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**Report of Service Manager, Private Sector Housing****Report to Director, Resources and Housing****Date: November 2017****Subject: Private Sector Housing – Updated Enforcement and Civil Penalty Policies.**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	No
Are there implications for equality and diversity and cohesion and integration?	No
Is the decision eligible for Call-In?	No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	No

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**Summary of main issues**

The Government has introduced new legislation under the Housing and Planning Act 2016 to help tackle rogue and criminal landlords. The Council welcomes these additional powers and is committed to making full use of them to improve housing standards in the private rented sector and ensure all private rented housing is safe, well managed and properly maintained.

Since 6<sup>th</sup> April 2017, local housing authorities have had the power to impose civil penalties (financial penalties) of up to £30K on individuals and organisations, as an alternative to prosecution, for certain offences under the Housing Act 2004. Rent Repayment Orders (RRO's) have also been extended to cover a wider range of offences.

The report outlines amendments to the Private Sector Enforcement Policy to reflect the new powers now available and provides detail and clarity on the policy to impose Civil Penalties. The introduction of Civil Penalties, together with the extension of rent repayment orders to include a wider range of offences, will help the Council to tackle criminal, rogue and irresponsible landlords and improve housing standards in the private sector.

## **Recommendation:**

The Director, Resources and Housing, is requested to:

- 1) Approve the adoption of an updated Enforcement Policy for use by the Private Sector Housing Service (attached as Appendix 1).
- 2) Approve the adoption of the Civil Penalty Policy for use by the Private Sector Housing Service (attached as Appendix 2).

## **1 Purpose of this report**

The purpose of this report is to seek approval of the Director, Resources and Housing, for the Civil Penalties Policy and amendments to the Council's Private Sector Housing Enforcement Policy.

These policies reflect the new powers that have been given to local authorities (under the Housing and Planning Act 2016) to impose Civil Penalties of up to £30K on individuals and organisations as an alternative to prosecution in certain cases.

## **2. Background information**

- 2.1 In Leeds, the private rented sector (PRS) has increased in size significantly in recent years and now accounts for approximately 70,000 properties (20%) of housing stock in the city. For the first time, there are now more people living in PRS properties than there are in social rented housing.
- 2.2 Although Leeds has many excellent landlords and letting agents, like other major cities it also has a significant number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.
- 2.3 The Government has pledged to crack down on rogue landlords and has introduced a number of measures, under the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords. The new powers introduced include:
  - **Civil Penalties of up to £30K** as an alternative to prosecution for certain specified offences (came into force from 6<sup>th</sup> April 2017).
  - **Extension of Rent Repayment Orders** so that they now cover illegal eviction, breach of a banning order, failure to comply with an Improvement Notice, and certain other specified offences (came into force from 6<sup>th</sup> April 2017).
  - **Database of rogue landlords and agents** who have been convicted of certain offences or received multiple civil penalties (scheduled to come into force from October 2017 but no detail as yet)

- **Banning Orders** for the most serious and prolific offenders (scheduled to come into force from October 2017 but no detail as yet).

2.4 Under the Housing and Planning Act 2016, local housing authorities are permitted to retain income that they receive from civil penalties and rent repayment orders, and to use that income to fund their statutory functions in relation to their enforcement actions in the private rented sector.

### 3 Main Issues

#### Civil Penalties:

- 3.1 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016.
- 3.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:
- **Section 30** – Failure to comply with an Improvement Notice
  - **Section 72** – Offences in relation to licensing of Houses in Multiple Occupation
  - **Section 95** – Offence in relation to licensing of houses under Part 3 of the 2004 Act
  - **Section 139** – Offences in contravention of an overcrowding notice
  - **Section 234** – Failure to comply with management regulations in respect of Houses in Multiple Occupation.
- 3.3 The maximum civil penalty that can be imposed is £30K per offence **although it is for the Council to determine the appropriate level of any civil penalty.**
- 3.4 The same criminal standard of proof is required for a civil penalty as for a prosecution. This means that before taking any formal action, the Council must satisfy itself that, if the case was prosecuted in the Magistrates court, there would be a realistic prospect of conviction. This means that the Council must be able to demonstrate beyond all reasonable doubt that an offence has been committed.
- 3.5 The private sector housing service in Leeds already has a robust enforcement policy and procedures in place to ensure compliance with this requirement.

#### Rent repayment orders:

- 3.6 A rent repayment order is an order made by the First-Tier Tribunal requiring a landlord to repay a specified amount of rent which can be up to 12 months' rent in total.

- 3.7 The Housing Act 2004 originally introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed – specifically offences in relation to licensing of HMO's.
- 3.8 Rent repayment orders have now been extended (under the Housing and Planning Act 2016) to cover a wider range of offences including failure to comply with an Improvement Notice (Section 30 of the HA 2004) and failure to comply with a Prohibition Order.
- 3.9 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid the rent themselves, then the rent must be repaid to the tenant but if it was paid through housing benefit, or Universal Credit, then it must be repaid to the local housing authority.
- 3.10 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only after the formal appeal process has passed. The Government has indicated that they expect local housing authorities to consider the option of applying for a rent repayment order whenever a civil penalty has been successfully imposed.
- 3.11 It is clearly in the financial interests of a local housing authority to make an application for a rent repayment order but they are also expected to offer advice, guidance and support to help tenants apply themselves where appropriate.

Private Sector Housing Civil Penalty Policy:

- 3.12 The Private Sector Housing Civil Penalties Policy contains information about civil penalties and how the Council is planning to use them. It takes account of statutory guidance issued by Government as well as discussions on best practice with regional and national colleagues (Appendix 2).
- 3.13 Generally, the highest civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect, amongst other factors, the severity of the offence, the harm caused and take account of the landlords' compliance history.
- 3.14 In line with national guidance, the Council will take account of the following factors when determining an appropriate penalty level:
- The severity of the offence
  - The culpability and track record of the offender
  - The harm caused to the tenant(s)
  - The punishment of the offender
  - Whether it will deter the offender from repeating the offence

- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.

- 3.15 The last factor is an overarching one and, after all other factors have been considered and applied, the Council will need to ensure that the civil penalty applied removes any financial benefit that had been gained from committing the offence.
- 3.16 The costs associated with investigating, determining and applying a civil penalty will be reflected in the level of the civil penalty that is imposed.

#### Private Sector Housing Enforcement Policy:

- 3.17 The Enforcement Policy is designed to provide an overview of the broad principles and processes with which the Council will seek to comply when taking enforcement action to ensure all private sector housing is safe and well managed.
- 3.18 It has been updated (Appendix 1) to take into account the new measures introduced under the Housing and Planning Act 2016 and the actions the Council will take in relation to civil penalties.
- 3.19 The Enforcement Policy confirms that decisions on appropriate course of action will be made on a case-by-case basis, it explains the actions available to the Council and describes the reasons why the Council may take such action. It demonstrates that the Private Sector Housing Service enforcement activity will be targeted, proportionate, consistent, transparent, fair and objective.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Detailed discussions have taken place with Legal Services about the Council's legal regulatory role, including the Enforcement and Civil Penalty policies.
- 4.1.2 The draft civil penalty policy was also circulated to other interested parties in the private sector and other comparable regional and national local authorities for comment. Full consultation has also been undertaken with other West Yorkshire local authorities to gain consistency in approach across the region. All responses received were positive and supportive.
- 4.1.3 The principles behind the civil penalties policy has also been fully discussed and debated at the PRS Housing Forum and received full cross party and member support.

## **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 There are no issues for Equality and Diversity / cohesion and integration as the policy will help improve the living conditions and life chances of vulnerable tenants across the city.

## **4.3 Council policies and the Best Council Plan**

- 4.3.1 The Council has an ambition to be the “Best City”. One determiner of achievement will be whether or not the city has housing to offer that meets the ambition of “Best City”. This policy will support the Best Council Plan in relation to living in good quality affordable homes within a clean and well cared for place by addressing poor housing conditions, bad management and targeting rogue and criminal landlords.
- 4.3.2 The Private Rented Sector is key market provider of housing in the city. The Council has a clear regulatory role in this sector to ensure that standards are maintained and tenants have access to a safe, warm and secure home. The implementation of this policy will be another tool with which to regulate the sector.

## **4.4 Resources and value for money**

- 4.4.1 Adoption of this more robust policy will help resources be targeted at the very worst properties and landlords thus helping the more vulnerable tenants. The policy reflects existing staffing resources so there is no additional cost to the service but aims to target activity and create more efficient ways of working.
- 4.4.2 The Housing and Planning Act 2016 specifies that income received by a local authority following the implementation of a civil penalty or the recovery of Housing Benefit through Rent Repayment orders can be retained by the local authority. The money received must however be spent on private sector housing enforcement and / or providing support to the PRS.
- 4.4.3 However, any income that a local authority receives from civil penalties but fails to spend on the activities described above must be repaid to a Central Government Universal Fund.

## **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Section 126 of the Housing and Planning act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. The Schedule in turn amends the Housing Act 2004 including a new Section 249A which includes the financial penalties as an alternative to prosecution.
- 4.5.2 The decision being requested falls under the Director’s delegations in accordance with part 3 of the constitution.
- 4.5.2 The adoption of this new enforcement policy is an operational decision.

## **4.6 Risk Management**

- 4.6.1 There is no identified legal risk to this decision given that it is fully in line with legislation and the Regulatory Code and has been subject to full consultation. The service will ensure the policy is fairly and equitably administered.
- 4.6.2 A key risk concerns the lack of certainty around decisions that will be made by First-Tier Tribunals when they consider an appeal against the imposition of a civil penalty. The Tribunal will have the power to quash, confirm, increase or reduce the civil penalty – and the regime is currently untried and untested. The Government has made it clear that offenders must not derive any financial benefit from their offence and has briefed the Tribunals on what is expected from them. However, an unfavourable outcome may affect the Councils' income and enforcement regime and undermine the process and this will need to be carefully monitored.
- 4.6.3 A further risk may well be the Councils' ability to successfully recruit to any additional qualified posts that could be created by the additional civil penalty income. Experience shows that it may be difficult to recruit the required number of housing enforcement officers with the necessary skills, qualification and experience.
- 4.6.4 A consequence of increased enforcement is a likely increase in complaints against the service and formal appeals against Statutory Notices to the First-Tier Tribunals. This is to be expected and policy and procedures will be developed by the service to ensure all actions are taken in accordance with legislator requirements although this will have an inevitable effect of increasing the need to seek Legal advice on more investigations and actions and incurring additional costs.
- 4.6.5 A further risk is the potential difficulty of recovering the financial penalties from some of the offenders as they may be limited liability companies and/or have no financial assets from which to recover the monies due, despite the use of legal action to recover the debts.

## **4.7 Conclusions**

- 4.7.1 The implementation of the amended enforcement policy is fully in line with the Councils' ambition to be the best city.
- 4.7.2 The amended enforcement policy continues to be closely linked to informal strategies and the new Leeds Rental Standard that still allows all compliant landlords to operate efficiently and in full engagement with the Council.
- 4.7.3 The new policy is fair, transparent and fully enforceable and will provide the service with the necessary tools to tackle the worst housing conditions in a more robust and efficient manner.
- 4.7.4 The Private Sector Housing Civil Penalties Policy contains information about civil penalties and how the Council is planning to use them. It takes account of statutory guidance issued by Government as well as discussions on best practice with regional and national colleagues (Appendix 2).

## **4.8 Recommendations**

4.8.1 The Director, Resources and Housing, is requested to:

- 1) Approve the adoption of an updated Enforcement Policy for use by the Private Sector Housing Service (attached as Appendix 1).
- 2) Approve the adoption of the Civil Penalty Policy for use by the Private Sector Housing Service (attached as Appendix 2).

## **4.9 Background documents<sup>1</sup>**

4.9.1 None

## **5.0 Appendices**

Appendix 1 – Updated Private Sector Housing Enforcement Policy

Appendix 2 – Private Sector Housing Civil Penalty Policy

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.