

Private Sector Housing Enforcement Policy



Report to:	Cabinet
Date:	15 January 2024
Portfolio Holder:	Councillor Nicky Purse, Portfolio Holder for Environment and Sustainability
Lead Officer:	Norah Nolan, Interim Assistant Director Environment (01279) 446132
Contributing Officers:	Sally Haggerstone, Interim Environmental Health Manager (01279) 446165 Steven Adams, Principal Environmental Health Officer (01279) 446105
Key Decision:	No
Forward Plan:	Forward Plan number 1016275
Call In:	This item is subject to call in procedures
Corporate Priority:	Improve council services
Wards Affected:	None specifically

Recommended that:

- A** Cabinet approves The Private Rented Sector Housing Enforcement Policy as set out in Appendix A. The results of the consultation on the proposed policy detailed in Appendix B be noted.
- B** The Private Sector Housing Enforcement Policy be adopted and implemented on 24 January 2024.

Reason for decision

- A** The powers provided by the Housing and Planning Act 2016 and the Housing Act 2004 will enable the Authority to help improve the quality of private rented accommodation in Harlow and to act against landlords, letting agents and property managers who knowingly rent out unsafe and substandard accommodation.
- B** There were four responses to the consultation, which show overall support for the use of civil penalties. Some negative responses were aimed at Harlow Council as a social landlord which is outside the scope of the Private Sector Housing Enforcement Policy and will be directed to the relevant department.

Other Options

- A** No other options were considered other than Statutory Legislation and Guidance.

Background

1. The Housing and Planning Act 2016 provides powers that permit local authorities to impose a civil penalty of up to £30,000 as an alternative to prosecution for a range of offences under the housing Act 2004, and where a landlord or property agent has breached a banning order under the Housing and Planning Act 2016.
2. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced the requirement to provide a smoke alarm installed on every storey of a property and a carbon monoxide alarm in any room containing a solid fuel burning appliance. Local authorities can impose a civil penalty of up to £5,000 where a landlord fails to comply with a remedial notice. A local housing authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.
3. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the Electrical Safety Standards Regulations') gives the council the power to impose civil penalties of up to £30,000. It is for the council to determine the level of any civil penalty up to this maximum.
4. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the Energy Efficiency Regulations') gives the council the power to impose civil penalties of up to £5,000. It is for the Council to determine the level of any civil penalty within certain individual maximum levels for different types of breaches.
5. The Redress Schemes for letting agency work and property management work (requirement to belong to a scheme, etc.) (England) Order 2014, introduce a fine of up to £5,000 where a lettings agent or property manager who should have joined a scheme

has not done so.

Issues/Proposals

6. Recent legislation has introduced new civil penalties for Local Housing Authorities and associated charges.
7. Local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty, and on determining the appropriate level of civil penalty.
8. For Harlow Council this responsibility is with the Environmental Health Service, Communities and Environment.
9. The private rented sector is an important part of our housing market and there is a commitment to improving standards within it. The council want to support good landlords who provide decent, well maintained homes, but will take action against those landlords who knowingly rent out unsafe and substandard accommodation.
10. The council's Private Rented Sector Housing Enforcement Policy outlines the councils' approach and how it will tackle poor housing conditions and address non-compliance with legislation. The current Private Sector Housing Enforcement Policy was adopted in 2003, the proposed policy attached to this report replaces this policy. Since adopting the previous policy there have been several significant changes to housing legislation.
11. The current private sector housing enforcement policy has been updated to incorporate the additional civil penalty powers and the updated policy has been through a 4-week consultation.
12. The new Private Sector Housing Enforcement Policy aims to:
 - a) Improve the standard of homes in the private sector;
 - b) Assess local housing conditions;
 - c) Reduce the number of properties with serious risks to health and safety;
 - d) Reduce the number of vulnerable households living in non-decent homes;
 - e) Improve the energy efficiency and warmth of homes and to help reduce fuel poverty;
 - f) Improve standards in private rented accommodation;
 - g) Improve the standards in HMOs (houses in multiple occupation);

- h) Work closely with private sector landlords towards improving conditions and the standard of management of private rented housing; and
 - i) Meet the council's statutory obligations.
13. In all instances where civil penalties are being considered as an alternative to prosecution, the council will still have to be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction, i.e., the standard of proof remains the same as if the decision had been taken to institute legal proceedings. The council needs to demonstrate beyond reasonable doubt that the offence has been committed before imposing a civil penalty. For this purpose, officers involved in cases will consult the Crown Prosecution Service Code for Crown Prosecutors and liaise with senior officers, managers, and Legal Services before any decision is made to impose a civil penalty.
14. In order to ensure civil penalties are used fairly and are set at an appropriate level, the following factors, as set out in the statutory guidance, first published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities) in April 2017, will be considered:
- a) severity of the offence;
 - b) culpability and track record of the offender;
 - c) harm caused to the tenant;
 - d) punishment of the offender;
 - e) whether it will deter the offender from repeating the offence;
 - f) whether it will deter others from committing the offence;
 - g) whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.
15. The updated Policy is aimed at the regulation of the private rented sector, which includes housing association properties and not those owned by the council.
16. Any income from civil penalties is retained by the local housing authority which imposed the penalty. The council must use any income from civil penalties to further its statutory functions in relation to enforcement activity covering the private rented sector.

Implications

Equalities and Diversity

Please see attached equality impact initial screening.

A full Equality Impact Assessment form is required but is not an immediate priority, this has been completed and is attached.

Climate Change

It is not possible to quantify the outcome of the updated Policy in relation to climate change impacts. Nevertheless, the fundamental purpose of the Energy Performance Regulations is to drive up energy performance of rented accommodation by setting a minimum energy efficiency level for such properties.

Whilst the Electrical Safety Standards Regulations are primarily focused on the electrical safety of rented properties, the energy efficiency is likely to be indirectly improved if the electrical installations are modern and effectively optimised from a safety perspective.

It is, therefore, reasonable to conclude that where enforcement powers are used to ensure compliance with both the Energy Performance Regulations and the Electrical Safety Standards Regulations, there will be a positive climate outcome, particularly in relation to energy and fuel consumption. There is a strong likelihood of significant improvements for tenants on low incomes, with associated co-benefits such as improved physical health and mental wellbeing.

It is acknowledged that enforcement of both the Energy Performance Regulations and the Electrical Safety Standards Regulations will not generate any potential opportunities for carbon offsetting or specific measures to improve resilience to climate related extreme weather events.

Finance

Any income from civil penalties is retained by Harlow Council as the local housing authority. The council must use any income from civil penalties to further its statutory functions in relation to enforcement activity covering the private rented sector. It is not yet known what income level may be retained, but will form part of the council's formal budget monitoring processes.

Author: Jacqui Van Mellaerts, Assistant Director – Finance

Governance and Corporate Services

The proposals use a range of powers that are available to the Council in bringing prosecutions and in enforcement. Members should be mindful of the impacts of the policy particularly against those with protected characteristics and the rising level of homelessness from evictions in the private rented sector. Any increase in the level of prosecutions will impact support services and must be contained within available resources.

Author: Simon Hill, Director of Governance and Corporate Services

Housing

We endorse and support the recommendations outlined in the report.

Author: Neil Euesden, Interim Director of Housing

Strategic Growth and Regeneration

The improvement of housing standards in the private rented sector will be an important part of Harlow's renewal. There is as much need to improve quality in the private rented sector as there is in the Council's own stock and in the construction of new homes. This new policy will be a key part of achieving that objective.

Author: Andrew Bramidge, Chief Executive

Appendices

Appendix A –Private Sector Housing Enforcement Policy 2024

Appendix B – Results of the consultation

Background Papers

Private Sector Housing Enforcement Policy 2003

Glossary of terms/abbreviations used

None.