatory to do so, the council could face criticism if it failed to adopt a policy.</p> <p>The proposed policy links to the following corporate priorities and values:</p> <p><u>Priority 1: A clean and welcoming environment</u></p> <p>A relevant offence could relate to a private landlord's failure to manage waste at a property they own. In the knowledge that financial penalties are an available enforcement option for the council, some landlords may be deterred from committing such offences.</p> <p><u>Priority 2: Supporting neighbourhoods</u></p> <p>Having the additional enforcement option of imposing financial penalties will assist the council in ensuring local residents have access to good quality housing that is safe and affordable.</p> <p><u>Value 1: Delivering value for money</u></p> <p>Any funds arising from the collection of financial penalties will help to ensure that the council's private sector housing enforcement services are delivered in the most cost effective and efficient way.</p>
<p>Equality Act 2010 & Public Sector Equality Duty</p>	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p>

	Please indicate which aim is relevant to the report.	
	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.	✓
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it.	
	Foster good relations between people who share a protected characteristic and people who do not share it.	
<p>Persons from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poor quality privately rented accommodation. Consequently, the council's enforcement activities often involves safeguarding the health, safety and welfare of persons with the protected characteristics of age and disability. Therefore, the enhanced enforcement capabilities provided by financial penalties will help to minimise disadvantage and contribute to the needs of many residents with protected characteristics.</p> <p>An Equality Impact Assessment has been undertaken and is annexed to this report.</p>		

CORPORATE PRIORITIES	
A clean and welcoming Environment	✓
Promoting inward investment and job creation	
Supporting neighbourhoods	✓

CORPORATE VALUES	
Delivering value for money	✓
Supporting the Workforce	
Promoting open communications	

1.0 Introduction and Background

- 1.1 Thanet District Council is a Local Housing Authority. As such, it has a statutory duty to keep private sector housing conditions in the Thanet area under review.

- 1.2 Our residents should have access to a home that does not have a detrimental effect on their health, safety or well-being. Therefore, the council uses a wide range of statutory powers to ensure that those responsible for private sector homes take the actions needed to prevent harm from occurring.

- 1.3 When in the public interest, it is sometimes appropriate for the council to punish those who contravene housing law. The sanction for such failures is usually prosecution in the criminal courts. However, the Housing and Planning Act 2016 has introduced the concept of financial (civil) penalties as an alternative to prosecution for certain housing offences.

1.4 However, before the council can issue financial penalties for certain housing offences, it must first have an adopted policy which is just and proportionate. The purpose of this report is to propose the adoption of such a policy.

2.0 The Current Situation

2.1 In the absence of an adopted policy, the council does not currently have the capability to impose financial penalties as an alternative to prosecution.

2.2 Nevertheless, the council is proactive in taking robust enforcement action when in the public interest to do so. As of January 2019, the council had successfully prosecuted 11 private sector landlords in the 2018/19 financial year (April 2018 to December 2018). The total amount of fines and victim surcharges handed down by the Magistrates' Court amounted to £41,820. This averages £3,802 per prosecution. Fines collected by the court are returned to the Treasury. The total amount of prosecution costs awarded to the council was £3,165, which averages £288 per case.

3.0 Relevant offences

3.1 Financial penalties may not be imposed as an alternative to prosecution for all housing offences investigated by the council. It is an option for nine specified offences.

3.2 The Housing and Planning Act 2016 introduced the option for eight pre-existing offences under the Housing Act 2004. They are:

- Failing to comply with an Improvement Notice;
- Failing to licence a house in multiple occupation ("HMO");
- Knowingly permitting the over-occupation of a licensed HMO;
- Failing to comply with the condition of an HMO licence;
- Failing to licence a house subject to selective licensing;
- Failing to comply with the condition of a selective licence;
- Failing to comply with an overcrowding notice in respect of a non-licensable HMO;
- Failing to comply with HMO management regulations.

3.3 The Housing and Planning Act 2016 also introduced a new offence of breaching a banning order. The power to impose a financial penalty for such an offence is available under that act.

3.4 The maximum financial penalty that can be imposed in respect of the above mentioned housing offences is £30,000. The actual penalty imposed in each case should reflect the severity of the offence, with the higher amounts reserved for the worst offenders.

3.5 The council cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate.

4.0 Options

4.1 There are three options available to the council, namely:

Agenda Item 5

Option 1: To adopt the proposed “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” annexed to this report.

Option 2: To adopt the proposed “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” annexed to this report, subject to amendment.

Option 3: To not adopt the proposed “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” annexed to this report.

- 4.2 In the event that the policy is adopted, with or without amendment, its ongoing ability to deliver just and proportionate sanctions will remain under review. While not expected, it is possible that minor anomalies arise in its application. It is therefore proposed that authority to approve minor amendments to the policy is delegated to the Head of Housing and Planning, in consultation with the Cabinet Member for Housing and Safer Neighbourhoods.

Contact Officer:	Richard Hopkins, Private Sector Housing Manager, 01843 577402
Reporting to:	Bob Porter, Head of Housing and Planning

Annex List

Annex 1	Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016
Annex 2	Equality Impact Assessment

Background Papers

Title	Details of where to access copy
Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities	Available at: https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016

Corporate Consultation

Finance	Matthew Sanham, Interim Head of Financial Services
Legal	Tim Howes, Director of Corporate Governance and Monitoring Officer
Communications	Hannah Thorpe, Head of Communications

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Thanet District Council

Private Sector Housing

Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016 (Draft Version 1)

01 April 2019

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Introduction

Financial penalties as an alternative to prosecution

Relevant housing offences

1. Section 126 and Schedule 9 of the Housing and Planning Act 2016 (“the 2016 Act”) amended the Housing Act 2004 (“the 2004 Act”) to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences.
2. Under section 249A of the 2004 Act, a local housing authority may now impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a “relevant housing offence”.
3. The relevant housing offences are offences under the 2004 Act, namely:
 - Failing to comply with an Improvement Notice (section 30);
 - Failing to licence a house in multiple occupation (“HMO”) under Part 2 (section 72(1));
 - Knowingly permitting the over-occupation of an HMO licensed under Part 2 (section 72(2));
 - Failing to comply with the condition of an HMO licence issued under Part 2 (section 72(3));
 - Failing to licence a house subject to selective licensing under Part 3 (section 95(1));
 - Failing to comply with the condition of a selective licence issued under Part 3 (section 95(2));
 - Failing to comply with an overcrowding notice in respect of a non-licensable HMO (section 139(7)); and
 - Failing to comply with HMO management regulations (section 234(3)).
4. A person who commits any of the above-mentioned offences without reasonable excuse is liable on summary conviction to a fine of any amount in the Magistrates’ Court. A financial penalty imposed by a local housing authority as an alternative must not exceed £30,000.

Breaches of banning orders

5. The 2016 Act also introduced banning orders under Chapter 2 of Part 2. A local housing authority may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a “banning order offence”. A banning order offence is an offence set out in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 Acts of Parliament are listed, including those listed above as relevant housing offences.
6. A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:
 - Letting housing;
 - Engaging in letting agency work;
 - Engaging in property management work.
7. A person who breaches a banning order commits an offence under section 21(1) of the 2016 Act and is liable on summary conviction to imprisonment, or to a fine, or to both. However, a local housing authority may instead impose a financial penalty under section 23 of the 2016 Act of an amount not exceeding £30,000.

Prosecution or financial penalty

8. A local housing authority cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate.

Burden of proof

9. The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, a local housing authority must therefore be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

Statutory guidance

10. In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the 2016 Act. The Ministry of Housing, Communities & Local Government issued such statutory guidance in April 2018, namely: *Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*.
11. The guidance requires local housing authorities to develop and document a policy which sets out:
 - When it should prosecute and when it should impose a financial penalty; and
 - The level of financial penalty it should impose in each case.
12. The guidance states that local housing authorities should consider the following factors to help ensure that any financial penalty is set at an appropriate level:
 - Severity of the offence;
 - Culpability and track record of the offender;
 - The harm caused to the tenant (actual and potential);
 - Punishment of the offender (the penalty should be proportionate to the offence and have a real economic impact);
 - Deter the offender from repeating the offence;
 - Deter others from committing similar offences;
 - Remove any financial benefit the offender may have obtained as a result of committing the offence.
13. This policy sets out how Thanet District Council ("the council") will impose financial penalties in accordance with relevant legislation and statutory guidance.

Commencement

14. This policy takes effect from 01 April 2019 and applies to all relevant offences ("relevant housing offences" and breaches of banning orders) committed on or after this date.

When a financial penalty is to be imposed

Crackdown on rogue landlords

15. The Government announced the introduction of financial penalties for relevant housing offences with a press release entitled: *“Tougher measures to target rogue landlords - New rules will help crackdown on rogue landlords that flout the rules and improve safety and affordability for renters.”* The Government is obviously keen to see more enforcement action taken against the small minority of rogue landlords who neglect their responsibilities.
16. Significantly, these new powers allow local housing authorities to retain the income received from financial penalties to fund private sector housing enforcement activities. This is clearly intended to help local housing authorities take more enforcement action.
17. The council will use the new powers robustly whenever it is appropriate to do so.

Determining an appropriate sanction

18. Each offence will be assessed on a case-by-case basis. However, the starting position is that the council will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.
19. The council may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with the policy set out below may not constitute a sanction of sufficient severity in relation to some offences, as the policy has prescribed ranges and is further restricted by the statutory maximum of £30,000. If the council is of the opinion that an offence is of such serious nature that it warrants a more significant financial sanction than that which could be imposed by this policy, it will normally seek to prosecute the offender(s).
20. The breach of a banning order under the 2016 Act is a serious offence, and the council will give careful consideration to the option of prosecution in such cases, as the courts have the power to impose a prison sentence as a punishment.
21. Prosecution may also be an appropriate course of action when an offender has committed the same offence on more than one occasion in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a more significant deterrent in some circumstances.
22. Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by the council and local media. Such publicity in respect of an offender may be in the public interest in certain circumstances. Naming and shaming also helps to deter others from committing similar offences. If an offender is subject to a financial penalty, their personal information will not be available in the public domain.
23. There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, the council will carefully review the merits of prosecution for every offence before making a final decision as to an appropriate sanction.

Determining the starting point for a financial penalty

Severity of the offence

24. A financial penalty may be of any amount up to the statutory maximum of £30,000. However, local housing authorities are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.
25. Having due regard to the statutory guidance published by Government, the council has developed the Table of Financial Penalties set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following factors:
- Culpability;
 - Track record;
 - Portfolio size;
 - Risk of harm.
26. The following paragraphs set out how each determinant is assessed.

Culpability

27. Culpability is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium. There are four culpability categories, namely:
- Very High;
 - High;
 - Medium;
 - Low.

Very High

28. This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium.

High

29. This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take appropriate and/or timely action. This category is subject to a 80% culpability premium.

Medium

30. This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium.

Low

31. This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This category is subject to a 40% culpability premium.

Track record

32. The council would expect a good landlord or agent to have very little contact with the council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition.
33. The second step in determining the amount of financial penalty relates to the offender's track record. A historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.
34. The council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:
- Any previous convictions for housing related offences;
 - Whether previously subject to a financial penalty for a housing related contravention;
 - Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
 - The number of genuine housing condition complaints received in respect of properties associated with the offender.
35. Following the review, the offender's track record will be classed as one of the following categories:
- Significant;
 - Some;
 - None or negligible.

Significant

36. Where there is evidence of multiple enforcement interventions by the council's Private Sector Housing Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

Some

37. This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

None or negligible

38. This category will be used if, following a review of the council's records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. The council may also exercise its discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales.
39. The descriptor "Negligible" has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in Thanet, this category will be used.

Portfolio size

40. The size of an offender's portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such the penalty should have regard to their ability to pay.
41. Taking into account the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.
42. The third step in determining the amount of financial penalty requires the council to allocate a portfolio size. There are four size categories which relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories are:
 - One unit of accommodation;
 - Two to four units of accommodation;
 - Five to 19 units of accommodation;
 - 20 or more units of accommodation.
43. A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation ("HMO").
44. The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.
45. Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.
46. The council will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment.
47. If the council cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

Risk of harm

48. The fourth step in determining the amount of financial penalty concerns the risk of harm associated with the offence. The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence.
49. The council will make an assessment of the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. The offence will be placed into one of the following four categories:
- Level 1;
 - Level 2;
 - Level 3;
 - Level 4.
50. To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high.

Level 1

51. This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories.
52. Any offence associated with the operation of an unlicensed premises under the HMO and selective licensing regimes will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.

Level 2

53. The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

Level 3

54. The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.

Level 4

55. The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

Table of Financial Penalties

56. Having made the four-step assessment described above, the council will determine the starting point for the financial penalty using the Table of Financial Penalties set out on the next page.

Table of Financial Penalties

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,500
		20 +	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500
		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20 +	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,500
		20 +	£12,500	£15,000	£17,500	£25,000
High (80% Premium)	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20 +	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20 +	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20 +	£10,000	£12,000	£14,000	£20,000
Medium (60% Premium)	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20 +	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20 +	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500
		20 +	£7,500	£9,000	£10,500	£15,000
Low (40% Premium)	Significant	1	£3,000	£4,000	£5,000	£8,000
		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20 +	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20 +	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20 +	£5,000	£6,000	£7,000	£10,000

Determining whether adjustment of the financial penalty is appropriate

Review

57. The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, the council will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be taken into account when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties.
58. Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and the council may take into account any factor deemed to be relevant.

Hardship (Landlord)

59. If at this stage of the process, the council is aware of the offender's personal situation and financial position, and is of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.

Hardship (Tenant)

60. If, owing to the imposition of a financial penalty on a landlord, the tenant will - through no fault of their own - experience hardship, the council may consider reducing the amount of financial penalty, but only in exceptional circumstances.

Previous offences

61. While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences require a more robust approach to punishment.
62. For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a *Significant* track record category is already in use for a certain offender, repeated offences where the *Culpability* is very high would be restricted owing to the *Risk of Harm* categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, the council may consider increasing the amount of financial penalty.

Scale of exposure

63. The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, it does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons exposed is higher than average, the council may consider increasing the amount of financial penalty.
64. A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

Actual harm

65. If actual harm has occurred, the council may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely the council will seek to review the financial penalty upwards.

Adjustment range

66. The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500.
67. The council will not, under any circumstances, vary the financial penalty by more than 50%, and is restricted by the statutory maximum of £30,000.

Decision making

68. If the council decides to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, it will make a record of its decision and notify the offender of the reasons for that decision.
69. To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by a senior manager of the council. In the first instance, the variation will be proposed by the Private Sector Housing Manager. The proposal will be reviewed by the Head of Housing and Planning, or an officer of similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the council and any reference to the Private Sector Housing Manager or the Head of Housing and Planning may be deemed to include a reference to any future equivalent post.

Right to make representations

Notice of Intent

70. Before imposing a financial penalty, the council must first give the offender notice of its intention to impose such a penalty. This type of notice is known as a “Notice of Intent”.
71. The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased.
72. For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, the council may at any time while the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, the council will still have the option to serve a Notice of Intent, but if it chooses to do so, it must serve the Notice of Intent within six months of the date the valid licence application was made.
73. The Notice of Intent must set out:
 - The amount of the proposed financial penalty;
 - The reasons for proposing to impose the financial penalty, and
 - Information about the right to make representations.

Written representations

74. Any person served with a Notice of Intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served.
75. Written representations may be made in respect of any matter.

Financial position

76. The offender may wish to submit information as to their financial position. If the council was aware of the financial position of the offender before serving the Notice of Intent, the council may have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make the council aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty.

False or misleading information

77. It is important to note that any person who supplies information to the council that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates’ Court to an unlimited fine.

Review of representations

78. The council will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but the council will seek to make a decision as to its proposed course of action as soon as possible.
79. The council will take one of the following courses of action:

- Withdraw the proposal to impose a financial penalty;
 - Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
 - Impose the financial penalty proposed in the Notice of Intent;
 - Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.
80. If the council decides to withdraw the proposal to impose a financial penalty, it will confirm its decision in writing. If the council decides to impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, it will serve a Final Notice.
81. If the offender has provided written representations that increase the severity of the offence committed, the council may seek to impose a higher financial penalty. If the council decides to take that course of action, it will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

Reduction of financial penalty

82. A reduction in the amount of financial penalty to be imposed may arise from the council altering the starting point on the Table of Financial Penalties.
83. Whether the council decides to alter the starting point or not following any written representations, the council will not reduce the financial penalty by more than 50% of the finalised starting point.
84. If the council decides not to alter the starting point after its review of any written representations received, and it has already used its discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

Decision making

85. To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager of the council. In the first instance, the imposition of a financial penalty will be proposed by the Private Sector Housing Manager, who will provide an assessment of any written representations received. The proposal will be reviewed by the Head of Housing and Planning, or an officer of similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the council and any reference to the Private Sector Housing Manager or the Head of Housing and Planning may be deemed to include a reference to any future equivalent post.

Final Notice and right of appeal

Contents of Final Notice

86. If the council decides to impose a financial penalty following its review of any written representations received, it will serve a “Final Notice” on the offender.
87. The Final Notice will set out:
- The amount of the financial penalty;
 - The reasons for imposing the penalty;
 - Information about how to pay the penalty;
 - The period for payment of the penalty;
 - Information about rights of appeal; and
 - The consequences of failure to comply with the notice.
88. The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date the Final Notice was served.

Appeals

89. A person on whom a Final Notice has been served may appeal to the First-tier Tribunal against:
- The decision to impose the financial penalty; or
 - The amount of the financial penalty.
90. Appeals should be made within 28 days of the date the Final Notice was served.
91. Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn.
92. The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.
93. As of 2018, the address and contact details of the First-tier Tribunal (Southern Region) were:
- First-tier Tribunal - (Property Chamber) Residential Property
Havant Justice Centre
The Court House
Elmleigh Road
Havant
Hampshire PO9 2AL
- Email: rpsouthern@justice.gov.uk | Tel: 01243 779 394 | Fax: 0870 7395 900
94. The address of the First-tier Tribunal changes from time to time, but the latest address will be detailed on any Final Notice served and can be found at:
- <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Reduction for early acceptance of guilt

Public interest

95. As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

Demonstrating early acceptance of guilt

96. An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 21 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.
97. A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.
98. If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal. If an offender makes an early payment at the reduced rate, but then decides to appeal at a later date, the council will seek the full finalised amount during the appeal proceedings.

Unpaid financial penalties

County Court

99. The council will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served.
100. An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer of the council stating that the financial penalty (or part thereof) has not been paid will be accepted by the court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to the 2004 Act (relevant housing offences) and Paragraph 11 of Schedule 1 to the 2016 Act (breaches of banning orders).
101. In taking court action, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

Enforcement

102. If an offender does not comply with an order of the court, the council will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

Court bailiffs

103. A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

Charging order - Order of sale

104. The council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the council.

Attachment to earnings order

105. If the offender is in paid employment, the council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the council has been fully discharged.

Multiple offences

General principle

106. When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, the council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.
107. Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by the council does not constitute an unjust and disproportionate punishment.

Determining a just and proportionate punishment

108. The council will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. The council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.
109. If the council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each offence.
110. However, if the council considers the cumulative total to be unjust and disproportionate, it will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.

Reduction of financial penalty

111. The council may use its discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether or not there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration.

Decision not to impose a financial penalty

112. The council may use its discretion to not impose a financial penalty in respect of every offence under consideration. If the council decides to take this course of action, the offence or offences disregarded will usually be of a lower severity.

Rent Repayment Orders

113. In consideration of totality, the council will also take into account any proposal to pursue a Rent Repayment Order in respect of the same behaviour.

Help and advice

114. If you would like further advice or clarification, the Private Sector Housing Team can help. Please ring us on 01843 577437 and speak to one of our officers. We can also be contacted by email on: housing.conditions@thanet.gov.uk.

115. Alternatively, you can write to us at:

Private Sector Housing
Thanet District Council
 PO Box 9
 Cecil Street
 Margate
 Kent CT9 1XZ

Making a complaint

116. The Private Sector Housing Team aims to provide the best possible service. However, if you are not happy with the service you receive you can make a formal complaint.

117. More information about how to make a formal complaint can be found on the council's website at: www.thanet.gov.uk. Alternatively, you can call, email or write to us:

Telephone: 01843 577000 | Email: customer.feedback@thanet.gov.uk

Address: Customer Feedback, Thanet District Council, PO Box 9, Cecil Street, Margate, Kent, CT9 1XZ.

118. If, after having gone through the council's formal complaints process, you believe that the council has not handled your complaint properly, you have the right to request an independent investigation by the Local Government and Social Care Ombudsman. The Ombudsman Service will review your complaint and decide if it is appropriate to carry out an investigation. The service is free of charge.

119. You can make a complaint by phone or online at:

The Local Government and Social Care Ombudsman
 Telephone: 0300 061 0614 | Website: www.lgo.org.uk.

Document history

Version	Date	Agreed by	Minute reference
Draft v1	10 January 2019	TBC - Cabinet (14 March 2019)	Policy not yet agreed

Private Sector Housing

Thanet District Council

PO Box 9
Cecil Street
Margate
Kent CT10 2HG

Phone: 01843 577437

Email: housing.conditions@thanet.gov.uk
housing.licensing@thanet.gov.uk
empty.homes@thanet.gov.uk

Web: thanet.gov.uk

Equality Impact Assessment



Topic	Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016
For decision by	Cabinet - 14 March 2019
Date of assessment	23/01/2019
Author	Richard Hopkins, Private Sector Housing Manager

Introduction to the proposal and background	<p>Thanet District Council is a Local Housing Authority. As such, it has a statutory duty to keep private sector housing conditions in the Thanet area under review.</p> <p>Our residents should have access to a home that does not have a detrimental effect on their health, safety or well-being. Therefore, the council uses a wide range of statutory powers to ensure that those responsible for private sector homes take the actions needed to prevent harm from occurring.</p> <p>When in the public interest, it is sometimes appropriate for the council to punish those who contravene housing law. The sanction for such failures is usually prosecution in the criminal courts. However, the Housing and Planning Act 2016 has introduced the concept of financial (civil) penalties as an alternative to prosecution for certain housing offences, namely:</p> <ul style="list-style-type: none"> ● Failing to comply with an Improvement Notice; ● Failing to licence a house in multiple occupation (“HMO”); ● Knowingly permitting the over-occupation of a licensed HMO; ● Failing to comply with the condition of an HMO licence; ● Failing to licence a house subject to selective licensing; ● Failing to comply with the condition of a selective licence; ● Failing to comply with an overcrowding notice in respect of a non-licensable HMO; ● Failing to comply with HMO management regulations; ● Breaching a banning order. <p>However, before the council can issue financial penalties for certain housing offences, it must first have an adopted policy which is just and proportionate.</p> <p>This Equality Impact Assessment concerns the proposed implementation of a “Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016” for offences that occur on or after 01 April 2019.</p>			
	PSED Engaged by this topic	Yes	✓	No
N/A.				

Protected Characteristic	Definitions	Positive Impact			Negative Impact	No specific impact	What will the impact(s) be?
		PSED Aim 1	PSED Aim 2	PSED Aim 3			
Gender	Men/Boys					✓	A financial penalty may be payable by any person responsible for a residential dwelling who has committed a relevant offence. The application of the proposed policy shall apply equally to everyone. Those affected will have the right to make representations to the council and make an appeal to the independent First-tier Tribunal. Any person with a protected characteristic who believes they have been discriminated against can make a formal complaint to the council. A person not satisfied after following the council's complaint process may make a further complaint to the independent Local Government and Social Care Ombudsman. No positive or negative impacts have been identified in respect of this characteristic.
	Women/Girls					✓	As notes for "Gender - Men/Boys" above.
Gender Reassignment						✓	As notes for "Gender - Men/Boys" above.
Disability	Physical	✓					Persons with a disability can sometimes have limited housing choices and may therefore be at increased risk of exposure to poor quality privately rented accommodation. As the council's housing enforcement activities focus on safeguarding the health, safety and welfare of residents in the private rented sector, the enhanced enforcement capabilities provided by financial penalties should help to minimise disadvantage among residents with the protected characteristic of disability.
	Mental Ill health/disability	✓					As notes for "Disability - Physical" above.
	Learning difficulty/disability	✓					As notes for "Disability - Physical" above.
	Sensory impairment	✓					As notes for "Disability - Physical" above.
Age	Babies and children (0-16)	✓					Persons with young children can sometimes have limited housing choices and may therefore be at increased risk of exposure to poor quality privately rented accommodation. As the council's housing enforcement activities focus on safeguarding the health, safety and welfare of residents in the private rented sector, the enhanced enforcement capabilities provided by financial penalties should help to minimise disadvantage among residents with the protected characteristic of age.

	Young adults (16-25)					✓	As notes for "Gender - Men/Boys" above.
	Mid-age adults (26-59)					✓	As notes for "Gender - Men/Boys" above.
	Older adults (60+)	✓					Older adults, who may be retired, can sometimes have limited housing choices and may therefore be at increased risk of exposure to poor quality privately rented accommodation. As the council's housing enforcement activities focus on safeguarding the health, safety and welfare of residents in the private rented sector, the enhanced enforcement capabilities provided by financial penalties should help to minimise disadvantage among residents with the protected characteristic of age.
Race	White British/white other					✓	As notes for "Gender - Men/Boys" above.
	Mixed race					✓	As notes for "Gender - Men/Boys" above.
	Asian/Asian British					✓	As notes for "Gender - Men/Boys" above.
	Black/Black British					✓	As notes for "Gender - Men/Boys" above.
	Arab/Arab British					✓	As notes for "Gender - Men/Boys" above.
	Gypsies/travellers					✓	As notes for "Gender - Men/Boys" above.
	Other ethnic group					✓	As notes for "Gender - Men/Boys" above.
Sexual Orientation	Heterosexual					✓	As notes for "Gender - Men/Boys" above.
	Gay man					✓	As notes for "Gender - Men/Boys" above.
	Lesbian					✓	As notes for "Gender - Men/Boys" above.
	Bisexual					✓	As notes for "Gender - Men/Boys" above.
Religion or Belief	Faith Groups					✓	As notes for "Gender - Men/Boys" above.
Pregnancy & Maternity						✓	As notes for "Gender - Men/Boys" above.
Marriage & Civil Partnership	<i>(Aim 1 of the PSED only)</i>					✓	As notes for "Gender - Men/Boys" above.
Socio-Economic Background	<i>(N.B not a protected characteristic but relevant to Thanet)</i>		✓				The persons (and companies) engaged in residential lettings in Thanet are located around the UK. These persons are usually so engaged for the purposes of financial gain. It is the Government's intention that the imposition of financial penalties does have a financial impact on private sector landlords, being that such penalties are a punishment for wrongdoing. Therefore, in terms of public interest, there are no negative impacts. The policy of imposing financial penalties on private sector landlords who fail to meet their legal obligations is likely to promote an improvement in

					housing conditions more generally. Many households on lower incomes in Thanet live in the larger than average private rented sector. As such, this policy is likely to have a positive impact on deprived households.
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Consultation with Information Governance & Equality Team					
Date advice given	08 February 2019				
Summary of Advice – Key Points	Content agreed.				
Advice accepted by responsible officer?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	If no, please explain your reasoning.

Approval and sign off from Line Manager			
Name	Bob Porter	Job Title	Head of Housing and Planning
Date	08 February 2019		

Household Waste duty of care Fixed Penalty Notices (FPN)

CMT Meeting

Report Author **Trevor Kennett, Head of Operational Services**

Portfolio Holder **Councillor Savage**

Status **for Decision**

Classification: **Unrestricted**

Key Decision **No**

Ward: **All Wards**

Executive Summary:

On 26 November 2018 a new Waste Duty of Care Code of Practice was presented to Parliament and to the National Assembly for Wales pursuant to Section 34(9) of the Environmental Protection Act (EPA) 1990.

From 7 January 2019 the new code of practice came into force and allows for a fixed penalty notice (FPN) to be issued for the offence of Duty of Care, a contravention under section 34A (2) of the Environmental Protection Act 1990. The new fine has to be set by the Council at a level not less than £150 and not more than £400 with a default of £200 if no amount is set by the authority.

Recommendation(s):

The Council introduce fixed penalty notices in accordance with section 34A (2) of the EPA 1990 for Households who fail their duty of care obligations for the safe disposal of domestic waste and the level of the fine is £400 with a reduced early payment of £300 if paid within 10 days.

CORPORATE IMPLICATIONS	
Financial and Value for Money	There is small income generation possibility and cost saving in taking cases to court for prosecution and allowing officer time to be redirected to further enforcement action.
Legal	We are required to stay within the recommended fine levels being no lower than £150 and no higher than £400. There will also be less reliance on the legal team for prosecutions of duty of care offences if we are able to issue FPNs for them instead, unless unpaid. The regulations are inserted as an amendment into the Environmental Protection Act 1990 as section 34(2). The section allows for giving FPNs

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	for contravention of section 33(1)(a). Officers authorised to investigate fly tipping under section 33(1)(a) are authorised to give FPNs under section 34A(2).								
Corporate	<p>The priorities that have impact on the enforcement activities of Operational Services are:</p> <p>Priority 1, Clean and welcoming environment - Maintaining zero tolerance to encourage positive behaviour to help improve our environment</p> <p>Priority 2, Supporting neighbourhoods - Continuing to work with partners to improve community safety</p>								
Equalities Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td style="width: 80%;">Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td style="width: 20%;"></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td></td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td></td> </tr> </table> <p>It is the author's opinion that the Public Sector Equality Duty (PSED) is not engaged by the subject matter. In accordance with the continuing nature of the duty the council will keep the matter under review.</p> <p>Use of FPNs for duty of care offences will give staff more flexibility and to be better able and equipped to address unlawful disposal of household waste. All officers will receive training and be monitored.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it		Foster good relations between people who share a protected characteristic and people who do not share it.	
Please indicate which aim is relevant to the report.									
Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,									
Advance equality of opportunity between people who share a protected characteristic and people who do not share it									
Foster good relations between people who share a protected characteristic and people who do not share it.									

CORPORATE PRIORITIES (tick those relevant) ✓	
A clean and welcoming Environment	✓
Promoting inward investment and job creation	
Supporting neighbourhoods	✓

CORPORATE VALUES (tick those relevant) ✓	
Delivering value for money	✓
Supporting the Workforce	✓
Promoting open communications	

1.0 Introduction

The fixed penalty notice (FPN) for breaches of the household waste duty of care provides an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. There is no obligation for authorities to offer an alleged offender the option to discharge liability through an FPN. However, it can be more proportionate than prosecution through the courts.

The duty of care requires occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it.

Authorities may give the FPN when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:

- where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person;
- where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property;
- where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption.

An authorised person may still fly-tip waste so tracing fly-tipped waste to a household does not necessarily demonstrate a breach of the duty of care. An individual should be given an opportunity to demonstrate that they took reasonable steps to determine the person that took their waste was authorised to do so. If fly-tipped waste is traced to an individual and they are unable to identify who took their waste, or the carrier they identify is unauthorised, then it is reasonable to believe their duty of care was not met.

3.0 Use of the new FPNs

Our Enforcement team focus on those who, as a result of not meeting their duty of care, enable their waste to be fly-tipped or otherwise inappropriately disposed of.

Individuals will not be penalised for minor breaches which do not lead to waste being inappropriately disposed of. This includes where an individual uses an authorised carrier that disposes of their waste appropriately but doesn't check that they are authorised.

The Council's established approach to effective environmental offences enforcement regime is one that is proportionate, consistent, targeted, transparent and accountable. Under the Legislative and Regulatory Reform Act 2006, we have a duty to carry out regulatory activities in a way which is transparent, accountable, proportionate and consistent, and for them to be targeted only at cases in which action is needed.

If an individual is considered to be a vulnerable person (for example due to age related ill-health or a mental or physical disability or divergence), we will give close

consideration as to whether it is proportionate and in the public interest to proceed with enforcement, on a case-by-case basis.

An individual giving their waste to a friend or family member to dispose of would breach the duty of care. However, it would only be appropriate and in the public interest to enforce in this and similar circumstances where there is evidence the friend or family member has disposed of the waste inappropriately.

This FPN is not applicable where an individual intends for waste to be collected by the local authority collection service, for instance where this is put out in household waste or recycling bins. It is reasonable to believe the local authority or any contracted provider working on their behalf is an authorised person and so in putting the waste out for collection by a local authority, the individual has taken all reasonable steps to ensure the person they transfer it to is authorised.

As per section 5.2 of the Waste Duty of Care Code of Practice, where a tradesperson is working on a property, they are responsible for the waste they produce. As the occupier is not producing the waste, they are not transferring it to the tradesperson and so the duty of care does not apply.

FPNs will not be given where prosecution through the courts is more appropriate, for example the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped, or when someone is a persistent offender with a record of not paying fixed penalties for environmental offences.

4.0 Setting the fine level

The fixed penalty notice level must not be set lower than £150 and not more than £400. If no amount is specified by that authority, the level will be automatically set at £200. The fine must be paid within 10 days, if not it could be referred to the Magistrates Court.

Small scale fly tipping and the dumping of rubbish is an increasing problem in the District, with over 3,000 reported cases per year. These FPNs will give greater powers to deal with low level offences, while concentrating our efforts on prosecuting major fly-tipping across the district.

It should be also noted that; monies paid for FPNs comes to the Council, whilst fines imposed at court go to HM Court service.

5.0 Options

Option 1: Introduce this FPN for small fly-tips using the default level of fine of £200 with an early reduced payment of £150 if paid before the end of the period of 10 days following the date of the notice.

Option 2: Introduce this FPN for small fly-tips at the maximum level of the fine of £400 with or without an early payment discount. There is a risk of some not paying the fine because it is at the highest level which would result in court process.

Option 3: Introduce this FPN for small fly-tips setting the level of the fine at £400 with a reduced early payment of £300 if paid within 10 days. This would provide the

incentive towards early payment and more likelihood of offenders paying and therefore less resorting to the court.

6.0 Recommendations

That Option 3 is implemented because the issuing of Fixed Penalty Notices for failure of households to exercise their duty of care will be a more effective power to stop the dumping of rubbish. The Council's existing powers only allow for us to issue a warning enforcement notice to stop placing their controlled waste other than in the receptacles provided by the authority or for us to prosecute them for this offence.

Contact Officer:	Trevor Kennett, Head of Operational Services
Reporting to:	Gavin Waite, Director of Operational & Commercial Services

Corporate Consultation

Finance	Sharon Westbrook, Interim Financial Services Manager
Legal	Sophia Nartey, Interim Head of Legal Services

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Quarter 3 Budget Monitoring Report 2018-19

Cabinet	14 March 2019
Report Author	Tim Willis, Deputy Chief Executive and s151 Officer
Portfolio Holder	Cllr Ian Gregory, Portfolio Holder for Financial Services and Estates
Status	For Decision
Classification:	Unrestricted
Key Decision	No
Ward:	All Wards

This report provides an update of the Council's 2018-19 revenue and capital forecasts against budget as at the end of December 2018.

Recommendation(s):

1. That Cabinet notes the 2018-19 Quarter 3 forecast position for:
 - (i) The General Fund;
 - (ii) The Housing Revenue Account;
 - (iii) The General Fund and Housing Revenue Account Capital Programmes;
2. Cabinet agrees to the updated General Fund and Housing Revenue Account capital programmes as set out in Annex 1 and 2 to this report.

CORPORATE IMPLICATIONS

Financial and Value for Money	The financial implications have been reflected within the body of the report. Achieving value for money is critical to the Council's medium term financial strategy and one of the three Corporate Values.
Legal	Section 151 of the 1972 Local Government Act requires a suitably qualified named officer to keep control of the Council's finances. For this Council, it is the Deputy Chief Executive and s151 Officer, and this report is helping to carry out that function.
Corporate	Corporate priorities can only be delivered with robust finances and this report gives Members the opportunity to review the Council's current position.
Equalities Act 2010 & Public Sector Equality Duty	Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and

	<p>other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p>
	Please indicate which aim is relevant to the report.
	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it
	Foster good relations between people who share a protected characteristic and people who do not share it.
	<p>There are no equity and equalities implications arising directly from this report, but the Council needs to retain a strong focus and understanding on issues of diversity amongst the local community and ensure service delivery matches these.</p> <p>It is important to be aware of the Council's responsibility under the Public Sector Equality Duty (PSED) and show evidence that due consideration had been given to the equalities impact that may be brought upon communities by the decisions made by Council.</p>

CORPORATE PRIORITIES (tick those relevant) ✓	
A clean and welcoming Environment	✓
Promoting inward investment and job creation	✓
Supporting neighbourhoods	✓

CORPORATE VALUES (tick those relevant) ✓	
Delivering value for money	✓
Supporting the Workforce	
Promoting open communications	

1.0 General Fund – Revenue Forecast 2018-19

1.1 The 2018-19 General Fund budget of £16.8m was agreed at the Council meeting on 8 February 2018. It was arrived at after allowing for £2.7m of savings proposals to bridge the funding gap.

1.2 Table 1 summarises the current projected General Fund spending position at the end of December 2018.

Table 1 - General Fund - Forecast against Budget 2018-19

Function	2018-19 Budget £'000	2018-19 Forecast £'000	2018-19 Variance £'000	
Chief Executive	179	171	-8	See paragraph 2.1
Deputy Chief Executive and s151 Officer	6,530	6,390	-140	See paragraph 2.2

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Corporate Governance	599	1,023	424	See paragraph 2.3
Operations and Commercialisation	7,204	7,834	630	See paragraph 2.4
Corporate Budgets	2,288	2,288	0	
Total Net Expenditure	16,800	17,706	906	

- 1.3 All budgets will continue to be regularly monitored to ensure that the council's expenditure remains within the agreed budget. This will include monitoring the savings targets introduced to bridge the funding gap identified in the report to February 2018 Council. Each of the services projecting an overspend as above are striving to minimise or eliminate the overspend before the end of the year.

2.0 General Fund detail by Directorate:

Chief Executive

- 2.1 An underspend of £8k is forecast:

- (i) This is in the mainly due to vacant post savings.

Deputy Chief Executive and s151 Officer

- 2.2 An underspend of £140k is currently forecast:

- (i) Additional income on investment activity will generate a potential £70k surplus at year end.
- (ii) Various minor underspends across Financial Services of £30k including underspends on bank charges and equipment purchase.
- (iii) Additional costs recovered on Council Tax will generate an estimated £40k at year end.

It is also worth noting that the Housing Needs budget continues to experience significant pressure due to increased demand for temporary accommodation and additional statutory obligations. Although the direct housing costs are currently forecast to be contained within the budget, this has also had an impact on the corporate budgets of housing benefits payments and benefit subsidy. Balanced against this pressure is the forecast one-off financial benefit of the Kent Business Rates retention pilot, although this will also be available to help fund any residual overspend across service budgets.

Director of Corporate Governance

- 2.3 An overspend of £424k is currently forecast:

- (i) Work is ongoing to deliver savings attributable to Your Leisure, but there remains £190k of the original £350k saving to be delivered.
- (ii) Property income in this service area remains under scrutiny however the current shortfall in income is forecast to be £215k.

- (iii) Building control is currently reporting an adverse position of £199k, this is in the main due to forecast income being below budget.
- (iv) Land Charges is currently reporting an adverse position of £116k, this is in the main due to reduced income as a result of a change in the way customers utilise this service.
- (v) There are some compensatory savings in respect of vacant posts (£143k), increased surveyors fee income (£127k) and other minor underspends (£26k).

Director of Operations and Commercialisation

2.4 An overspend of £630k is currently forecast:

- (i) Currently there is a predicted overspend of £500k against the Port, as a result of a combination of forecast expenditure being higher and income being lower than budgeted.
- (ii) There is a £70k forecast overspend on fuel costs as a result of higher fuel prices.
- (iii) The £60k forecast net income for clinical waste will not be achieved this year.
- (iii) Within Operational Services the £90k income budget for beach wifi will not be achieved. Work has been undertaken within the service to find compensating savings, however there remains a risk that the shortfall in income will not be fully balanced by savings.

3.0 Housing Revenue Account (HRA) – Projected Revenue Forecast 2018-19

- 3.1 The HRA is currently forecast to have a surplus of £12k in 2018-19, which represents a £302k underspend against the original budgeted deficit of £290k.
- 3.2 The Revised Budgeted deficit reflects £346k of unused repairs and maintenance budgets being returned to HRA balances mainly due to the new external decorations contract being unlikely to commence until 2019-20.
- 3.3 Table 2 provides a summary of the projected spending position on the Housing Revenue Account compared to the original budget.

Table 2 - HRA – Forecast against Budget 2018-19

	2018-19 Revised Budget	2018-19 Projected Forecast	2018-19 Variance
	£'000	£'000	£'000
Income:			
Dwelling Rents	(12,786)	(12,649)	137
Non-dwelling Rents	(139)	(142)	(3)
Charges for services and facilities	(480)	(451)	29
Contributions towards expenditure	(349)	(360)	(11)

Agenda Item 7

TOTAL INCOME	(13,754)	(13,602)	152
Expenditure			
Repairs & Maintenance	2,906	2,903	(3)
Supervision & Management	4,323	4,221	(102)
Depreciation & Impairments	3,771	3,771	0
Allowance for bad or doubtful debts	170	170	0
Contribution to Capital	300	393	93
Non-service specific expenditure	1,390	1,390	0
TOTAL EXPENDITURE	12,860	12,848	(12)
Other Adjustments:			
HRA Investment Income	(35)	(35)	0
Debt Interest Charges	1,007	1,007	0
Government Grants and Contributions	(1,034)	(1,034)	0
Adjustments, accounting /funding basis	897	804	(93)
Deficit/ (Surplus) for HRA Services	(59)	(12)	47

3.4 Table 3 outlines the key variances.

Table 3 - HRA Main Variances

Budget	(Under)/ Overspend £000	Explanation
Dwelling Rents	137	<p>The budgeted figure includes rental income for properties in the Margate Housing Intervention and the New Build Programme. The current projection is based upon the current actual rent debit. This projection will be reviewed as properties are completed and let during the year and will reduce further.</p> <p>When the budgeted figure was set, it was not anticipated that an additional 19 properties would be sold that year through Right To Buy and so the budgeted rent figure includes rental income for these properties.</p>
Charges for Services and Contributions towards Expenditure	18	<p>Communal heating costs are higher than anticipated. Recovery costs in relation to tenant service charges are not sufficient to cover the costs.</p> <p>Additional leaseholder contributions towards expenditure.</p>

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Repairs & Maintenance	(3)	Underspends relate to water safety, door entry servicing, non contract works, void/relet works, decorating vouchers, RWOs and housing officer funds. Overspends relate to asbestos removal, heating repairs, estate clearance, damp works and disinfestation.
Supervision & Management	(102)	Reduced contributions to project co-ordinator post as HRA activity has reduced. EKH forecast that the grounds maintenance budget in relation to HRA Open Spaces is not required. The relocation of the utility meters at Coastguard Cottages is no longer required. The Welfare Reform contingency budget is not required this financial year.
Contribution to Capital/Other Adjustments	(3)	East Kent Housing (EKH) additional £93k loan for the single housing system to be funded from HRA balances.
TOTAL VARIANCES	47	

4.0 General Fund Capital Programme – Forecast 2018-19

- 4.1 The council's 2018-19 revised General Fund capital programme of £14m (£13.3m as per annex 1 + £0.7m flexible use of capital receipts) is expected to be spent with the exception of £330k.
- 4.2 **Annex 1** shows that £9.6m has been currently committed against this year's budgets.

5.0 Housing Revenue Account Capital Programme – Forecast 2018-19

- 5.1 Of the revised £6.8m budget allocated to HRA capital schemes it is currently anticipated that this will all be spent by year end. A breakdown is provided in Annex 2.

Contact Officer:	Matthew Sanham, Acting Head of Financial and Procurement Services
Reporting to:	Tim Willis, Deputy Chief Executive and S151 Officer

Annex List

Annex 1	GF Capital Programme Qtr3 2018-19
Annex 2	HRA Capital Programme Qtr3 2018-19

Background Papers

Title	Budget monitoring papers held in Financial Services
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Corporate Consultation

Finance	N/A
Legal	Sophia Nartey, Head of Legal Services

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ANNEX 1 - General Fund Capital Programme Qtr3 2018-

Capital Programme 2018-19	Revised Capital Budget 2018-19 to Cabinet 13 Dec 2018 £	Additions / Removals £	Revised Capital Budget 2018-19 to Cabinet [] 2019 £	Estimated Outturn £	Variance Overspend / (Underspend) £	Committed Spend to 31 December 2018 £	Comments
Deputy Chief Executive (incl East Kent Services)							
Disabled Facilities Grants	3,030,755	336,313	3,367,068	3,367,068	0	2,246,817	[Clive to comment on budget increase]
Margate Housing Intervention - Loan scheme	130,000		130,000	20,000	-110,000	20,000	Remaining spend now anticipated in 19-20
Private Sector Housing - Winter Warmth Grants	2,879		2,879	2,879	0	0	
Private Sector Housing - RHB	431,126		431,126	431,126	0	41,638	
Payroll-HR System	934	-934	0	0	0	0	Project finished
Digital Parking	95,000		95,000	95,000	0	4,221	
End User Computing Refresh of Devices	298,160	88,507	386,667	386,667	0	294,710	Budget increase for EKS roll-out, externally funded
IT Infrastructure	85,131		85,131	85,131	0	54,935	
Total	4,073,984	423,886	4,497,870	4,387,871	-110,000	2,662,321	
Corporate Governance							
Sunshine Café	21,420		21,420	21,420	0	19,683	
Dreamland	566,662		566,662	566,662	0	502,441	
Dreamland Car Park Enhancement	149,700		149,700	149,700	0	5,700	
Property Enhancement Programme	80,000		80,000	80,000	0	0	
Mill Lane Multi-Storey Car Park	3,184,355		3,184,355	3,184,380	25	3,184,380	
Dalby Square	620,949		620,949	620,949	0	553,272	
Total	4,623,086	0	4,623,086	4,623,111	25	4,265,476	
Operational Services							
Allotments	6,452		6,452	6,452	0	0	
Crematorium Office Upgrade	4,464	1,489	5,953	5,953	0	5,951	Budget increase funded from Memorial Chapel
Pontoon Decking Improvements	85,000		85,000	85,000	0	83,581	
Upgrade of Western and Eastern Amenity Blocks	72,000		72,000	72,000	0	0	
Manston and Dane Park Depot Improvements (previously	10,841	12,500	23,341	23,341	0	10,841	Budget increase for health & safety enhancements at
Replace Pontoon Piles	118,000		118,000	118,000	0	117,394	
Ramsgate Port - Berth 2/3 & 4/5 Replacement	27,814		27,814	27,814	0	0	
Ramsgate Port - Berth 1 Refurbishment	150,000		150,000	0	-150,000	0	Spend now anticipated for 19-20
CCTV	395,271		395,271	395,271	0	289,929	
Vehicle & Equipment Replacement Programme	909,280		909,280	909,280	0	610,740	
Thanet Crematorial Memorial Chapel	3,844	-849	2,995	2,995	0	2,995	See above
In-Cab System	60,000		60,000	60,000	0	0	

ANNEX 1 - General Fund Capital Programme Qtr2 2018-

Capital Programme 2018-19	Revised Capital Budget 2018-19 to Cabinet 13 Dec 2018 £	Additions / Removals £	Revised Capital Budget 2018-19 to Cabinet [] 2019 £	Estimated Outturn £	Variance Overspend / (Underspend) £	Committed Spend to 31 December 2018 £	Comments
Marina Management System	14,500		14,500	14,500	0	12,532	
Ramsgate Flood and Coast Protection Scheme	43,177		43,177	43,177	0	14,383	
Ramsgate Harbour Water Supply Upgrade	28,076		28,076	28,076	0	0	
Ramsgate Harbour Railings	100,000		100,000	28,048	-71,952	28,048	Remaining spend now anticipated for 19-20
Margate Harbour Railings	0		0	-483	-483	-483	Negative spend due to accounting adjustment
Ramsgate Harbour Aquastores	15,000	-1,620	13,380	13,380	0	13,380	
Ramsgate Harbour Self Storage Containers	50,000	1,620	51,620	51,620	0	47,791	
Westbrook Groyne and Sea Wall (previously called Groyne	184,000		184,000	184,000	0	0	
Sea Wall Refacing - Minnis Bay to Grenham Bay	244,000	80,300	324,300	324,300	0	0	External funding (100%) now approved for this scheme

Harbour Gate & Bridge	1,295,180		1,295,180	1,295,180	0	1,220,918
Breakwater Piles & Guides	181,275		181,275	181,275	0	181,275
Skatepark	59,487		59,487	59,487	0	0
Total	4,057,660	93,440	4,151,100	3,928,666	-222,435	2,639,276
Total Programme	12,754,730	517,326	13,272,056	12,939,647	-332,409	9,567,073
Capital Salaries	75,000		75,000	75,000	0	0
Grand Total	12,829,730	517,326	13,347,056	13,014,647	-332,409	9,567,073

Funded By	Revised Capital Budget 2018-19 to Cabinet 13 Dec 2018	Additions / Removals	Revised Capital Budget 2018-19 to Cabinet 13 December 2018
Revenue and Reserves	206,844	12,206	219,050
Capital Receipts	3,479,491	5,000	3,474,491
Prudential Borrowing	4,631,998		4,631,998
External Funding	4,511,397	510,119	5,021,516
Total	12,829,730	517,326	13,347,056

ANNEX 2 - HRA Capital Programme Qtr3 2018-19

Capital Programme 2018-19	Revised Capital Budget 2018-19 to Cabinet 13 Dec 2018 £	Virements/Budget Not Required	Slippage/ Deferred/ Re-profiled £	Revised Capital Budget 2018-19 to Cabinet [date] 2019 £	Estimated Outturn £	Variance Overspend / (Underspend) £	Committed Spend to 31 December 2018 £	Comments
17-18 UNDER/OVERSPENDS	£ 69,945	£ 6,559	£ -	£ 76,504	£ 76,504	£ -	£ 76,504	17-18 Over & Underspends cleared down
RE ROOFING	£ 125,000	£ -	£ -	£ 125,000	£ 125,000	£ -	£ 121,379	£121k committed to complete Newington Hall and
REPLACE WINDOWS DOORS	£ 110,000	£ -	£ (45,000)	£ 65,000	£ 65,000	£ -	£ 50,436	Full programme of UPVC works not identified this
KITCHEN & BATH REPLACEMENTS	£ 600,000	£ -	£ -	£ 600,000	£ 600,000	£ -	£ 585,437	Programme due to complete this year
ELECTRICAL REWIRING	£ 93,441	£ (30,000)	£ -	£ 63,441	£ 60,000	£ (3,441)	£ 63,214	No contract until 2019-20. Replacements identified by
HEATING	£ 200,000	£ -	£ (50,000)	£ 150,000	£ 150,000	£ -	£ 4,633	Contract under review. Emergency replacements
FIRE PRECAUTION WORKS	£ 450,000	£ -	£ (190,000)	£ 260,000	£ 256,000	£ (4,000)	£ 392,538	Unable to complete programme this year
PLANNED REFURBISHMENTS	£ -	£ -	£ -	£ -	£ -	£ -	£ -	No works identified
STRUCTURAL REPAIRS	£ 160,000	£ -	£ (25,000)	£ 135,000	£ 135,000	£ -	£ 129,671	Outsourced consultancy to be brought back in house.
THERMAL INSULATION	£ 10,000	£ -	£ -	£ 10,000	£ 10,000	£ -	£ 7,339	Ad-hoc works
DISABLED ADAPTATIONS	£ 300,000	£ (75,000)	£ -	£ 225,000	£ 225,000	£ -	£ 135,685	Referrals reduced. Budget not required.
LIFT REFURBISHMENT	£ 80,000	£ -	£ (80,000)	£ -	£ -	£ -	£ -	Delays in supply of parts. Janice and Turner Court to
Total	£ 2,198,386	£ (98,441)	£ (390,000)	£ 1,709,945	£ 1,702,504	£ (7,441)	£ 1,566,836	
MARGATE INTERVENTION								
19 Athelstan Road	£ -	£ 5,050	£ -	£ 5,050	£ 5,050	£ -	£ 5,050	Units complete
54 Trinity Square	£ -	£ 1,606	£ -	£ 1,606	£ 1,606	£ -	£ 1,606	Units complete
40-46 Sweyn Road	£ 16,125	£ 38,462	£ -	£ 54,587	£ 16,125	£ (38,462)	£ 54,587	Units complete
1 Godwin Road	£ 16,162	£ -	£ -	£ 16,162	£ 16,162	£ -	£ (2,054)	Start on site due 19-20
17-21 Warwick Road	£ 126,971	£ -	£ -	£ 126,971	£ 126,971	£ -	£ 38,524	Start on site due 19-20
24 Ethelbert Crescent	£ 519,354	£ -	£ -	£ 519,354	£ 519,354	£ -	£ 424,779	On site. Due to complete Feb 18-19
New Projects	£ 50,000	£ (45,118)	£ -	£ 4,882	£ 4,882	£ -	£ -	New site to be identified
NEW BUILD PROGRAMME								
Phase 1	£ 1,989,505	£ -	£ -	£ 1,989,505	£ 1,989,505	£ -	£ 1,980,679	Units complete
Phase 2	£ 548,000	£ -	£ -	£ 548,000	£ 548,000	£ -	£ 14,211	Start on site due 19-20
Phase 3	£ 366,509	£ -	£ -	£ 366,509	£ 366,509	£ -	£ 78,419	Start on site due 19-20
141 PURCHASES PROGRAMME	£ 1,365,004	£ -	£ -	£ 1,365,004	£ 1,365,004	£ -	£ 490,817	3 acquisitions complete. 5 acquisitions in progress
COASTGUARD COTTAGES	£ (15,249)	£ -	£ -	£ (15,249)	£ -	£ 15,249	£ 815	Refurbishment complete
EKH LOAN	£ 92,500	£ -	£ -	£ 92,500	£ 92,500	£ -	£ 92,500	To be draw down from reserve at year end
ST JOHNS CRESCENT	£ 128,547	£ -	£ -	£ 128,547	£ 128,547	£ -	£ 1,321	Start on site due 18-19
Total	£ 5,203,428	£ -	£ -	£ 5,203,428	£ 5,180,215	£ (23,213)	£ 3,181,252	
Grand Total	£ 7,401,814	£ (98,441)	£ (390,000)	£ 6,913,373	£ 6,882,719	£ (30,654)	£ 4,748,088	

Funded By	Revised Capital Budget 2018-19 to Cabinet 13 Dec 2018	Virements/Budget Not Required	Slippage/ Deferred/ Re-profiled	Revised Capital Budget 2018-19 to Cabinet 13 December 2018
Revenue and Reserves	£ 4,820,166	£ (105,000)	£ (390,000)	£ 4,325,166
Capital Receipts	£ 654,803	£ -	£ -	£ 654,803
Prudential Borrowing	£ -	£ -	£ -	£ -
External Funding	£ 1,856,900	£ -	£ -	£ 1,856,900
Total	£ 7,331,869	£ (105,000)	£ (390,000)	£ 6,836,869

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Petition response - Margate Museum and the Mayor's Parlour

Cabinet	14 March 2019
Report Author	Tim Howes, Director of Corporate Governance
Portfolio Holder:	Councillor Gregory, Cabinet Member for Financial Services & Estates:
Status:	For decision
Classification:	Unrestricted
Key Decision	No
Ward:	All

Executive Summary:

A petition containing 94 valid signatures was received by the Council requesting that the council reaffirm that there will be no sale or disposal of the buildings known as Margate Museum and the Mayor's Parlour.

Under the Council's petitions scheme, Council is required to refer the petition to Cabinet without debate for report back to Council.

Recommendation(s):

Cabinet has considered the content of the petition and given responses in section 4 of this report.

Cabinet remains committed to finding a long term sustainable future for the museums and the recommendation is to continue to progress to marketing as detailed and determined in the October 2018 meeting.

CORPORATE IMPLICATIONS

Financial and Value for Money	The asset team must work with finance to clarify the VAT position and ensure that all costs involved in a transfer are identified as part of the marketing to ensure costs are recovered as part of any transfer. The Medium Term Financial Strategy documents capital and revenue expenditure, this action is required to ensure there are no unplanned costs incurred which may impact the MTFs.
Legal	Legal advice will be provided as part of the transfer.

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Corporate	Supporting neighbourhoods and promoting inward investment are drivers behind the need to protect the museums and heritage properties. Without action these will close. There are risks involved in transfer, these risks will be managed and mitigated through this process. The Communications team will be actively involved in promoting the opportunities and liaising with members of the public and press throughout the process.								
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (Section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td style="width: 80%;">Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td style="width: 20%;"></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td style="text-align: center;">X</td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td style="text-align: center;">X</td> </tr> </table> <p>The changes recommended in this report will protect the values for inclusive museum facilities.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it	X	Foster good relations between people who share a protected characteristic and people who do not share it.	X
Please indicate which aim is relevant to the report.									
Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,									
Advance equality of opportunity between people who share a protected characteristic and people who do not share it	X								
Foster good relations between people who share a protected characteristic and people who do not share it.	X								

CORPORATE PRIORITIES (tick those relevant) ✓	
A clean and welcoming Environment	X
Promoting inward investment and job creation	X
Supporting neighbourhoods	X

CORPORATE VALUES (tick those relevant) ✓	
Delivering value for money	X
Supporting the Workforce	X
Promoting open communications	X

1.0 Introduction and Background

1.1 A petition organised by Mr Smith-Stewart had been validly signed by 94 persons. The petition prayer and justification reads:

1.2 “We the undersigned petition the council to reaffirm that there will be no sale or disposal of the buildings known as Margate Museum and the Mayor's Parlour. The Museum is ideally placed on its existing site, and only requires an extension into the Mayor's Parlour where a lift was to be installed to comply with the Disability Discrimination Act. The Mayor's Parlour also known originally as a municipal building was funded by the widow of Mayor Kendall and must continue for mayoral use. The Tudor House and Maltings are not suitable to take all the museum artefacts, a heritage lottery bid needs to be revisited for all for these buildings as a matter of urgency.”

2.0 The Current Situation

2.1 Cabinet considered the interests of the following Museums and Heritage property on 18 October 2018.

- Dickens House, Broadstairs
- Margate Museum, Margate
- Tudor House, Margate
- Old Town Hall, Margate.

2.2 The report thanked the ongoing support of staff, volunteers and community organisations who give their time to support the museums and share the heritage of the local area.

2.3 However the report also commented on the condition of the property, the reduction in technically qualified resources and noted that funding opportunities are not necessarily increased by council ownership.

2.4 As a reminder the Mendoza Review, an independent review of Museums published by the government on 14 November 2017 noted funding challenges for local authorities and commented:-

“Local Authorities that are no longer able or willing to support their museums should try to find alternative sustainable futures for them, including considering whether they would better fulfil their functions outside the council.”

Since this review a £4 million DCMS Wolfson Museums and Galleries Improvement fund was launched, but local authorities were not able to apply for this funding instead preference is given to established museums and galleries. This seems to confirm the trend for supporting qualifying organisations rather than local authorities.

2.5 A strategic review of the museums concluded that Thanet Council is no longer able to financially support the museums and therefore must try to find alternative sustainable futures.

2.6 A report on this subject was considered by the Executive, Policy and Community Safety Committee on 27th September 2018 and cabinet considered their concerns in taking the decision on the way forward.

2.7 As a reminder the suggested way forward documented in the October cabinet report was:- This report was considered by the panel and Cabinet asked to consider:-

2.8 Margate Museum and Dickens House

2.8.1 It is proposed that these two properties are retained primarily as museums (but that there is some scope for ancillary trading activities that support the museum objectives) and advertised as a going concern to be transferred to a voluntary or community body.

2.8.2 On the 3 September 2018 Margate Museum was determined as an asset of community value under the Localism Act 2011. It should be noted that any marketing is now regulated by this statute.

2.8.3 Note that the volunteers are being consulted at an early stage in this process with a view to retaining their ongoing support at these museums. All those who have had discussions so far with the council are in support of the strategic change.

2.8.4 A staff consultation process has begun with the employee of Dickens House to give the assurance that the transfer will be as a going concern.

2.9 Margate Town Hall

It is proposed that this premises is marketed for commercial opportunities for the vacant areas of the ground floor, but with interested parties incorporating ideas to accommodate the Charter Trustees on the upper floor. Note that the existing leasehold interest on the lower ground floor will be unaffected by the transfer.

2.10 Tudor House

It is proposed that the Tudor House is marketed for a use that supports investment into the premises, promotes the heritage and ensures it remains used by members of the public.

2.11 Proposed approach

2.11.1 A marketing team will convene to collate information into a data pack which is required for marketing of the sites. Regular updates will be provided to the Portfolio Holder. The proposed process is:-

2.11.2 Stage 1 - pre marketing

Collation of information into data packs, containing key opportunities and constraints including planning, legal, contractual, building fabric potential, user information, staff and volunteer data (only data permissible under employment law and GDPR), artefact information (where relevant) and operational data pulled together for marketing purposes.

2.11.3 Stage 2 - Marketing/Expressions of Interest

Market the opportunity through appropriate channels during the early Spring of 2020. Marketing includes advertising and approaches for support through English Heritage, Heritage Lottery Fund, Arts Council England, Association of Independent Museums and other independent museum trusts.

During this stage there would comprise requests for expressions of Interest, with bidders invited to submit their proposals by a defined date. The detail required from bidders would include identifying the nature of the proposed use, they would be required to provide information demonstrating experience and financial ability to deliver the outcomes within a reasonable timeframe. The purpose is to identify the most realistic and attractive use for the site.

Please note that the properties are being marketed independently from each other. This does not prevent an organisation expressing an interest in more than one opportunity but will allow for greater flexibility for the Council to consider all applications.

2.11.4 Stage 3 - Shortlisted Proposals

Provided a sufficient number of expressions are received a short list of parties would be asked to meet with officers to review their proposals giving both parties the opportunity to ask questions and where relevant they would be requested to submit a final offer.

It is expected that the Portfolio Holder for Estates and Finance, the Lead Director together with officers from Community Services, Heritage, Tourism, Finance and Asset Management will form part of the panel of review of the final offers submitted.

2.11.5 Stage 4 - Contractual Recommendation

With a preferred party chosen for each opportunity a recommendation will be made by the panel, to Cabinet for approval. Should there be no clear credible opportunity to transfer these facilities a summary will also be included in the Cabinet report with a recommendation made on the way forward.

2.11.6 There would be marketing, legal and estates fees involved in completing these changes, at this stage these costs are not known. However, these costs would be expected to be covered by the successful bidder, with their final offer reflecting these outgoings. The costs will be quantified and published as part of the marketing of the opportunity.

2.12 The timeframe to bring this back to Cabinet will be at least twelve months, but this will be confirmed. Whilst the timeframe is fairly lengthy, it is in recognition that there is a considerable amount of work to be done to prepare the marketing and the opportunities must be widely marketed to adhere to property and procurement laws.

3.0 The decision taken at the Cabinet meeting in October 2018 was:-

- 3.1 Dickens House, Broadstairs - to market the opportunity as a going concern (i.e. the premises, collections and staff) through appropriate channels for transfer to a voluntary or community body and
- 3.2 Margate Museum, Margate - to market the opportunity following the rules imposed by the Asset of Community Value regime (Localism Act 2011) to transfer to a voluntary or community body and
- 3.3 Tudor House, Margate - market opportunities through appropriate channels to transfer the premises to a use that demonstrates credible investment will be achievable in a reasonable timeframe and the use will continue to support the heritage of the area and use of the asset by members of the public and
- 3.4 Margate Town Hall, Margate - market opportunities for the property through appropriate channels to transfer to a use that demonstrates credible investment but with consideration given to preserving the Margate Charter Trustees presence. The existing leasehold interest on the ground floor will not be affected by the transfer.
- 3.5 In respect of the above to report back to Cabinet with the outcome of the marketing exercise and a recommendation on the way forward for each of the above properties.

4.0 The Petition

The petition received raises a number of concerns which are considered below:

- 4.1 "We the undersigned petition the council to reaffirm that there will be no sale or disposal of the buildings known as Margate Museum and the Mayor's Parlour."

For the reasons contained in the October Cabinet report and briefly summarised above, these two buildings should be marketed, following the restrictions and regimes documented, to encourage investment, both of a financial and technical nature. Before marketing can commence there must be a decision in principle to transfer to another party, this is Council Policy and complies with the principles of the Local Government Act 1972.

- 4.2 "The Museum is ideally placed on its existing site and only requires an extension in to the Mayors Parlour where a lift was to be installed to comply with the Disability Discrimination Act"

There are no plans in place to displace the museum, the Council is looking for credible qualifying organisations (for example a charity) as documented in the Community Asset Transfer Policy. Both the Margate Museum and Margate Town Hall require extensive work to bring them back in to use and comply as far as reasonably practicable (noting the Grade 2 Listing status) for accessibility requirements.

- 4.3 "The Mayor's Parlour also known originally as a municipal building was funded by the widow of Mayor Kendall and must continue for mayoral use".

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At present there are no known impediments to the use of the building, but the property will be subject to a thorough legal due diligence process which will include searches on the use of the property to identify any restrictions.

- 4.4 “The Tudor House and Maltings are not suitable to take all the museum artefacts, a heritage lottery bid needs to be revisited for all for these buildings as a matter of urgency.”

The intention is to market the Tudor House and land behind, together with the Margate Museum to identify potential uses that will support funding and a sustainable use of the properties. It is expected that the interested parties will include details of how they propose to fund the planned use.

Contact Officer:	Edwina Crowley, Head of Asset Management
Reporting to:	Tim Howes, Director of Corporate Governance

Background Papers

Title	Details of where to access copy on the internet
Asset Management, Museums, Cabinet October 2019	https://democracy.thanet.gov.uk/
Museum Association, Museum Survey 2018	Museumassociation.org
Mendoza Review, November 2017	www.gov.uk
Executive, Policy and Community Safety Scrutiny Panel Committee Meeting 27th September 2018	https://democracy.thanet.gov.uk/mgAi.aspx?ID=33079

Corporate Consultation

Finance	Matthew Sanham, Interim Head of Financial Services & Procurement
Legal	Sophia Nartey, Interim Head of Legal Services

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THANET DISTRICT COUNCIL DECLARATION OF INTEREST FORM

Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
 - exercises functions of a public nature; or
 - is directed to charitable purposes; or
 - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992

If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the

matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

Gifts, Benefits and Hospitality

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £25 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

What if I am unsure?

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Committee Services Manager well in advance of the meeting.

DECLARATION OF DISCLOSABLE PECUNIARY INTERESTS, SIGNIFICANT INTERESTS AND GIFTS, BENEFITS AND HOSPITALITY

MEETING.....

DATE..... AGENDA ITEM

DISCRETIONARY PECUNIARY INTEREST

SIGNIFICANT INTEREST

GIFTS, BENEFITS AND HOSPITALITY

THE NATURE OF THE INTEREST, GIFT, BENEFITS OR HOSPITALITY:

.....
.....
.....

NAME (PRINT):

SIGNATURE:

Please detach and hand this form to the Democratic Services Officer when you are asked to declare any interests.