

North Tyneside Council

Report to Cabinet

Date: 28 June 2021

Title: Private Sector Housing Enforcement and Civil Penalties Policy

Portfolio:	Community Safety and Public Protection	Cabinet Member:	Councillor Carole Burdis
Report from Service Area:	Environment, Housing and Leisure		
Responsible Officers:	Phil Scott Head of Environment, Housing and Leisure	Tel: (0191) 643 7295	
Wards affected:	All		

PART 1

1.1 Executive Summary:

The Housing and Planning Act 2016 gave Local Housing Authorities additional powers for dealing with landlords and property agents who have failed to maintain the standards expected of them. This includes the ability to issue civil penalties of up to £30,000 as an alternative to the prosecution of landlords, letting agents or property managers for relevant housing offences. The 2016 Act also permitted the inputting of problematic landlord's data onto a national database. In relation to prolific offenders, the Authority has the ability to apply for banning orders, banning a person from the letting or management of property.

In October 2018 Cabinet agreed to permit the use of these additional powers. At that time it was envisaged consideration would be given to developing of a Housing Enforcement and Civil Penalties Policy as good practice to support the use of these powers. Cabinet provided the necessary delegated authority to enable that. Since then officers have worked regionally with other Local Housing Authorities to shape a new policy, taking into account other new legislation subsequently introduced and undertake a comprehensive consultation exercise which has been affected by the national lockdown restrictions to prevent the spread of Covid-19.

This report outlines the final proposals to Cabinet for the formal approval of the Policy, following appropriate consultation and seeks delegation to Head of Environment, Housing and Leisure in consultation with the Head of Resources and the Head of Law and Governance for the setting of civil penalty charges.

Recommendations:

It is recommended that the Cabinet:-

- a) Approve the draft Private Sector Housing Enforcement and Civil Penalties Policy attached at **Appendix 1** and the charges for housing enforcement actions attached at **Appendix 3** to this report; and
- b) Delegate any future setting of charges for housing enforcement actions to the Head of Environment, Housing and Leisure in consultation with the Head of Resources and the Head of Law and Governance.

1.3 Forward Plan:

Twenty eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 19 March 2021.

1.4 Council Plan and policy framework:

This report relates to the following priorities in the **2020 – 2024 Our North Tyneside Plan**:

Our Places will:

- Provide a clean, green, healthy, attractive and safe environment

Our People will:

- Be healthy and well

Our Economy will

- Grow by supporting new businesses and building on our strengths

1.5 Information:

1.5.1 Background

The private rented sector in North Tyneside plays a significant role in the Borough's diverse and vibrant housing market which has grown steadily over the last two decades. The sector now represents more than 12% of the Authority's housing stock (2001 Census and North Tyneside Council tax data) and for the majority of private tenants their landlords offer good quality, affordable accommodation.

Nevertheless there is a small minority of landlords that operate below the level of professionalism expected leading to some, often vulnerable residents, living in substandard accommodation.

The Authority investigates over 600 complaints from residents about housing disrepair per annum, the most common being condensation, damp and coldness. The majority result in the cooperation of landlords to resolve the problems without recourse to formal action. However it is necessary to take formal action in some cases. Action taken has

included Awareness Notices, Improvement Notices and Prohibition Notices being served on landlords. This is a lengthy process and as such the new powers are a welcome tool.

Officers work with internal agencies including Community Protection and Social Care, as well as Tyne and Wear Fire and Rescue Service and Northumbria Police to offer support and assistance to residents. The Authority directly engages with landlords and provides support in partnership with the National Landlords Association through training and specific advice.

As well as responding to complaints targeted proactive joint working is undertaken to tackle unlicensed Houses in Multiple Occupation, houses in disrepair and where overcrowding is suspected.

The government now recognises the impact non-compliant landlords have and has now provided local authorities with increased powers to deal with them more swiftly through the introduction of measures included in the Housing and Planning Act 2016.

The Housing and Planning Act 2016 amended the Housing Act 2004 by introducing a number of measures designed to assist local authorities, acting as local housing authorities, in tackling “rogue landlords and property agents”. These measures include:-

- The imposition of civil penalties of up to £30,000 as an alternative to prosecution for relevant housing offences; and
- The extension of rent repayment orders to cover illegal eviction, breach of a banning order and other relevant housing offences.

In April 2018, new guidance was published to enable the implementation of the following powers:-

- Banning orders for the most serious offenders; and
- A database of non-compliant landlords and property agents against whom a banning order has been made, which may also include persons convicted of a banning order offence or who have received two or more financial penalties.

On the 1 June 2020, the new Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the Regulations”) came into force to strengthen the protection of tenants by requiring all landlords to ensure all assured shorthold tenancies for all new tenancies granted on or after 1 June 2020 have safe electrics checked by periodic electrical standard inspections. Failure to maintain standards can now potentially lead to Local Housing Authorities serving a Remedial Notice, carry out the works in default and applying a civil penalty to failing landlords.

The aim of implementing civil penalties and rent repayment orders is to improve housing standards and protect vulnerable tenants within the Borough. Civil penalties are a powerful deterrent and are hoped to encourage landlords to reconsider poor practices.

1.5.2 Policy

The Government has made it clear in guidance that it expects each Local Housing Authority to have a Housing Enforcement Policy so that the public, tenants and landlords and agents are aware of how it is likely to use its new powers under the relevant pieces of legislation.

The aim of the Policy is to support good landlords and set out policies and procedures in place for tackling those landlords who do not comply with their legal obligations. This Policy will fit into the wider work that the Authority is undertaking to ensure North Tyneside is a great place to live, work, and visit. The Policy will provide a framework to ensure consistency and proportionality in decision-making.

The Head of Environment, Housing and Leisure was given authority to develop and consult on a specific Housing Enforcement Policy in accordance with the legislation and to bring a further report to Cabinet to seek approval for the adoption of such a Policy at a time when the guidance and supporting information was available to develop it. Government has since made this information available which has enabled a draft Policy to be developed. In accordance with the guidance advising of a consistent approach, the draft Policy has been shaped by liaising on a regional basis with all Local Housing Authorities in the North East of England. The draft Policy was further updated to incorporate the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Consultation on the draft Policy was affected by the national lockdown restrictions to prevent the spread of Covid-19 and deferred from Spring 2020.

The Private Sector Housing Enforcement and Civil Penalties Policy as set out in **Appendix 1** provides a staged approach to enforcement action that can be taken against landlords and property agents. The Policy has been developed in line with the principles set out in the published North Tyneside Statement of Enforcement Policy.

The Housing Enforcement Policy is required to comply with the Ministry of Housing Communities and Local Government (MHCLG) guidance documents issued under the Housing and Planning Act 2016.

1.5.3 Charging for Housing Enforcement Actions

The Housing Enforcement and Civil Penalties Policy sets out the level of charge that will be applied by the Authority as a means of recovering administrative and other expenses incurred for taking any of the enforcement actions set out in section 49 of the Housing Act 2004. The taking of enforcement action will be proportionate to the hazard and risk posed to the occupants, and in accordance to the HM Government Enforcement Guidance for the Housing Health and Safety Rating System. The details of the charges are set out in **Appendix 3**.

The statutory guidance makes it clear that Local Housing Authorities are expected to develop and document in a Policy setting out when they would consider it appropriate to prosecute and when it would be considered appropriate to issue a civil penalty.

The statutory guidance, whilst indicating that prosecution may be the most appropriate option for particularly serious offences or where the offender has committed similar offences in the past, does not rule out the use of a civil penalty for serious offences. If a civil penalty is imposed where there is evidence of a serious offence having been committed, then a penalty of up to £30,000 can be imposed. It could therefore be appropriate where there has been a serious offence for the Authority to impose a significant financial penalty rather than prosecuting the offender. New regulations on electrical standards provides for the use of a civil or financial penalty for non compliance as the only punitive punishment option available. The determination of the level of penalty to be imposed by the Authority will be in line with the proposed Housing Enforcement and Civil Penalties Policy as set out in **Appendix 1**.

1.5.4 Consultation

A comprehensive six-week consultation process on the Policy has been undertaken. The consultation was carried out between 8 February and 22 March 2021. The consultation was available on line via the Engagement Hub, placed on the Authority's website and issued directly to local landlords and resident groups, Independent bodies such as Citizens Advice, and charities such as Shelter.

Officers have attended the local Landlord Forum to provide information on the legislation changes with regard to the different enforcement options available in the Policy, from informal advice and support through prosecution to civil penalties.

1.5.5 Response and Actions

In total 20 responses were received to this consultation exercise. A summary of the responses received and the amendments made to the Policy as a result of those responses are attached at **Appendix 2** to this report.

Respondents confirmed that they were 100% in agreement with the Policy and that the content was clear and comprehensive. In total, 95% of the responses were from residents and 5% from independent landlord and resident support groups and Citizens Advice.

Residents raised the need to ensure that the Policy was well publicised and queried the availability of landlord support and advice in relation to problem tenants. Citizens Advice welcomed the Policy and the ability to issue civil penalties when dealing with problematic landlords. Respondees welcomed the clarity provided by the Policy.

1.6 **Decision Options:**

The following decision options are available for consideration by Cabinet:

Option 1

To approve the final proposals in relation to the Policy and the delegation of future setting of charges to the head of Environment, Housing and Leisure in consultation with the Head of Resources and the Head of Law and Governance..

Option 2

To not approve the final proposals in relation to the Policy.

Option 1 is the recommended option.

1.7 **Reasons for Recommended option:**

Option 1 is recommended for the following reasons:

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 the Borough and to act against landlords, letting agents and property managers who

knowingly rent out unsafe and substandard accommodation. The use of the Policy will assist in achieving these goals.

1.8 Appendices:

Appendix 1 – Draft North Tyneside Council Private Sector Housing Enforcement and Civil Penalties Policy

Appendix 2 - Summary table of consultation responses and amendments to Policy

Appendix 3 - Charges for housing enforcement actions

1.9 Contact Officers:

Joanne Lee, Public Protection Manager, Tel: (0191) 643 6901

Frances McClen Environmental Health Group Leader; Tel 0191 6436640

Colin MacDonald, Senior Manager, Technical & Regulatory Services,
Tel: (0191) 643 6620

John Barton, Lawyer, Tel: (0191) 643 5354

David Dunford, Senior Business Partner, (0191) 643 7027

1.10 Background Information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author.

- [Civil Penalties Under the Housing and Planning Act 2016 statutory guidance](#)
- [Rent Repayment Orders Under the Housing and Planning Act 2016 statutory guidance](#)
- [Housing and Planning Act 2016](#)
- [Housing Act 2004](#)
- [The Rent Repayment Orders and Financial Penalties \(Amounts Recovered\)\(England\) Regulations 2017](#)
- [Banning Order Offences under the Housing and Planning Act 2016 statutory guidance](#)
- [Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2017](#)
- [Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#)
- [Database of rogue landlords and property agents under the Housing and Planning Act 2016 statutory guidance](#)
- [The new Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#)
- [Tackling Rogue Landlords under the Housing and Planning Act 2016, Cabinet October 2018](#)
- [Equality Impact Assessment](#)
- [Statement of enforcement policy | North Tyneside Council](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and Other Resources:

Income received from imposing a civil penalty will be paid to the local housing authority. The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 permits the Authority to apply any financial penalty recovered or amount received by way of a rent repayment order under the Housing Act 2004 to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. Any amount which is not used to meet the costs and expenses in such a way must be paid into a centrally held Government fund.

The civil penalties guidance is not prescriptive in its determination of financial penalty. The financial penalties will be considered on a case by case basis.

2.2 Legal:

Schedule 9 of the Housing and Planning Act 2016 amends the Housing Act 2004 to allow Local Housing Authorities to impose financial penalties as an alternative to prosecution for certain housing related offences. The 2016 Act also expanded the offences for which an application can be made by a local housing authority to the First-tier Tribunal for a rent repayment order.

By virtue of section 9D of the Local Government Act 2000 unless there is provision to the contrary in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 or other legislation, any function of the Authority is to be the responsibility of Cabinet. There is nothing in the 2000 Regulations, the Housing Act 2004 or the Housing and Planning Act 2016 that indicates that the approval of the Housing Enforcement Policy is not to be a matter for Cabinet.

2.3 Consultation/Community Engagement:

2.3.1 Internal Consultation

Internal consultation was undertaken with officers of the Authority.

2.3.2 External Consultation

As highlighted in the main body of the report, the draft Policy has been widely consulted upon. Members of the public, local landlord and residents group, professional bodies such as Citizen Advice Group, Shelter and other Authorities all have had an opportunity of commenting on the draft Policy. The 6 week consultation period commenced on 8 February 2021 and notice of this consultation was given through a press release and copies of the draft Policy were made available on the North Tyneside Council website. A summary of responses received are attached at **Appendix 2** to this report.

2.4 Human Rights:

There are no human rights implications directly arising from this report.

2.5 Equalities and Diversity:

The Equality Impact Assessment has identified that the decision to implement the use of civil penalties and rent repayment orders will not have an adverse impact on people with characteristics protected under the 2010 Equality Act. It is recognised that the Orders may have a positive impact on younger people within the Borough. The English Housing Survey 2019/20 shows that more younger people rent privately, 67% under 45 years old. 42% young people aged 25-34 live in private rented sector, which is overrepresented. A third of households have dependent children and a quarter have a long term condition or disability. Younger people find it harder to get on the housing ladder and get a mortgage. The average age of first time buyers is 32 years old.

2.6 Risk Management:

There are no risk management implications directly arising from this report. Risks associated with delivery of the Authority's Public Protection function are monitored via the Technical Services Partnership risk arrangements included within the strategic partnership governance framework.

2.7 Crime and Disorder:

The purpose of the legislation referred to in the report is to deal with offenders by way of civil penalty as opposed to prosecution. The use of the powers given to the Authority referred to in the report are designed at punishing and deterring offending by landlords, letting agents and property managers.

2.8 Environment and Sustainability:

The ability to use the powers referred to in the report will assist in maintaining a suitable standard of living for those living in private rented properties and bring about necessary improvements to those properties in the Borough that provide sub-standard accommodation for tenants.

PART 3 – SIGN OFF

- Chief Executive
- Head of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy and Customer Service