

Appendix B

Private Sector Housing Enforcement Policy – response from Harlow Poverty Alliance

The policy sets out how Harlow District Council intends to secure effective compliance with the Housing Act 2004 and other relevant legislation while minimising the burden on the council, individuals, organisations and businesses.

The policy extends to residential dwellings, HMOs, empty dwellings and owner-occupier.

Initial concerns

The policy document, including appendix, is 41 pages long, which is likely to lead to low engagement in the consultation. To our knowledge, it is only available online, and there are no easy-read versions available.

There is nothing on Harlow Council's website to say that it can intervene in issues related to private sector housing.

We have called Contact Harlow to gain an understanding on how people would escalate issues. We have been told that people would need to call Contact Harlow and go from there, or if it is a hazard, then they would need to contact environmental health. If it is ASB, then the community safety team. We are calling on other people's behalf and interest, so not experiencing the stress of the issues. It would be beneficial to have information available on how and where to escalate, outside of the policy document.

The following response drills down to individual points of the policy and related concerns.

Details of policy

Point 4: Regulators Code

Targeting: We will target properties and people that pose the greatest risk, including owners and landlords who evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

Fairness and Consistency: (Paragraph 2) In certain instances, we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

Related concerns

There is a concern that "properties which cause a nuisance" could lead to the targeting of the most vulnerable occupants with high support needs.

There are no examples of how/why the Code may not be relevant and what instance may lead to it being abandoned.

Details of policy

Point 5: Authority to investigate or enforce

“Harlow Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2005. A notice is not required where entry is to ascertain whether an offence has been committed.

Related concerns

There is a concern that this power may be intimidating to those who experience forced entry and the people who are experiencing this may be vulnerable and not know their rights. Coupled with the approach to targeting, there is a concern that it may impact vulnerable occupants with high support needs. How will tenants know the legitimacy of such an action?

Details of policy

Harlow Council has powers under Section 237 of the Housing Act 2004 to use the information obtained above the Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

Related concerns

There is no further information – in the policy or appendix – detailing what will be done with the Housing Benefit and Council Tax information collected/to what purpose this is being collected.

Details of policy

6. Inspections

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS). It is a calculation of the effect of 29 possible hazards on the health of occupiers and any visitors. The legislation provides a range of actions to address these hazards.

The process of a HHSRS is two stages, the inspection, and the subsequent calculations. HHSRS calculation provides a combined score for each hazard identified, however it does not provide a single score for the dwelling as a whole.

The scoring of any hazard combines the likelihood of an occurrence taking place (within 12 months) and then the range of probable harm outcomes that may arise from that occurrence. A numerical value is then provided which is then converted into bands (from A to J).

Bands A to C (ratings of 1,000 points and over) are considered to be the most severe and are known as Category 1 hazards. The Council has a duty to take appropriate action in response to a Category 1 hazard. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options is the most appropriate course of action.

Bands D to J, are less severe (rating less than 1,000 points) and known as Category 2 hazards. This process is repeated for each of the hazards present within the dwelling. The Council has a power to act in response to Category 2 hazards. If the Council decides to take action for category 2 hazards, it will consider taking action in the following circumstances:

- Where a Category 2 hazard falls within Band D or E and there is one or more Category 1 hazards

- Where the cases involve a vulnerable person that would benefit from having Category 2 hazards addressed
- Cases in which a premises suffers from multiple Category 2 hazards, which when considered together, create a more serious situation
- Where a Stock Condition Survey highlights specific local hazards relating to that type of dwelling
- Any other exceptional case determined by the Environmental Health Manager/Assistant Director

The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will consider the effect of that risk upon the actual occupant.

Concerns

Category 2 hazards will only be acted on when there is one or more Category 1 hazard: there is a concern that things have to get worse to be rectified, and there are no details on how assessment is undertaken – how are 1,000 points reached? How bad do things need to be to require action?

Assessment is not based on the risk to the actual occupant but those most vulnerable to that particular risk and action is then taken based on how vulnerable the actual occupant is to that risk – there is a concern that hazards left untreated could increase the vulnerability of the actual occupant. While it's unclear how initial scores are reached, it's also unclear how they are amended to apply to an individual. How is vulnerability of the occupant ascertained? What are the deciding factors of vulnerability? Is the level of vulnerability reliant on disclosure from the occupant?

Anecdotal concerns

We have spent time speaking to our clients. One shared that they have a council property with blown windows and a leaking toilet. They can't see out of the windows. Their biggest concern is the leak from the toilet and the health impact this may have, but state that they have been told that because there are no children and no one is disabled, the council will not take action to resolve the issue. The person uses walking aids and is on PiP. They are unaware of their score and at what level it needs to be to pose an actionable hazard.

Another client has broken guttering which is leaking outside the house. While it is not causing issues inside the house as yet, it has been two years. It seems it would be financially beneficial to the council to resolve the issue before it affects more of the property, while also giving reassurance to the occupier that their belongings and health will not be affected in the long term.

If the council is allowing this to happen in their own properties, what capacity do they have to further monitor this in a private rental setting?

Details of policy

15.1 Energy efficiency in private rented property

Under prescribed circumstances within the Regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies, the landlord must register the exemption on the national Private Rented Sector Exemptions Register.

Concerns

Are details of the property being sub-standard shown to renters prior to take up of the lease? Is there any obligation for these to be shown?

Given the lack of affordable rental properties available in Harlow, there is a concern that landlords may exploit this exemption, and there will be no consequences.

This concern is heightened through the details on section 6 of the policy which lists "Excess cold (due to low energy efficiency from expensive or inadequate heating and/or inadequate insulation" as top of the 29 hazards most frequently identified in Harlow.

Details of policy

16.2 Tenants

If tenants are unhappy about their housing conditions, they are expected to give their landlord the opportunity to resolve any problems before the Council become involved. Unless there are exceptional circumstances, the PSH Team will generally not visit a property at the request of a tenant unless the tenant has first been in contact with their landlord or letting agent to try to resolve the matter.

Example of exceptional circumstances include, but not exclusively:

- An imminent risk to health and safety
- A history of harassment/threatened eviction/poor management practice
- Where the tenant could not reasonably be expected to contact their landlord/managing agent due to the special circumstances of the case e.g., vulnerability.

This does not preclude Harlow Council from making unannounced visits to properties where it feels it appropriate to do so.

Concerns

The power rests with the council and the landlord.

A history of harassment/threatened eviction/poor management practice has to be built up before action will be taken by the council. Can the severity of an incident prompt an earlier intervention before it escalates

Details of policy

16.4. Social Landlords

Registered Providers of Social Housing (RPs) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) their performance is also scrutinised by the Homes and Communities Agency and Tenant Services Authority. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting repairs or problems and will have set out the response times to achieve this.

Harlow Council will not normally take formal action against an RP unless it is satisfied that the problem in question has been properly reported to the RP has then failed to take appropriate action. If the Council determines that it is appropriate to take action it will then normally notify the RP that a complaint has been received and will seek the RP's comments and proposed action. Only in cases where it has been deemed that an unsatisfactory response has been received will the Council take further action and review what enforcement options are available to determine the most appropriate course of action.

Concerns

People living within managed and maintained properties may be vulnerable. Reporting of dissatisfaction may not be recorded by the RP, in which case the action will end. The need for Harlow Council to report the complaint may put people off from escalating it, as they may feel that they cannot complain about a place they are living in: they may be concerned that they will lose their home. How can this fear, that may lead to disadvantage for a vulnerable tenant, be mitigated by clear communication to tenants relating to how and when they can appeal to the council for support?

Anecdotal concerns

We have spent time on the phone today (10/11/23) asking how a person with a social landlord would report issues to the council and what the process is, as we do have a client with issues they would like to escalate. We have been informed that the occupier must report the issue to the social landlord and if they are unhappy with the response, it would then need to be escalated with the ombudsmen. The council would not intervene and there is no way to report it to the council. This is contradictory to this policy. It took 27 minutes on the phone to get this information.

This consultation document suggests that it is existing policy that the council will intervene where there is a dispute between a resident and a registered provider of social housing. How will a resident discover that, especially as your staff aren't aware the council is committed to doing so, in the existing policy?

From [REDACTED]

Sent: Friday, November 10, 2023 11:38 AM

To: Environmental Health <env.health@harlow.gov.uk>

Cc [REDACTED]
[REDACTED]

Subject: Private sector housing enforcement policy consultation

Dear Sirs

We write with regard to the consultation on the newly proposed private sector housing enforcement policy.

Citizens Advice Harlow welcomes the policy for Private Sector Housing Enforcement in Harlow. We recognise that powers and enforcement measures available to local authorities are valuable tools for tackling poor conditions in the private rented sector. However we also understand the challenges faced by local authorities in driving enforcement such as capacity, expertise and strategic commitment. Nevertheless we would like to see a proactive approach being taken by Harlow Council. Undertaking regular reviews of the housing stock, although challenging, would lead to build a picture of the issues and individuals involved. Many of the tenants that live in sub-standard housing are vulnerable themselves. They will either not complain because they are not aware of their rights or because they feel that they don't have the tools to do so or they may know only too well that any complaint may lead to a s.21 notice and potentially the loss of their home.

The role of Citizens Advice Harlow is to be here for such tenants to advise and support them and we can plan to work collaboratively together with Harlow Council in order to achieve this. Ultimately the aim of enforcement and the principle behind the policy must be to improve housing conditions and raise the standard of property management within the private rented sector in Harlow . It should aim to ensure the provision of safer, healthier, affordable, and warmer homes in the private sector to enable all people within Harlow to benefit from healthy housing and environment. As we believe that this is a fundamental building block for any community to thrive.

We would like to see the rogue landlord database being used as an appropriate tool for enforcement, this can be used on a discretionary basis rather than only using it when it is a mandatory requirement.

We must also not ignore the issue of permitted developments within Harlow - often these are owned by private companies and the same issues continuously arise within them of damp, mould and overcrowding. Enforcement must continue to be robust despite the fact that it is other local authorities that are outsourcing their housing duties to them.

Yours faithfully,

For and on behalf of Citizens Advice Harlow

From: [REDACTED] >
Sent: Wednesday, October 18, 2023 10:19 AM
To: Environmental Health <env.health@harlow.gov.uk>
Subject: Comments on Private Sector Housing Enforcement

Hello,

I would like to offer some comments on the above. I welcome the proposals and think that they are sensible. However, there is one aspect that I would comment on and that is damp/mould because very often that is a lifestyle issue rather than anything a landlord can fix.

Things like drying washing indoors, not wiping away condensation when you see it, not putting the heating on, and not opening windows regularly can all be contributing factors.

The point is that the landlord can let a flat to someone that does all of the above OR none of the above. One tenant will likely have damp/mould and the other will not.

Realistically there is little a landlord can do if a tenant's lifestyle is a contributing factor.

Thank you,

[REDACTED]

From: [REDACTED]
Sent: Friday, October 13, 2023 1:24 PM
To: Environmental Health <env.health@harlow.gov.uk>
Cc: [REDACTED]
Subject: Private landlord comments.

I am a private landlord in Harlow and are happy to accept any improvements or standards, however the same said standards should also be applied to council and social landlords.

If you have fines which is how I read this, without the need to prove anything in the courts then again the same must be applied to the council and social landlords

The existing private landlords are selling up and moving from the rental market because of council fees, legislation and the problematic issue of now eviction of bad tenants.

This creates more pressure on the council which they can not meet so it is the council causing the housing problems with no real care for those in need.

You will ultimately do what you want and I am sure this will generate more fees and fines for the councils piggy bank without any consideration for the landlords and tenants they support.

Kind regards [REDACTED]