



CABINET REPORT

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| Report Title | Private Sector Housing Enforcement – Civil Penalties and Rent Repayment Orders |
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AGENDA STATUS: PUBLIC

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| Cabinet Meeting Date: | 19 July 2016 |
| Key Decision: | Yes |
| Within Policy: | Yes |
| Policy Document: | Yes |
| Directorate: | Chief Executive's |
| Accountable Cabinet Member: | Councillor Stephen Hibbert |
| Ward(s) | All |

1. Purpose

- 1.1 The purpose of this report is to seek Cabinet's approval of a Private Sector Housing Civil Penalties Policy and amendments to the Council's Private Sector Housing Enforcement Policy and Private Sector Housing Fees & Charges Policy.
- 1.2 These policies reflect the new powers that have been given to local authorities (under the Housing and Planning Act 2016) to impose civil penalties of up to £30,000 on individuals and organisations as an alternative to prosecution.
- 1.3 The introduction of civil penalties, together with the extension of rent repayment orders to include a wider range of offences, will help the Council to tackle criminal, rogue and irresponsible landlords, improve standards in the private rented sector and ensure that all private rented housing is safe, well managed and properly maintained.

2. Recommendations

2.1 It is **recommended** that Cabinet:

- (a) Approves the Private Sector Housing Civil Penalties Policy (attached to this report as Appendix A) with effect from 1 August 2017;
- (b) Approves the amended Private Sector Housing Enforcement Policy (attached to this report as Appendix B) with effect from 1 August 2017; and
- (c) Approves the amended Private Sector Housing Fees & Charges Policy (attached to this report as Appendix C) with effect from 1 August 2017.

3. Issues and Choices

3.1 Report Background

3.1.1 In Northampton, the private rented sector has doubled in size during the past ten years and now amounts to almost 16,000 (18%) of the homes in the borough. For the first time in decades, there are now more people living in Northampton's private rented sector than are living in social rented housing.

3.1.2 As well as having a growing university population, the town is attracting more people through the creation of extra jobs by the Northampton Alive projects and Enterprise Zone. Together with the difficulty that many people are experiencing in buying a home of their own, this is leading to more people wanting to rent accommodation in the town.

3.1.3 Although Northampton 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.

3.1.4 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:

- **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified 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 specified offences (these came into force on 6 April 2017);
- **Database of rogue landlords and property agents** who have been convicted of certain offences or received multiple civil penalties (this is scheduled to come into force on 1 October 2017); and
- **Banning orders** for the most serious and prolific offenders (these are scheduled to come into force on 1 October 2017).

- 3.1.5 Under the Housing and Planning Act 2016, local housing authorities are permitted to retain the income that they receive from civil penalties and rent repayment orders, and to use that income to fund their statutory functions in relation to their enforcement activities in the private rented sector. This might include, for example, an increase in housing enforcement capacity, support for a social lettings agency or the provision of a specialist tenancy relations service.
- 3.1.6 Northampton's approach to housing enforcement – reflected in the Private Sector Housing Enforcement Policy and Fees & Charges Policy approved by Cabinet in February 2016 – is based on the principle that it should be the offender (rather than good landlords or local council tax payers) who pays for enforcement and no-one who breaks the law should gain a financial advantage over someone who does not.
- 3.1.7 This approach enjoys widespread support from local landlords who want the Council to create a level playing field for all landlords by dealing robustly with offenders.

3.2 Issues

Civil penalties

- 3.2.1 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.
- 3.2.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:
- **Section 30** – Failure to comply with an Improvement Notice
 - **Section 72** – Offences in relation to licensing of Houses in Multiple Occupation
 - **Section 95** – Offences in relation to licensing of houses under Part 3 of the Act
 - **Section 139** – Offences of contravention of an overcrowding notice
 - **Section 234** – Failure to comply with management regulations in respect of Houses in Multiple Occupation
- 3.2.3 Although the maximum civil penalty that can be imposed for an offence is £30,000, it is for the Council to determine the level of civil penalty.
- 3.2.4 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that, before taking formal action, the Council must satisfy itself that, if the case was prosecuted in the magistrates' court, there would be a realistic prospect of conviction. To achieve a conviction in the magistrates' court, the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed.

3.2.5 Northampton's intelligence-led, targeted approach to housing enforcement – together with its expectation that all members of its Housing Enforcement Team will study for the Advanced Professional Certificate in Investigative Practice – means that the Council is well placed to competently detect and investigate possible offences and, where appropriate, to impose a civil penalty as an alternative to prosecution.

Rent repayment orders

3.2.6 A rent repayment order is an order made by the First-Tier Tribunal requiring a landlord to repay a specified amount of rent which can be up to 12 months' rent.

3.2.7 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed; specifically offences in relation to licensing of HMOs.

3.2.8 Rent repayment orders have now been extended (under the Housing and Planning Act 2016) to cover a much wider range of offences, described below.

- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (due to be enacted in November 2017);
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)

3.2.9 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis

3.2.10 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no longer any prospect of the landlord appealing against that penalty.

3.2.11 The Government has made it clear that local housing authorities must always consider a rent repayment order after a civil penalty has been successfully imposed.

3.2.12 Although it is clearly in the financial interests of local housing authorities to make an application for a rent repayment order to recover monies paid through Housing Benefit or the housing element of Universal Credit, the Government has said that it expects them to offer advice, guidance and support to help tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

Private Sector Housing Civil Penalties Policy

- 3.2.13 The Private Sector Housing Civil Penalties Policy contains information about civil penalties and rent repayment orders, and how the Council is planning to use them.
- 3.2.14 It takes into account the statutory guidance that has been issued by the Government under Schedule 9 of the Housing and Planning Act 2016, and should be read in conjunction with the Council's Private Sector Housing Enforcement Policy.
- 3.2.15 Generally, the maximum civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of the landlord's previous record of offending.
- 3.2.16 In order to ensure that the civil penalty is set at an appropriate level, the Council will consider the following factors that the Government has identified, in its statutory guidance, as being pertinent:
- The severity of the offence
 - The culpability and track record of the offender
 - The harm caused to the tenant
 - The punishment of the offender
 - Whether it will deter the offender from repeating the offence
 - it will deter others from committing the offence
 - Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence
- 3.2.17 The last factor is an overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence.
- 3.2.18 In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords or the local council tax payers), the costs associated with investigating, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed.

Private Sector Housing Enforcement Policy

- 3.2.19 The Enforcement Policy is designed to provide an overview of the broad principles and processes with which the Council will seek to comply when taking action to ensure all private sector housing in the borough is healthy, well managed and safe.
- 3.2.20 It has been updated (see Appendix B) to take into account the new measures introduced under the Housing and Planning Act 2016 and the action that the Council will be taking in relation to civil penalties and rent repayment orders.
- 3.2.21 The purpose of the Enforcement Policy is to 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.

3.2.22 The Enforcement Policy confirms that decisions on the appropriate course of action will be made on a case-by-case basis, it explains what action the Council can take and describes the reasons why it may take that action. It also confirms that the Private Sector Housing Team's enforcement activity will be targeted, proportionate, consistent, transparent, fair and objective.

Private Sector Housing Fees & Charges Policy

3.2.23 The law allows Councils to charge for the licensing of Houses in Multiple Occupation and the cost of the enforcement action it takes in relation to private sector housing.

3.2.24 In order to support and complement Northampton's Private Sector Housing Enforcement Policy, the Fees & Charges Policy is designed to encourage good and responsible behaviour and ensure that, where possible, the cost of enforcement is borne by the offender, rather than by the taxpayer and responsible landlords.

3.2.25 The Fees & Charges Policy has been updated (see Appendix C) to take into account the new measures introduced under the Housing and Planning Act 2016 and remove the references to the transitional arrangements applied in February and March 2016.

3.2.26 The Fees & Charges Policy offers a reduction in the HMO licence fee where a completed application (for a new licence or the renewal of a licence) is made on time. It will also shorten the term of an HMO licence where the licence application is submitted very late and/or the Council has reason to believe that its Officers will need to spend a lot of time monitoring and enforcing standards in that HMO.

3.2.27 Northampton's new Fees & Charges Policy is based on the following principles:

- The Council will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners, landlords and occupiers;
- All fees and charges will be calculated on the basis of what it costs the Council to license HMOs, take enforcement action, carry out works in default and provide advice and written reports;
- All licensable HMOs will be subject to the same fees and charges arrangements, irrespective of whether they are affected by the Mandatory HMO Licensing regime or the Additional HMO Licensing regime;

- Owners and landlords who fail to license their HMOs on time will be required to pay more for their HMO licence and, when they are eventually issued with an HMO licence, the Council is likely to issue them with a shorter licence that lasts less than the standard term;
- Owners and landlords (including the owners of long-term and problematic empty properties) who are served with formal Notice(s) by the Council will be required to bear the full cost of enforcement in line with this Policy;
- Where it is necessary for the Council to carry out works in default, the Council will seek to recover all of its costs (including the cost of the works) from the owner or landlord at the earliest opportunity; and
- The Council will ensure that its fees are as low as possible by improving efficiency and making effective use of information technology.

3.3 Choices (Options)

Approval of the Private Sector Housing Civil Penalties Policy

- 3.3.1 A Private Sector Housing Civil Penalties Policy is required to enable the Council to make use of its new powers (under the Housing and Planning Act 2016) to impose civil penalties of up to £30,000 per offence as an alternative to prosecution.
- 3.3.2 Approval of the Policy will enable the Council to use the income that it receives from civil penalties (and the rent repayment orders that are likely to be made following the successful imposition of a civil penalty) to fund the appointment of additional staff to tackle criminal, rogue and irresponsible landlords.
- 3.3.3 If the Private Sector Housing Civil Penalties Policy is not approved, the Council will not be able to impose civil penalties of up to £30,000 per offence as an alternative to prosecution. This will deprive the Council of not only the additional income that it might have expected to receive from civil penalties (and, indeed, from rent repayment orders) but also the opportunity to use that income to fund the appointment of additional staff to tackle criminal, rogue and irresponsible landlords.
- 3.3.4 For these reasons, it is recommended that the Policy is approved.

Approval of the amended Private Sector Housing Enforcement Policy and Private Sector Housing Fees & Charges Policy

- 3.3.5 The amendments are necessary in order to ensure that the two policies are up to date and include an explanation of how the Council will be using civil penalties and rent repayment orders to improve standards in Northampton's private rented sector.
- 3.3.6 Failure to keep the policies up to date is likely to attract criticism and have an adverse effect on the reputation of the Council. Having an out-of-date Housing Enforcement Policy may undermine the Council's efforts to prosecute and impose civil penalties.
- 3.3.7 For these reasons, it is recommended that the amended Policies are approved.

4. Implications (including financial implications)

4.1 Policy

- 4.1.1 The Private Sector Housing Civil Penalties Policy, Private Sector Housing Enforcement Policy and Private Sector Housing Fees & Charges Policy are in line with Council policy and reflect its corporate priorities.
- 4.1.2 The fees and charges for Private Sector Housing are reviewed annually in order to ensure that they reflect the true cost of the work involved.

4.2 Resources and Risk

- 4.2.1 The Housing and Planning Act 2016 specifies that all of the income that a local authority receives from the imposition of Civil Penalties and the recovery of Housing Benefit through Rent Repayment Orders can be retained by the local authority and spent on private sector housing enforcement, providing support for the private rented sector and funding the activities of a social lettings agency.
- 4.2.2 However, any income that a local authority receives from Civil Penalties and Rent Repayment Orders but fails to spend in support of one of the activities listed above must be paid into a Central Government Universal Fund.
- 4.2.3 A comprehensive Business Case is being developed to demonstrate how the income that is received from civil penalties and rent repayment orders can be used to expand the size of the Private Sector Housing Team, increase enforcement activity and speed up the improvement of standards in the borough's private rented sector. The Business Case will be considered by Cabinet at its meeting in September 2017.
- 4.2.4 One of the key risks will be the Council's ability to successfully recruit to the additional posts that are funded from the extra income generated by civil penalties and rent repayment orders. Although it may not be too difficult to attract suitable candidates to the Intelligence Officer and Tenancy Relations Officer roles, experience suggests that it may prove particularly difficult to recruit, in one go, the required number of Housing Enforcement Officers with the appropriate skills, qualifications and experience.
- 4.2.5 It is hoped that the Private Sector Housing Team will be able to mitigate this risk by promoting Northampton as a place for new Environmental Health Officers to learn how to tackle criminal, rogue and irresponsible landlords through robust enforcement action and the effective use of civil penalties, repayment orders and innovative practice.
- 4.2.6 All new Officers will be expected to become skilled investigators and achieve the Advanced Professional Certificate in Investigative Practice within 3 months of joining the Council. This will equip them with the skills they will need to reduce the risk of the civil penalties being successfully appealed through the First-Tier Tribunal.
- 4.2.7 Another potential risk concerns 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 or a request (from tenants or the local authority) for a rent repayment order. In both situations, an unfavourable outcome may affect the Council's income.

- 4.2.8 Although the First-Tier Tribunal has the power to quash, confirm, increase or reduce the civil penalty – and the civil penalties regime is currently untried and untested – the Government has made it clear that offenders must not derive any financial benefit from their offences and it has briefed the Tribunals on what is expected of them.
- 4.2.9 Another key risk is that, if there is a substantial increase in the number of investigations, this is likely to result in a corresponding increase in the number of cases requiring legal advice and assistance and this may, in turn, put extra pressure on the existing staffing resources within the Council's Legal Services team.
- 4.2.10 The Civil Penalty Matrix has costs built in to pay for specialist legal advisers – to defend civil penalty appeals – and the Business Case that is presented to Cabinet in September 2017 will ensure that the Council is able to 'buy in' specialist advice and support as and when it is required.

4.3 Legal

- 4.3.1 Section 126 of The Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are as set out in paragraph 3.2.2.
- 4.3.2 The Housing and Planning Act 2016 also introduces a number of other steps that may be taken by the Council to improve the private rented sector and tackle landlords who do not comply with the law.

4.4 Equality

- 4.4.1 The Private Sector Housing Civil Penalties Policy (and the updated Private Sector Housing Enforcement Policy and Private Sector Housing Fees & Charges Policy) will help improve housing conditions and the life chances of people with protected characteristics, including homeless people, people with disabilities and families with children. They will therefore have a positive impact on Equality and Diversity.
- 4.4.2 The new policies are part of the Borough Council's commitment to improving communities and our town as a place to live. In implementing the policies, the Council will have due regard to its Public Sector Duty and will continue to work to tackle discrimination and inequality and contribute to the development of a fairer society.

4.5 Consultees (Internal and External)

- 4.5.1 In April 2017, the Council hosted 3 focus groups to obtain the views of a wide range of stakeholders on the Council's proposals in relation to civil penalties. The focus groups were attended by Council Officers, the Northampton Student Landlords Network, the East Midlands landlord accreditation scheme, and local landlords and agents.
- 4.5.2 In June 2017, the Private Sector Housing Manager briefed a well-attended meeting of the town's Landlord Forum on the Council's proposals in relation to civil penalties.

4.5.3 Everyone who attended the focus groups, and the vast majority of the landlords and letting agents that attended the Landlord Forum, were extremely positive about the Council's plans for using its new powers under the Housing and Planning Act 2016.

4.6 How the Proposals deliver Priority Outcomes

4.6.1 As well as contributing to the delivery of a number of the borough's key strategies and policies, the new Private Sector Housing Civil Penalties Policy (and the updated Private Sector Housing Enforcement Policy and Fees & Charges Policy) will help meet two of the priorities in the Corporate Plan:

- **Housing for Everyone:** The policies will support the Council's efforts to increase the supply of good quality, well managed private rented housing by raising standards and bringing empty homes back into use.
- **Working Hard and Spending your Money Wisely:** The Private Sector Housing Civil Penalties Policy will enable the Council to generate income that can be used to fund its housing enforcement activity and related services.

Appendices

Appendix A – Private Sector Housing Civil Penalties Policy

Appendix B – Private Sector Housing Enforcement Policy

Appendix C – Private Sector Housing Fees & Charges Policy

Background Papers

Community Impact Assessment

Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities (Department for Communities and Local Government) April 2017

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