

**WAVERLEY BOROUGH COUNCIL**

**EXECUTIVE**

**17 JANUARY 2023**

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**Title:**

**Private Sector Housing Enforcement Policy**

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**Portfolio Holder:** Cllr Paul Rivers, Co-Portfolio Holder for Housing (Operations)  
Cllr Andy Mcleod, Portfolio Holder for Enforcement, Operations  
and Brightwells

**Head of Service:** Richard Homewood, Executive Head of Regulatory Services

**Key decision:** No

**Access:** Public

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**1. Purpose and summary**

- 1.1 To introduce a new enforcement policy specifically for the private sector housing team to incorporate the recent changes to legislation affecting the private rented sector and to propose a charging structure for financial penalties imposed as a result of formal action to improve housing standards.

**2. Recommendation**

That the new Private Sector Housing Enforcement Policy is adopted by the Council.

**3. Reason for the recommendation.**

To ensure the Council has the necessary tools to improve conditions for tenants in the private rented sector.

**4. Background**

- 4.1 In 2007 the Council formally adopted an enforcement policy to provide guidance on its enforcement work in private sector housing as a result of a range of new powers introduced under the Housing Act 2004. This policy has not changed since then but was supplemented by the Council's Enforcement Policy for Regulatory Services in 2014.

4.2 Since 2014 there has been a raft of new legislative powers to improve conditions in the private rented sector and drive out “rogue landlords”, notably the Housing and Planning Act 2016. This Act introduced the following powers:

- Financial penalty as alternative to prosecution
- Extension of Rent Repayment Orders to other offences
- Banning Orders for serious offences
- Central database of rogue landlords
- Electrical safety standards for all private rented properties

4.3 A new enforcement policy has been drawn up specifically to deal with the work carried out by the Private Sector Housing Team. This policy incorporates a charging structure to determine the level of financial penalty to be applied under the Housing Act 2004, a Statement of Principles for the penalty under the Smoke and Carbon Monoxide Regulations 2015 and the penalty levels under the Minimum Energy Efficiency Standard. It is intended that this policy will supplement the existing Council Policy for Regulatory Services, which sets out the broad principles of good regulation and the various codes and legislation that provide best practice.

#### Financial Penalties

4.4 The Act amends the Housing Act 2004 to allow the Council to impose a financial penalty (“a civil penalty”), where it is satisfied, beyond reasonable doubt that a landlord has committed a relevant offence under the Housing Act 2004.

4.5 The list of relevant offences includes:

- Failure to comply with an Improvement Notice
- Offences relating to the licensing of Houses in Multiple Occupation
- Breach of an Overcrowding Notice
- Breach of HMO Management Regulations
- Breach of a Banning Order

4.6 The charging of a civil penalty is an alternative to prosecution, which is often time consuming and expensive. A civil penalty is intended to act as a punishment and a deterrent against non-compliance.

4.7 The Act requires the Council to develop its own policy on determining the appropriate level of civil penalty in each case. Under the guidance issued to local authorities in April 2017 “Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities” the civil penalties charging structure should take into account the following:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences

- Removing any financial benefit the offender may have obtained from committing the offence.

4.8 Where the person fails to pay the civil penalty, the Council may recover it as if it were an order of the County Court.

### Rent Repayment Orders

4.9 Rent Repayment Orders were introduced under the Housing Act 2004 to cover situations where the landlord of a licensable property had failed to obtain a licence. The Housing and Planning Act 2016 has extended the range of offences where Rent Repayment Orders can be applied to include the following situations:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Offences in relation to licensing of HMOs under Part 2 of the Act
- Illegal eviction or harassment of tenants
- Using violence to secure entry to a property
- Breach of a Banning Order.

4.10 A local housing authority can impose a civil penalty and also apply for a Rent Repayment Order for certain offences e.g. both sanctions are available for a failure to comply with an Improvement Notice and failure to obtain an HMO Licence.

4.11 Either the Council or a tenant can make an application to the First-tier Property Tribunal and tenants no longer need to wait for a conviction before making an application for a Rent Repayment Order. If approved up to 12 months rent can be reclaimed. Where the rent was paid through housing benefit or universal credit payments and a Rent Repayment Order is granted, the money will be returned to the Council. Where the person fails to pay the Rent Repayment Order, the Council may recover it as if it were an order of the County Court.

4.12 The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 enable Local Authorities to use the money received from civil penalties and Rent Repayment Orders for private sector housing enforcement work.

### Banning Orders

4.13 Under the Housing and Planning Act 2016 the Council can apply to the First-tier Tribunal for a Banning Order against a residential landlord or property agent for a wide range of housing offences. This Order prevents the landlord or agent from letting or managing properties for at least 12 months. Breaching a Banning Order is an offence subject to either prosecution or a civil penalty.

4.14 Once a Banning Order has been made, the Council must place the person on the new database of rogue landlords. The Council may also make an entry on the database for a person who has been convicted of one or more of the Banning Order offences or has received two or more financial penalties in respect of a Banning Order offence.

## Electrical Safety Standards

- 4.15 Since April 2021 all landlords of privately rented residential properties must make sure that the electrical installations in their properties are inspected and tested by a qualified electrician at least every 5 years. They must also provide copies of the reports to tenants and the Council if requested and carry out any remedial works. Where a landlord is in breach of the Regulations, the Council must serve a Remedial Notice requiring the works to be carried out and it can also take urgent remedial action itself where necessary. If the landlord does not comply with the notice, it can arrange the work itself with the tenant's consent. The Council can recover the costs of taking remedial action from the landlord and it can issue a financial penalty of up to £30,000 under the policy mentioned above.

## Other recent provisions

- 4.16 Under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) Order 2014 it is a legal requirement for lettings agents and property managers to join a government approved redress scheme. Failure to do so is an offence and the Council may serve notice requiring the payment of a financial penalty of up to £5,000. Further penalties may be imposed if they continue to fail to join a scheme.
- 4.17 Under the Smoke and Carbon Monoxide Alarm Regulations 2015 it is a legal requirement for landlords to ensure that there is a working smoke alarm on each floor of any privately rented property and a carbon monoxide alarm installed in any room used as living accommodation and containing a fixed combustion appliance. Where a landlord is in breach of the Regulations, the Council must serve a Remedial Notice requiring the works to be carried out. If the landlord does not comply with the notice, the Council must carry out the remedial work. It can recover the costs of taking remedial action from the landlord and require the landlord to pay a penalty charge of up to £5,000 determined in accordance with its Statement of Principles.
- 4.18 Under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 landlords must not let out properties with an EPC rating below E unless a valid exemption is in place. Where the Council believes that a landlord is in breach of the Regulations, it may serve a Compliance Notice on the landlord requiring information to help it decide whether there has been a breach. If the Council is satisfied there has been a breach of the Regulations it can issue a financial penalty. The maximum level of penalty varies with the type of breach under the Regulations, up to a maximum amount of £5,000 per property.

## **5. Relationship to the Corporate Strategy and Service Plan**

- 5.1 The adoption of this policy will contribute to the strategic priorities of improving the health and well-being of our residents and communities and ensuring good quality housing for all income levels and age groups.

## **6. Implications of decision**

- 6.1 **Resource (Finance, procurement, staffing, IT)**

The charging of penalties helps recover the revenue costs of the private sector housing service, which in turn helps to support the General Fund revenue budget.

Through civil penalties, there is likely to be reduced costs comparatively to prosecution, therefore enables the service to minimise costs.

It is likely some penalties will be unrecoverable, therefore an impairment allowance will be required for non-collectable penalties.

## **6.2 Risk Management Implications:**

The application of civil penalties is likely to be quicker and cheaper than prosecution and the Council will retain the penalty. However, the same standard of proof is required as for prosecution and the landlord can appeal to the First-tier Tribunal who can confirm or vary the size of the penalty. There is also a risk that the Council does not receive any money if the landlord refuses to pay.

## **6.3 Legal Implications:**

An agreed enforcement policy will give the Council a policy against which all cases can be assessed before and while any enforcement action is taken, in order to ensure consistency of approach to cases and to support the Council should there be any challenge to the Council's use of its enforcement powers.

## **6.4 Equality, diversity and inclusion**

"There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when necessary, across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010."

## **6.5 Climate emergency declaration**

The proposed enforcement policy will ensure that private sector rented housing is maintained to an appropriate standard including the heating and lighting in support of reducing energy consumption. .

## **7. Consultation and engagement**

7.1 Consultation with Landlords and tenants groups,

## **8. Other options considered**

8.1 Doing nothing is not an option

8.2 Having a clearly defined and set out policy is key to delivering the councils strategic objectives in respect of good quality housing for all.

## **9. Governance journey**

- 9.1 Corporate Management Board - 29 November 2022  
Executive Briefing – 3 January 2023  
Executive – 17 January 2023  
Council for adoption – 21 February 2023

**Annexes:**

Annexe 1 – Draft Private Sector Housing Enforcement Policy

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**Background Papers**

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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Agreed and signed off by:  
Legal Services: 17 November 2022  
Head of Finance: 17 November 2022  
Strategic Director: 17 November 2022  
Portfolio Holder: 3 January 2023