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**Subject:** **REVISED PRIVATE SECTOR HOUSING ENFORCEMENT POLICY**

**Meeting and Date:** **Cabinet - 2 October 2017**

**Report of:** **Mike Davis, Director of Finance, Housing and Community**

**Portfolio Holder:** **Councillor Mike Conolly, Portfolio Holder for Housing, Health and Wellbeing**

**Decision Type:** **Key Decision**

**Classification:** **Unrestricted**

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**Purpose of the report:** To take advantage of new enforcement powers with the aim of improving the quality of the privately rented housing stock and tackling rogue landlords.

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**Recommendation:** Cabinet is recommended to approve revisions to the Private Sector Housing Enforcement Policy.

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## **1. Summary**

- 1.1 At its meeting on 2 December 2013 Cabinet approved a corporate Enforcement Policy and the Private Sector Housing Enforcement Policy. On 7 March 2016 Cabinet approved amendments to the Private Sector Housing Policy to take account of new regulations made in 2015.
- 1.2 The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords. These new powers include;
- Civil penalties of up to £30,000
  - Extension of Rent Repayment Order
  - Banning orders for most prolific offenders
  - Database of rogue landlords/property agents
  - Tougher fit and proper person test for landlords of licensed properties
  - Sharing data on tenancy deposit schemes with local authorities.
- 1.3 The use of most of these powers will be discretionary but there is an expectation that local housing authorities will cooperate with DCLG in maintaining and updating the database of rogue landlords and letting agents. Given the relatively small number of rogue landlords operating in the district we anticipate that the new powers would be used in a relatively small number of cases, probably less than 5 per annum. However, we believe they could be effective additional tools, which would allow the Council to take more immediate action and have a deterrent effect while also providing some financial benefits.
- 1.4 In order to be able to impose financial penalties the Council is required to have a policy for determining when to issue a penalty notice and the amount of penalty to be charged. It is therefore recommended that the current Private Sector Housing Enforcement Policy is amended to allow the use of the new powers relating to civil penalties and Rent Repayment Orders.
- 1.5 The civil penalties power effectively gives local authorities an alternative to prosecution for offences committed under the Housing Act 2004, including all HMO

offences. Local authorities now have a choice over whether to prosecute or impose a penalty with a maximum fine of £30,000. The benefit of imposing fines is that the Council will be able to retain the money recovered, which is not currently the case with fines imposed in the magistrates' court.

## 2. Introduction and Background

2.1 As part of the Governments policy to improve the private rented sector and to tackle rogue landlords, The Housing and Planning Act 2016 has introduced a number of discretionary new powers with the following commencement dates.

- 6th April 2017 – (made by Regulations) extension to Rent Repayment Orders (RRO) and Financial Penalty (FP) as enforcement options.
- 1st October 2017 (this date may be delayed due to election) – Landlord Banning Order, Banning Order Offences and Database of Rogue Landlords

2.2 While the powers relating to fixed penalties and Rent Repayment Orders are discretionary in terms of when they are used the government has issued guidance on how they should be used.

2.3 Instead of prosecuting a landlord in the Magistrates Court, the Council can now issue a **Financial Penalty Notice (FP)** to a landlord who commits one of a number of housing related offences. A FP can be served for the following: for the failure of a landlord to comply with an improvement notice requiring works, for HMO or property licensing offences, this includes the failure to licence a licensable property or; when licenced, a failure to comply with the conditions, including controlling numbers of tenants. In a HMO a (FP) can be issued to a landlord who fails to comply with an overcrowding notice or does not manage the property properly so that there are breaches of the HMO Management Regulations. There is no provision for a FP in the case of offences of Prohibition Orders.

2.4 This new power effectively gives local authorities an alternative to prosecution for offences committed under the Housing Act 2004, including all HMO offences. Local authorities now have a choice over whether to prosecute or impose a penalty with a maximum fine of £30,000. The benefit of imposing fines is that the Council will be able to retain the money recovered, which is not currently the case with fines imposed in the magistrates' court.

2.5 It is anticipated that from October 2017, a FP can be issued to a landlord who breaches the requirements of a Banning Order.

2.6 On 6<sup>th</sup> April 2017, the power to apply for a **Rent Repayment Order (RRO)** was extended. An application has to be made to the **First Tier (Property) Tribunal (FTT)** for an RRO to be made. A RRO can now be made in respect of a number of 2004 Housing Act offences, including the failure of a landlord to comply with an improvement notice or a prohibition order. Additionally it includes offences linked to poor tenancy management including using violence to secure entry to a property and offences of illegal eviction and harassment of the tenant. A RRO would require the landlord to repay 12 months rent to the tenant or to the Council in the case of Housing Benefit being paid.

2.7 It is envisaged that from October 2017 a RRO application can be made to a FTT for a landlord who breaches the requirements of a Banning Order.

- 2.8 The statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016 requires local housing authorities to have regard to the guidance in exercising of their function in respect of civil penalties as an alternative to prosecution. The guidance states that it expects the maximum amount to be reserved for the very worst offenders with the actual amount levied reflecting the severity of the offence and any previous record of offending.
- 2.9 The recommended policy for the Council in determining its approach in setting its financial penalty is set out at Annex 1; entitled “Determining the Penalty”. This proposes a process for determining the approach and appropriate level of FP which will ensure consistency, transparency and a fair treatment for all parties. The process takes account of the requirements of the 2016 Act and the statutory guidance issued by the Secretary of State in relation to making applications for Rent Repayment Orders and Financial Penalties (referred to as Civil Penalties within the guidance). Annex 2 is the proposed revised Private Sector Housing Enforcement Policy 2017 which includes this new provision.
- 2.10 The decision whether to prosecute or impose a FP will be considered for each offence. It is recommended that prosecution will be the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress ultimately through recording of a prosecution on the Rogue Landlord Database and banning through an application for a Banning Order. Reference will be made to Table 1. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

**Table 1:** Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
			Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)												
							Prosecution and Rent Repayment Order Banning Order Offence – register on Database								
										Consider -application to Ban Landlord					

- 2.11 The process for determining the penalty involves a five stage consideration. These take into account the statutory guidance, in that the FP should reflect: the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, punishment of the offender, deterring both the offender and others from committing similar offences and any financial benefit the offender has from offending.

Stage1: Banding the offence. The initial FP band is decided following the assessment of two factors;

- Culpability of the landlord; and
- The level of harm that the offence has had.

Stage 2: Amending the penalty band based on aggravating factors.

Stage 3: Amending the penalty band based on mitigating factors.

Stage 4: A Penalty Review; to ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. To ensure the total penalty is just and proportionate to the offending behaviour in the case of multiple offences or where a RRO is to be applied for.

2.12 The five stage process enables the Council to determine a penalty score and FP amount. Table 2 provides details on the four Bands and Penalty Scores.

**Table 2:** Financial Penalty Banding and Penalty Scores

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

After Council officers have calculated the level of the FP, this will then be checked by the Private Sector Housing manager or in his absence a more senior manager within the Housing service prior to being passed for processing. A checklist will be completed and kept on file in line with the Council's retention policy.

2.13 It is felt that the FTT is best placed to determine the RRO award to either the Council or tenant following a respective application. On this basis, "Determining the Penalty", Appendix 1, looks for the Council to apply to the FTT for the maximum rent repayment based on the rent paid over the relevant period in each case and to permit the FTT to determine the sum of the RRO.

### 3.0 Identification of Options

3.1 Option 1. Not to implement a Financial Penalty Notice scheme or have a policy on Rent Repayment Orders and therefore leave the current enforcement policy unchanged.

3.2 Option 2. Implement a Financial Penalty Notice scheme and policy on Rent Repayment Orders in accordance with legislation and government guidance and set out in the proposed revised Private Sector Housing Enforcement Strategy.

3.3 Option 3. To make alternative or additional amendments to the enforcement policy and/or the charging policy recommended in the report.

### 4.0 Evaluation of Options

4.1 Option 1. This is not considered appropriate as the new powers are intended to encourage a greater level of compliance thereby improving the quality and safety of homes as well as meeting a government expectation that housing authorities will use the powers to "clamp down on rogue landlords".

4.2 Option 2. This is the preferred option. While the process for determining fixed penalty notices may appear complex it is important that we have regard to government guidance and implement a scheme which is fair and proportionate so as to minimise as far as possible the risk of challenge. The ability to use the new powers will give the Council more options for tackling rogue landlords and improving housing standards and the occasional use of the powers should also have a deterrent effect.

- 4.3 Option 3. The recommended revisions to the enforcement policy and charges have been developed in accordance with government guidance and officers believe they provide the best approach to implementing the new powers in a fair and proportionate way.

## **5.0 Resource Implications**

- 5.1 There will be an increase in staff workload as a result of the need to serve penalty charge notices and apply for rent repayment orders but we are not seeking any increase in the number of staff at this time.
- 5.2 As these are new powers there isn't any comparable data we can use to estimate potential income. There aren't large numbers of rogue landlords operating in the district and consequently we anticipate that the number of penalty notices issued will be relatively low, probably around 2 or 3 per annum. If we assume that the penalty sum is most likely to be in the lower banding ranges (Bands 1 & 2), the income is unlikely to exceed £15,000 per annum.
- 5.3 The benefit of using civil penalties is that the income can be retained by the Council unlike fines imposed by the magistrate's court. This is subject to the income being used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

## **6 Corporate Implications**

- 6.1 If option 2 is approved, then the new provisions contained in the Housing and Planning Act 2016 will need to be delegated to Director of Finance, Housing and Community, Head of Strategic Housing and Private Sector Housing Manager.
- 6.2 Comment from the Director of Finance (linked to the MTFP): Accountancy have been consulted and have no further comments to add. (DL)
- 6.3 Comment from the Solicitor to the Council: The solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.
- 6.4 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

## **7 Appendices**

Annex 1: Determining the Penalty

Annex 2: Revised Private Sector Housing Enforcement Policy 2017

## **8. Background Papers**

- i. Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities
- ii. Rent repayment orders under the Housing and Planning Act 2016. Guidance for Local Housing.
- iii. Housing and Planning Act 2016

- iv. Corporate Enforcement Policy
- v. Private Sector Housing Enforcement Policy

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