

WEST NORTHAMPTONSHIRE COUNCIL CABINET

11th April 2023

**Cllr Adam Brown, Deputy Leader of the Council and Portfolio Holder for
Housing, Culture & Leisure**

Report Title	Private Sector Housing Enforcement and Civil Penalties Policy v2
Report Author	Chris Stopford – Head of Private Sector Housing chris.stopford@westnorthants.gov.uk

List of Approvers

Monitoring Officer	Catherine Whitehead	15/03/2023
Chief Finance Officer (S.151)	Martin Henry	15/03/2023
Other Director	Jane Carr	8th March 2023
Communications Lead/Head of Communications	Becky Hutson	16 th March 2023

List of Appendices

Appendix A –Private Sector Housing Enforcement and Civil Penalties Policy v2

1. Purpose of Report

- 1.1. The purpose of this report is to ask the Cabinet to approve an updated Private Sector Housing Enforcement Policy which takes into account the new Council Fees and Charges regime approved at Council in February 2023, government guidance, case law, the introduction of new legislation and changes to existing legislation.

2. Executive Summary

- 2.1. The Council, in undertaking its regulatory functions in relation of Private Sector Housing, is required to publish a policy outlining how it will approach its statutory duties. The attached

report, and its Appendix, outlines for our residents and businesses the approaches that the Council will take in seeking to ensure all private rented secure tenants have safe, secure and well maintained homes.

3. Recommendations

It is recommended that the Cabinet:

Approve the Private Sector Housing Enforcement and Civil Penalties Policy v2 (attached to this report as Appendix A)

Delegate to the Head of Private Sector Housing, in consultation with the Portfolio Holder for Housing, Culture and Leisure; the responsibility to maintain the policy and make any minor amendments in light of legislative changes, Court or Tribunal decision, or identified typographic error

4. Reason for Recommendations

The decision is recommended for the following reasons:

- The recommended course of action is the most cost-effective
- To support compliance with legislation and Council policy.
- To support consistency with previous decisions of the Council in adopting the Private Sector Housing Enforcement and Civil Penalties Policy v1 in April 2021, as part of the vesting day activities of West Northamptonshire Council
- To ensure that the Council maintains its policies in line with legislative, Court or Tribunal decisions

5. Report Background

- 5.1. In West Northamptonshire, the private rented sector has doubled in size during the past ten years and there are now more people living in the area's private rented sector than are living in social rented housing.
- 5.2. The 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 District
- 5.3. Although West Northamptonshire 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

- 5.4. 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 District, the Additional Licensing of Houses in Multiple Occupation.

- 5.5. 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:
- 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).
- 5.6. 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

- 5.7. 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.
- 5.8. 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 the existing Private Sector Housing Enforcement and Civil Penalty Policy v1 (April 2020)
- 5.9. The Housing Enforcement Policy has been reviewed and updated (see Appendix A) to reflect the new Council Fees and Charges regime, government guidance, case law and changes to legislation.

6. Issues and Choices

Issues

Purpose of the Private Sector Housing Enforcement Policy

- 6.1. The purpose of the Private Sector Housing Enforcement and Civil Penalties Policy is 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.
- 6.2. Most importantly, the 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 land owners, 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

- 6.3. 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.

7. Choices (Options)

Option 1 (recommended)

- 7.1. Cabinet can choose to approve the updated Private Sector Housing Enforcement and Civil Penalties Policy (Appendix A). This option is recommended because the Policy needs to take into account recent case law and changes in legislation and complement the Council's approach to fees and charges as approved by Council, February 2023.
- 7.2. Approval of the updated, overarching Policy will make it clear that the Council will impose 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 the Tenants Fees Act 2019.

Option 2 (not recommended)

- 7.3. Cabinet can choose not to approve the updated Private Sector Housing Enforcement and Civil Penalties Policy (Appendix A). This option is not recommended because the existing Policy was approved in April 2020 and requires updating as a result of changes to the Council's approach to fees and charges, updated legislation, case law and government guidance.
- 7.4. The absence of an up to date 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.

8. Implications

Resources and Financial

- 8.1. The current Private Sector Housing Enforcement and Civil Penalties Policy was produced in 2020. It was based on the best available advice and guidance from central government at the time.
- 8.2. A potential risk, at the time, concerned the lack of certainty around the decisions that will be made by the First Tier Tribunal when it considers an appeal against the imposition of a civil penalty. The updated Policy, which comes into effect on 12th April 2023, 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

Legal

- 8.3. 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.
- 8.4. The amended Private Sector Housing Enforcement and Civil Penalties 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". 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 new Policy to better reflect the legislatively mandated standard of proof ought to reduce the risk of Tribunals granting appeals on spurious and insubstantial grounds.

- 8.5. There is no statutory requirement to conduct a consultation exercise when amending a Private Sector Housing Enforcement and Civil Penalties 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.

Consultation and communications

- 8.6. There is no statutory requirement for any consultation associated with the development, and implementation of the Private Sector Housing Enforcement and Civil Penalties Policy.
- 8.7. Engagement on the Policy has taken place with the Deputy Leader / Cabinet Member for Housing etc and with the key managers within the Private Sector Housing Team
- 8.8. The new policy, once approved, will be published on the Council website and will replace the existing 2021 approved Policy

Risk

- 8.9. In the absence of a policy the Council faces risks of challenge by recipients of Council enforcement action. The publication of the policy will provide clear information to all residents and businesses of the approach that the Council will take to ensuring that tenants of the private rented sector are afforded.
- 8.10. The First Tier Tribunal, in considering any appeal against enforcement action, but give appropriate weight and consideration of the Council's Civil penalties and Housing Enforcement Policies, in this case the combined Private Sector Housing Enforcement and Civil Penalties Policy. In the absence of a policy the First Tier Tribunal will have no local policy on which to base their consideration. This may negatively impact on the outcome of any considerations of the First Tier Tribunal.

9. Background Papers

- 9.1. None