



## CABINET REPORT

Report Title

Private Sector Housing Enforcement Policy

**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	20 May 2020
<b>Key Decision:</b>	Yes
<b>Within Policy:</b>	Yes
<b>Policy Document:</b>	Yes
<b>Directorate:</b>	Housing and Wellbeing
<b>Accountable Cabinet Member:</b>	Councillor Stephen Hibbert
<b>Ward(s)</b>	All

### 1. Purpose

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- 1.1 The purpose of this report is to ask Cabinet to approve an updated Private Sector Housing Enforcement Policy which takes into account government guidance, new legislation, changes to existing legislation and the effect of recent case law.

### 2. Recommendations

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- 2.1 It is recommended that Cabinet approves the Private Sector Housing Enforcement Policy (attached to this report as Appendix A) with effect from 1 June 2020.

### 3. Issues and Choices

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#### 3.1 Report Background

- 3.1.1 In Northampton, the private rented sector has doubled in size during the past ten years and there are now more people living in the town's private rented sector than are living in social rented housing.

- 3.1.2 The severe shortage of social rented housing, together with the difficulty that many people are experiencing in buying a home of their own, has increased the number of people who are seeking private rented accommodation in the borough.
- 3.1.3 Although Northampton has some excellent landlords and letting agents, it also has a significant number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.

#### Housing enforcement powers

3.1.4 The Council has statutory powers and duties to regulate private sector housing and these are assisted by the Housing Health and Safety Rating System (HHSRS), the Mandatory Licensing of Houses in Multiple Occupation and, in designated parts of the borough, the Additional Licensing of Houses in Multiple Occupation.

3.1.5 The Government has pledged to crack down on rogue landlords and has introduced a number of measures, under and amended Housing Act 2004 and the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:

- Introduction of civil penalties as an alternative to prosecution for certain offences (these came into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other offences (these came into force on 6 April 2017);
- Introduction of a database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (this came into force in April 2018); and
- Introduction of banning orders for the most serious and prolific offenders (these came into force in April 2018).

3.1.6 The Government has also provided local housing authorities with the power to impose financial penalties on landlords and/or managing agents who:

- Undertake lettings agency / property management work, but fail to become a member of a Redress Scheme;
- Fail to comply with a remedial notice requiring them to install appropriate smoke and/or carbon monoxide detection;
- Fail to comply with the ban on tenants' fees and/or the rules affecting the holding of deposits;
- Fail to belong to a client money protection scheme; and/or
- Fail to undertake the necessary inspections and/or repairs in relation to the electrical system.

## The Council's approach to housing enforcement

- 3.1.7 The Council's approach to housing enforcement is intelligence-led, risk-based and targeted, and based on the principle that it should be the offender (rather than good landlords or council tax payers) who pays for enforcement and no-one who breaks the law should gain a financial advantage over someone who complies with the law.
- 3.1.8 This approach – which enjoys widespread support from local landlords who want the Council to create a level playing field for all landlords by dealing robustly with offenders – is reflected in three of the Council's Private Housing Policies:
- Private Sector Housing Fees & Charges Policy (updated 11 December 2019)
  - Private Sector Housing Civil Penalties Policy (updated 1 May 2020)
  - Private Sector Housing Enforcement Policy (last updated 1 August 2017)
- 3.1.9 The Housing Enforcement Policy has been reviewed and updated (see Appendix A) to reflect government guidance, case law and changes to legislation. It also mirrors the changes recently made to the Civil Penalties Policy and Fees & Charges Policy.

## **3.2 Issues**

### Purpose of the Private Sector Housing Enforcement Policy

- 3.2.1 The purpose of the Housing Enforcement Policy are to provide transparency and ensure that everyone who is affected by the Council's housing enforcement process understands what action the Council will take and when.
- 3.2.2 Most importantly, the Housing Enforcement Policy will also ensure that:
- Tenants of private landlords and registered social landlords live in homes that are free of unacceptable hazards and risks to their health and safety;
  - All Houses in Multiple Occupation are safe and well managed and all relevant Management Regulations are adhered to;
  - All licensable Houses in Multiple Occupation are licensed and all licensing conditions are met;
  - Private housing is not left empty for an unreasonable amount of time and/or becomes an eyesore and nuisance to neighbouring properties;
  - Privately owned property and land does not present a statutory nuisance to other landowners, and does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and
  - The Council meets its statutory obligations in relation to private housing.

### Principles underpinning enforcement action

- 3.2.3 The Housing Enforcement Team's enforcement activity will be:
- **Targeted** – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

- **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
- **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
- **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
- **Consistent** – Enforcement action will be undertaken by well-trained investigators, and the Housing Enforcement Team will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and share and develop good practice.
- **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Housing Enforcement Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

### 3.3 Choices (Options)

#### Option 1 (recommended)

- 3.3.1 Cabinet can choose to approve the updated Private Sector Housing Enforcement Policy (Appendix A). This option is recommended because the Housing Enforcement Policy needs to take into account recent case law and changes in legislation, and complement the Private Sector Housing Fees & Charges Policy and the Civil Penalties Policy which were updated in November 2019 and May 2020 respectively.
- 3.3.2 Approval of the updated, overarching Housing Enforcement Policy will make it clear that the Council will consider imposing civil penalties on landlords who are in breach of their legal obligations in relation to the redress schemes, smoke and carbon monoxide alarms, client money protection, electrical safety and Tenants Fees Act.

#### Option 2 (not recommended)

- 3.3.3 Cabinet can choose not to approve the updated Private Sector Housing Enforcement Policy (Appendix A). This option is not recommended because the existing Policy was approved in July 2017 and requires updating.
- 3.3.4 If the Housing Enforcement Policy is not updated, it will not make reference to the Civil Penalty Scoring Matrix – a robust 9-stage assessment process that is used to determine the level of civil penalty that should be imposed – or, indeed, the extension of the range of offences for which civil penalties can be imposed (including electrical safety, carbon-monoxide detection and tenants' fees).
- 3.3.5 The absence of an up to date Housing Enforcement Policy will hamper the Council's efforts to improve everyone's understanding of its housing enforcement process and what action the Council will take and when.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

4.1.1 The Private Sector Housing Enforcement Policy is in line with Council policy and will help the Council to meet its policy objectives of raising housing standards in the private sector, keeping the town and people safe, and putting the customer first.

### **4.2 Resources and Risk**

4.2.1 The Council's current Housing Enforcement Policy was produced in 2017 when civil penalties were new and there was no significant case law. It was based on the best available advice and guidance from central government at the time.

4.2.2 It is expected that the activity will be delivered within existing expenditure budgets. The budgeted income generated from imposition of civil penalty fines has been under pressure due to the risk mentioned in the paragraph 4.2.3 below. It is anticipated that the change in the Civil Penalties Policy will help mitigate some of these pressures. Budgets will continue to be monitored closely.

4.2.3 A current key risk is the lack of certainty around the decisions that will be made by the First Tier Tribunal when it considers appeals against the imposition of a civil penalties. The updated Civil Penalties Policy, which came into effect on 1 May 2020, has taken into account recent published decisions of the Tribunals and is designed, as far as possible, to mitigate the risks of a successful challenge

4.2.4 Another key risk is that, if there is a substantial increase in the number of investigations, this is likely to result in a corresponding increase in the number of cases requiring legal advice and assistance and this may, in turn, put extra pressure on the existing staffing resources within the Council's Legal Services team.

4.2.5 The updated Housing Enforcement Policy refers to the robust 9-point Civil Penalty Scoring Matrix that will be used to determine the level of the financial penalty that is to be imposed. This will reassure the Council that the civil penalty is proportionate.

### **4.3 Legal**

4.3.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 inserted section 249A and Schedule 13A into the Housing Act 2004 and amended sections 30, 72, 95, 139 and 234 to allow for the imposition of a financial / civil penalty as an alternative to prosecution for offences created by those provisions.

4.3.2 The amended Private Sector Housing Enforcement Policy at Appendix A makes it clear that the standard of proof that the Council must satisfy in order to be able to propose financial penalties for relevant housing offences is "beyond reasonable doubt". The wording in the existing August 2017 policy describing the standard that must be applied to all evidence is, with the benefit of hindsight, equivocal and imprecise. As First-Tier Tribunals must now give appropriate weight and consideration to the Council's Civil Penalties and Housing Enforcement Policies in any future appeals against the imposition of financial penalties by it, tightening up the phrasing used in the Policies to better reflect the legislatively mandated standard of proof ought to reduce the risk of Tribunals granting appeals on spurious and insubstantial grounds.

4.3.3 There is no statutory requirement to conduct a consultation exercise when amending a Housing Enforcement Policy. Case law makes it clear that there is no legitimate expectation that the public will be consulted about policy proposals for the exercise of local authority regulatory enforcement functions. Accordingly, there is a low risk that the amended policy could be successfully challenged by way of judicial review on the ground of a lack of public consultation if approved.

4.3.4 The amended Policy also complies with the statutory Regulator's Code introduced by the Government in 2014, which sets out the principles-based framework for how regulators should engage with those they regulate which must be taken into account when developing policies and procedures that guide their regulatory activities.

#### **4.4 Equality**

4.4.1 The Private Sector Housing Enforcement Policy will continue to support the Council's efforts to improve residents' housing conditions and life chances in Northampton.

4.4.2 It will reduce inequality and discrimination by ensuring that those in greatest need are not victims of criminal, rogue and irresponsible landlords.

4.4.3 A Community Impact Assessment has been completed to assess the likely impact of the Housing Enforcement Policy on Equality and Diversity.

4.4.4 It is anticipated that the updated policy will have a positive impact on:

- **Responsible landlords and managing agents** – by helping them to keep their business compliance processes to a minimum;
- **Tenants living in the private rented sector** – by making their homes safer and healthier to live in by improving physical standards and management; and
- **The wider community** – by ensuring that the private rented sector is better regulated and better managed.

4.4.5 The updated Policy is part of the Council's commitment to improving communities and our town as a place to live. In implementing the policy, the Council will have due regard to its Public Sector Equality Duty and will continue to work to tackle discrimination and inequality and contribute to the development of a fairer society.

#### **4.5 Consultees (Internal and External)**

4.5.1 Despite having no statutory duty to do so, in April 2017, the Council hosted 3 focus groups to obtain the views of a wide range of stakeholders on the Council's proposals in relation to housing enforcement. The focus groups were attended by Council Officers, the Northampton Student Landlords Network, the East Midlands landlord accreditation scheme, and local landlords and letting agents.

4.5.2 In June 2017, the Private Sector Housing Manager briefed a well-attended meeting of the town's Landlord Forum on the Council's proposals in relation to enforcement.

4.5.3 Everyone who attended the focus groups, and the vast majority of the landlords and letting agents that attended the Landlord Forum, were extremely positive about the Council's plans for using its new powers under the Housing Act 2004 and the Housing and Planning Act 2016.

## 4.6 How the Proposals deliver Priority Outcomes

4.6.1 As well as contributing to the delivery of a number of the borough's key strategies and policies, the new Housing Enforcement Policy (together with the updated Civil Penalties Policy and Fees & Charges Policy) will help create resilient communities and meet the following priorities in the Corporate Plan 2019 - 21:

- **More homes, better homes:** They will help the Council to increase the supply of good quality, well managed private rented housing and make effective use of its enforcement powers to ensure good standards.
- **Improving the health and wellbeing of local people:** They will help the Council to raise standards in private rented housing and, in doing so, improve the health and wellbeing of tenants.
- **Exceptional services to be proud of:** The Private Sector Housing Enforcement Policy will enable the Council to provide high quality, value for money services that generate income that can be used to fund its housing enforcement activity and related services.

### Appendices

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Appendix A – Updated Private Sector Housing Enforcement Policy

### Background Papers

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Community Impact Assessment

Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities (Department for Communities and Local Government) April 2017

Private Sector Housing Fees & Charges Policy (11 December 2019)

Private Sector Housing Civil Penalties Policy (1 May 2020)

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