

CABINET

MONDAY, 22 JULY 2019

**AMENDMENT TO EXISTING AND CREATION OF NEW POLICIES RELATING TO
PRIVATE SECTOR HOUSING**

Cllr Stuart Whittingham said:

Wirral's Private Rented Sector has expanded significantly in recent years and while the vast majority of private landlords manage their properties well, there are a small number of landlords who do not respond to informal action and require a formal enforcement response in order to protect their tenants. This Housing Standards Enforcement Policy Statement and associated policies and procedures consolidates a wide range of new powers to tackle rogue landlords and provides clarity to landlords and agents about how the Council intends to use these powers.

REPORT SUMMARY

The purpose of this report is to brief Cabinet Members on the proposed revisions to the Council's Housing Standards Enforcement Policy Statement (referred to as the *policy statement*) and proposed new policies and procedures on:

- The use of Civil Penalties
- Rent Repayment Orders
- Banning Orders,
- Rogue Landlord Database
- Determining a fit and proper person and management arrangements at licensable properties
- Enforced Sales

The report seeks to agree the implementation of both the revisions to the *policy statement* and the new policies listed above.

The proposed changes will assist the Council in meeting the objectives of the Wirral Plan pledges through the provision of "Good quality housing which meets the needs of residents"; and the aim of improving 2,250 private sector properties by 2020.

This matter affects all Wards within the Borough.
This matter is a key decision.

RECOMMENDATIONS

It is recommended that:

- (i) The Cabinet Members approve the proposed revisions to the *policy statement* and new policies and procedures on the use of Civil Penalties, Rent Repayment Orders, Banning Orders the Rogue Landlord Database, determining a fit and proper person and management arrangements at licensable properties and Enforced Sales.
- (ii) The Cabinet Members approve delegated authority being given for periodic review and any minor amendments to these documents to the Cabinet Member for Housing & Planning.
- (iii) The Cabinet Members agree that additional financial income generated from civil penalties and rent repayment orders is used to support further enforcement activity involving sub-standard private rented sector properties.

All above recommendations to be in operation following approval

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

Both updating the *policy statement* and introducing new policies and procedures relating to specific legislative powers is considered to be good practice and follows both statutory and non-statutory guidance. Such action is essential to support the successful use of relevant statutory powers in relation to substandard housing conditions. This report sets out both the revisions deemed necessary and the new policies required.

2.0 OTHER OPTIONS CONSIDERED

Making no changes to the *policy statement* was considered, however, this was ruled out on the grounds that the omission of certain legislative powers would leave the Council exposed to legal challenges if new powers were used without the Policy Statement being updated. In addition, both statutory and non-statutory guidance and good practice recommends that the Council should develop and document its own policies in relation to the use of its statutory powers. Failure to develop and adopt such policies and associated procedures would also expose the Council to legal challenge in relation to any action taken using these legislative powers. The option of waiting until the corporate enforcement strategy was updated was considered, but the Council is under a time restraint to seek a prosecution using new powers for a number of recent housing offences within 6 months from when the offence was committed. The option of not using any new discretionary powers was also considered, however the Council has stepped up its use of enforcement powers in the last few years and is keen to demonstrate a tough approach to tackling rogue landlords to meet its aspirations set out in the Wirral 2020 Plan, to improve the quality of housing in the borough.

3.0 BACKGROUND INFORMATION

- 3.1 The majority of private landlords and managing agents provide accommodation to a good standard, however, a minority do not and often break the law. Action against these offenders is often deemed to be appropriate, particularly in relation to repeat offenders. Since the introduction of mandatory Houses in Multiple Occupation (HMO) licensing, enforcement activity undertaken by the Council has increased in relation to non-compliant landlords and has accelerated further since the extension of mandatory HMO Licensing. This has resulted in fines being issued in excess of £200,000 in relation to HMO prosecutions alone. Since Selective Licensing was introduced locally in 2015, the Council has secured 21 successful prosecutions for failing to license rented properties and 29 successful prosecutions or simple cautions issued for breaches in license conditions and/or not complying with formal enforcement notices. This represents a 300% increase in the number of prosecutions taken since the start of Selective Licensing. The new policies referred to in this report will further enhance the tools available for the Council to deal with rogue landlords and empty properties and will ultimately drive up standards in the private rental sector and assist in reducing the number of empty houses. The policies will also provide transparency on the use of these powers, to both service users and officers.
- 3.2 The Council is required by the Regulators' Code to publish its Enforcement Policy explaining how it responds to non-compliance. It is recognised as an important

document for regulators in meeting their responsibility under the statutory principles of good regulation, set out in Section 21 of The Legislative and Regulatory Reform Act 2006, to be accountable and transparent about their activities. The Council's Enforcement Policy was approved by Cabinet on 11 September 2014 and provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by a range of services across the Council, including housing standards. It is designed to help businesses and individuals understand our objectives and methods for achieving compliance and the criteria we consider when deciding the most appropriate response to a breach of legislation.

- 3.3 In addition to the corporate enforcement policy, a separate Housing Standards Enforcement Policy Statement is published providing more detail about the range of powers that can be used specifically in relation to substandard private sector housing. The *policy statement* should be read in conjunction with the corporate enforcement policy. Over time, the *policy statement* has become out of date following the introduction of new legislative powers/tools and there is a need to update the *policy statement* to ensure that it is accurate and remains relevant.
- 3.4 A number of legislative powers available to tackle poor quality private sector housing have either been introduced or extended by the Housing and Planning Act 2016, in addition to associated statutory and non-statutory guidance being issued. These powers include Civil Penalties, Rent Repayment Orders, Banning Orders and the Rogue Landlord Database. Further information is provided on these particular powers in 4.0 of this report. The guidance issued regarding the use of these powers recommends that local housing authorities develop and document local policies on how these powers will be used. Wirral does not currently have specific policies in relation to all these powers, and although many of them were introduced under the Housing and Planning Act 2016, clarity is now required due to an increase in the use of enforcement powers and the need for greater clarity to ensure challenges can be defended robustly.
- 3.5 In connection specifically with HMO and Selective Licensing, the Council has to determine whether an applicant is deemed to be a fit and proper person and that suitable management arrangements are in place.
- 3.6 An Enforced Sales Procedure has been prepared in relation to the recovery of expenditure incurred in relation to longer term empty properties
- 3.7 It is proposed that the existing *policy statement* is updated to include references to the new legislative powers. The inclusion of these specific powers reflect the growing range of tools available to tackle sub-standard private sector housing conditions, primarily in the private rented sector and vacant properties. It is also proposed to include references to specific policies related to the use of these powers, as mentioned in 4.0 below. The revised *policy statement* will both assist officers as and when these powers are felt to be appropriate and provide guidance to members of the public involved in any such action. The revised *policy statement* is in Appendix 1 to this report.
- 4.0 PROPOSED NEW POLICIES AND PROCEDURES FOR USING CIVIL PENALTIES, RENT REPAYMENT ORDERS, BANNING ORDERS, THE ROGUE LANDLORD DATABASE, DETERMINING A FIT AND PROPER PERSON AND**

MANAGEMENT ARRANGEMENTS AT CERTAIN LICENSABLE PROPERTIES AND ENFORCED SALE

4.1 In line with statutory guidance issued under the Housing and Planning Act 2016 or good practice identified in non-statutory guidance, Local housing authorities are expected to develop and document their own policies on when to prosecute and when to issue a civil penalty; how to determine the appropriate level of civil penalty; when to apply for a rent repayment order and when to pursue a banning order. Each case should be considered independently. Policies have subsequently been developed by officers taking into account the advice in the statutory guidance. These policies are attached in Appendices 2, 3, 4 and 5 to this report.

4.2 Civil Penalties

4.2.1 A civil penalty is a financial penalty of up to a maximum of £30,000, imposed on an individual or organisation. Local housing authorities are able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004 and Housing and Planning Act 2016:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
- Offences in relation to not having a license in a selective licensing area (under Part 3, section 95 of the Housing Act 2004);
- Offences for contravention of an overcrowding notice (section 139 of the Housing Act 2004);
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

4.3 Rent Repayment Orders

4.3.1 A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. 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 Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

Rent repayment orders have since been extended through the Housing and Planning Act 2016 to cover a much wider range of offences which are 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;3
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and

- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

4.3.2 While each case will be decided on its own merits, it is suggested that a prosecution through the courts will generally be sought for more serious offences with larger professional landlords.

4.3.3 Where the tenant has paid the rent using their own resources, they have the option of applying directly for a Rent Repayment Order, if they are willing to do so. In these circumstances the Council will advise the tenant accordingly and consider supporting the tenant in making such an application

4.4 Banning Orders and the Rogue Landlord Database

4.4.1 On 6 April 2018, new measures came into force including banning orders and a database of rogue landlords and property agents against whom a banning order has been made, which may also include persons convicted of a banning order offence or those who have received two or more financial penalties.

4.4.2 Following an application by a local housing authority, a banning order can be granted by the First-tier Tribunal that bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work

A banning order offence has to have been committed in order to apply for a banning order. Banning Order Offences are specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 They can include for example offences relating to licensing of HMO's or properties in Selective Licensing areas. (see Appendix 5 for a full list).

Breach of a banning order is a criminal offence.

4.4.3 The rogue landlord database is a tool for local housing authorities in England to keep track of rogue landlords and property agents. Database users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.

4.4.4 Local housing authorities in England are responsible for maintaining the content of the database and have some discretion on when to use the database under certain circumstances. The policy on the rogue landlord database is attached in Appendix 6 of this report.

4.4.5 It is expected that a local housing authority will pursue a banning order for the most serious offenders.

4.5 Tests for fit and proper person and satisfactory management arrangements for a HMO Licence ("Part 2") and Selective Licence ("Part 3")

- 4.5.1 Under the Housing Act 2004 is it a requirement that the proposed licence holder and manager of a licensable house/dwelling under Part 2 and/or Part 3 of the Housing Act 2004 is a 'fit and proper' person, e.g. they don't have criminal convictions for certain offences that would impact on their ability to manage the property. In addition, in deciding whether a licence may be granted or not, Wirral Council must be satisfied that there are satisfactory management arrangements in place or that such arrangements can be put in place by the imposition of conditions in the licence.
- 4.5.2 A licence application will be refused if it is considered that the licence holder and / or manager are unfit.
- 4.6 The Council has developed a policy and tests to determine both whether or not a landlord or manager of a licensable house is deemed to be a fit and proper person, and whether or not satisfactory management arrangements are in place. This policy and tests are in Appendix 7 to this report.

4.7 Enforced Sales Policy and Procedure

- 4.7.1 In certain circumstances a local authority can enforce the sale of a privately owned property to recover historical debt registered against it by the local authority. An example could be when a legal notice is served forcing an owner to undertake specific works and remedial works end up being undertaken by the local authority, due to non-compliance with the notice. The costs incurred in doing these works in default are secured against the property as a legal charge and are eventually recovered when the property is sold. Such action is often taken in relation to problematic long term empty properties. Enforcing the sale of such properties would both recover the debt and force an ownership change of the building. This is likely to result in the property being subsequently renovated and brought back into residential use. An Enforced Sales Procedure has been prepared to inform action that may be taken to recover debt registered against problematic empty properties and is in Appendix 8 of this report

5.0 FUTURE ARRANGEMENTS TO REVIEW THE ENFORCEMENT POLICY STATEMENT AND ASSOCIATED POLICIES AND PROCEDURES

- 5.1 It is considered to be good practice to review policies and procedures to ensure they remain fit for purpose. Officers will review the documents subject to this report periodically and make any minor changes deemed necessary in agreement with the Cabinet Member for Housing and Planning. Should major changes be deemed necessary, this will be reported back to Cabinet for consideration.

6.0 FINANCIAL IMPLICATIONS

- 6.1 The proposed new policies on using Civil Penalties and Rent Repayment Orders should result in financial income for the Council, in successful cases. Civil Penalties can range from £1500 - £30,000 depending on the seriousness of the offence, culpability and harm. The income generated cannot be quantified and will depend on the number of successful cases, the individual circumstances of each case and the recovery rates of the fine. Statutory guidance advises that any financial income generated from Civil Penalties or Rent Repayment Orders can be retained by the local housing authority provided that it will be used to further the use of the local

housing authority's statutory functions in relation to their enforcement activities covering the private rented sector

6.2 The Enforced Sales Procedure, when used, will result in the recovery of debt registered against longer term problematic empty properties. Any surplus income generated from enforced sale action must be paid over the owner. If the owner is not known, any surplus is retained by the local authority in perpetuity.

6.3 There are no other financial implications to this report

7.0 LEGAL IMPLICATIONS

7.1 Both the revisions to the *policy statement* and the introduction of the various policies referred to in this report will support the use of statutory powers/tools in relation to substandard housing conditions.

8.0 PLANNING & COMMUNITY SAFETY IMPLICATIONS

8.1 There are no planning implications arising directly from this report

9.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

9.1 The proposed revision to the *policy statement* and introduction of the new policies referred to in this report can be managed using current ICT, staffing and asset resources.

10.0 RELEVANT RISKS

10.1 There is a risk that the revised *policy statement* and/or the new policies referred to in this report could be subject to legal challenge at some point in the future. Any such challenge may be successful and subsequently result in further amendments being necessary. This risk is considered to be low based on the collaboration of the Legal Services Team in the development of these proposed policies and procedures, and the fact they will be regularly reviewed.

11.0 ENGAGEMENT/CONSULTATION

11.1 There is no obligation to consult on any of these policies, however, it is considered to be good practice to make service users aware of the proposed policies, prior to adoption. The proposed policies in Appendices 2, 3, 4, 5, 6, 7 & 8 have been publicised using the following methods:

- Council website news item and webpage of information;
- Advertised under Public Notices in local press (Wirral Globe and Wirral View);
- email to all known landlords and agents who work with the Council or who have signed up to the Housing Services email list (a total of 1020 recipients);
- email to all landlords and agents who are in receipt of Housing Benefit payments or who have signed up to the Council's mailing list for housing related information. (a total of 1843 recipients)

11.2 Since publication, 5 responses have been received to date. Two of the responses were assessed as being neutral, with no negative or positive comment included. The third response was very positive about the introduction of the new policies, and the

remaining two responses raised concerns about the lack of provision for landlords to defend themselves, including an appeal process, the required notice to be given to a landlord about a breach and concerns about landlords being fined when it is the tenant's fault. Responses were sent to all five landlords who commented, including detailed responses to the concerns raised which explained that the concerns are covered by legislation and that Council's Enforcement Policy should be read in conjunction with the new policy documents.

As all the concerns raised above are covered by legislation and the Council's existing Enforcement Policy, no changes to the policies have been made.

12.0 EQUALITY IMPLICATION

12.1 An Equality Impact Assessment (EIA) has previously been completed for the Corporate Enforcement Policy in 2014 which has been reviewed and is still relevant in terms of the documents which are the subject of this report. No amendments are deemed to be necessary.

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APPENDICES

- Appendix 1 Housing Standards Enforcement Policy Statement**
- Appendix 2 Policy for deciding whether to Prosecute or apply a Civil Penalty**
- Appendix 3 Civil Penalties Policy and Procedure for the imposition of a Civil Penalty**
- Appendix 4 Policy on deciding whether to apply for a Rent Repayment Order**
- Appendix 5 Banning Order Policy and Procedure 2018**
- Appendix 6 Rogue Landlord Database Policy and Procedure 2018**
- Appendix 7 Policy on tests for fit and proper person and satisfactory management arrangements for a HMO Licence and Selective Licence**
- Appendix 8 Enforced Sales Procedure**

BACKGROUND PAPERS

Civil penalties under the Housing and Planning Act 2016
Guidance for Local Housing Authorities
Ministry of Housing, Communities and Local Government
April 2018

Rent repayment orders under the Housing and Planning Act 2016
Guidance for Local Housing Authorities
Department for Communities and Local Government

April 2017

Banning orders for landlords and property agents under the Housing and Planning Act 2016
Guidance for local housing authorities on banning orders.
Ministry of Housing, Communities and Local Government
April 2018

Database of rogue landlords and property agents under the Housing and Planning Act 2016
Statutory guidance for Local Housing Authorities
Ministry of Housing, Communities and Local Government
April 2018

SUBJECT HISTORY (last 3 years)

Council Meeting	Date