

Extraordinary (Informal Joint) Cabinet



St Edmundsbury
BOROUGH COUNCIL

Title of Report:	Tackling Rogue Landlords: Civil Sanctions Policy	
Report No:	CAB/SE/18/001	
Report to and date:	SEBC/FHDC Extraordinary (Informal Joint) Cabinets	9 January 2018
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Purpose of report:	To appraise Cabinet of the new powers available to councils under the Housing and Planning Act 2016 and to seek endorsement of the development of a Civil Sanctions policy to enable Forest Heath District and St Edmundsbury Borough Councils to make use of the new powers to tackle the small number of rogue landlords in West Suffolk and improve the wellbeing of tenants. The report also indicates how we will be approaching the consultation to develop the policy and engage with the private rented sector on regulation.	
Recommendation:	It is <u>RECOMMENDED</u> that Cabinet notes and endorses the approach by which the Public Health and Housing Team wishes to develop the new Civil Sanctions Policy, which will allow the West Suffolk councils to implement the new measures and sanctions which will support existing enforcement work and pro-active inspection programmes.	

Key Decision: (Check the appropriate box and delete all those that <u>do not</u> apply.)	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>
<i>The decisions made as a result of this report will usually be published within 48 hours and cannot be actioned until five clear working days of the publication of the decision have elapsed. This item is included on the Decisions Plan.</i>	
Consultation:	<ul style="list-style-type: none"> See Section 5.
Alternative option(s):	<ul style="list-style-type: none"> The West Suffolk councils could choose not to develop a policy but would not then be able to make use of the new legislation and sanctions. The development of a policy is favourable in that it enables the small number of rogue landlords to be tackled and the interests of tenants and compliant landlords to be protected.
Implications:	
<i>Are there any financial implications? If yes, please give details</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Income received from a civil penalty is retained by the Council and can only be used toward the statutory functions in relation to the enforcement of standards in the private rented sector. Any income generated is unpredictable based on the nature of enforcement action. The number of fines issued per annum is likely to be low but will target the worst offenders.
<i>Are there any staffing implications? If yes, please give details</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> It is envisaged that both the policy development and implementation can be funded through existing budgets. When the policy is approved and implemented, the investigation and enforcement will be carried out by staff in the existing establishment.
<i>Are there any ICT implications? If yes, please give details</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<i>Are there any legal and/or policy implications? If yes, please give details</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> 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 in Schedule 9 of the Act. A policy is required to enable the Council to implement the provisions in the legislation.

Are there any equality implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> There are no issues arising from the Government's Equality Impact Assessment (EQIA). A screening EQIA has been completed (Appendix B) which has identified potential positive impacts on those with protected equality characteristics arising from this proposal.	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
There are no major risks. Failure to agree the civil penalties and have an appropriate policy in place means the Council will be unable to issue civil penalties.			
Ward(s) affected:		All Wards	
Background papers: <i>(all background papers are to be published on the website and a link included)</i>		None	
Documents attached:		Appendix A - A summary of the new provisions within the Housing Act 2016 Appendix B - EQIA screening Appendix C - Timetable for policy development.	

1. Introduction and purpose

- 1.1 This report requests that Cabinet endorses the development of a policy to allow the use of new enforcement options, available via the Housing and Planning Act 2016, to help us tackle rogue landlords in the private rented sector.

2. Background

- 2.1 The Public Health and Housing team work under a wide range of legislation to prevent harm to health, improve quality of life and increase the number of suitable homes in West Suffolk. The existing legal provisions allow the team to take a graduated approach to enforcement from informal action to formal action, including enforcement notices and licencing for Houses of Multiple Occupation (HMOs).
- 2.2 Alongside the HMO licensing regime for the higher risk HMOs, we currently have risk based inspection programmes for the smaller HMOs, and flats above shops to ensure this accommodation is safe. A variety of private sector housing areas are covered including:
- Housing Standards
 - Houses in Multiple Occupation-Risk based inspections
 - Houses in Multiple Occupation-Licensing
 - Breaches of landlord obligations
 - Empty Homes
 - Public Health
 - Caravan Sites
 - Nuisance
 - Anti-social Behaviour (ASB)
- 2.3 We are currently protecting tenants from being exposed to risk through unsafe housing conditions with inspections, advice and enforcement, where landlords do not co-operate, to ensure that housing meets the required standards. We use a performance measure for bringing properties up to standard. If necessary and in accordance with our existing enforcement policy, we will prosecute landlords that fail to comply with formal enforcement actions such as improvement notices and licencing breaches.
- 2.4 Identifying private rented landlords will be enhanced with the new extended licensing of smaller HMOs. These HMOs will be entered into our existing programme of inspections. Single occupied properties will be identified with access to tenant deposit scheme records. Proactive actions also include flats above businesses which the service is currently undertaking.
- 2.5 Much of the work we do is to support vulnerable people, where we work closely with partner services and organisations around the needs of the individual and their home, and to protect the wider community.
- 2.6 A staged approach is taken to enforcement wherever possible to ensure solutions are initially sought through advice, co-operation and agreement. Tenants have an important role to play at the outset in terms of knowing their rights and engaging positively with their landlords. However, where this is not

successful there will be cases where formal action is necessary and this may ultimately lead to prosecution or other summary action. Public Health and Housing are committed to a tiered and proportionate approach to enforcement, consistent with our enforcement policies (these policies are due to be reviewed to create a single overarching enforcement policy).

- 2.7 West Suffolk have mainly excellent landlords who provide decent, well maintained homes and we are keen to work with and support them. There are however a small number of rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe and for whom the current sanctions are not a sufficient deterrent.

3. Reason for new legislation

- 3.1 One of the provisions of new legislation, the Housing and Planning Act 2016, is to help regulate the worst unsafe properties and landlords in the private rented sector.
- 3.2 The new legislation provides a streamlined alternative to prosecution, albeit with same level of evidence and an appeals process in place, which is designed to deal with cash for rent landlords working outside of the law. There are only a small minority of these landlords operating in West Suffolk.
- 3.3 The Act provides Local Housing Authorities with the option of civil penalty fines, rent repayment orders and banning orders for non-compliance with certain Housing Act 2004 offences. This is an alternative to taking a prosecution for the very worst landlords. Further details of the new provisions are attached at Appendix A.

4. Policy implications

- 4.1 A new policy is required by the legislation for us to make use of the new enforcement sanctions.
- 4.2 It will detail how we wish to continue our existing work and preventative approach to improve housing standards in the sector, working with compliant landlords and enforcing against the very worst landlords.
- 4.3 A fine structure will be included, with a level of fines expected to be set on a graduated basis depending on the severity of non-compliance with the offences.
- 4.4 Any income from fines will be used to continue meeting our wider strategic housing priorities.

5. Consultation

- 5.1 There is no specific requirement to consult on the proposals. The overarching policy guidance from Government has been based on an extensive consultation exercise with National Landlords Associations.
- 5.2 However, we feel that it would be beneficial that we engage on the proposals to be covered by the new policy locally with landlords, tenants and interest groups including neighbouring councils and the Landlords Association. This is consistent

with our desire to work closely with landlords and other stakeholders to achieve an effective and proportionate approach. The consultation will be designed to inform the wider public of the work of the team and the proposed implementation of new powers.

- 5.3 Consultation and engagement is proposed to include a workshop session for key stakeholders, potentially contributing to other housing events taking place during the consultation period, and an online survey on the Councils' website. Key stakeholders will be contacted directly and signposted to the survey which will also be open to the public.
- 5.4 The actual consultation and engagement brief will include the following points:
- Inform on the development of the policy, the need for the sanctions and the wider current and future service.
 - Engage with the private rented sector to understand their concerns, aspirations and develop with them better practice and recognition of good standards/better landlords.
 - Raise awareness of housing standards, including the minimum expected and how we assess this in rented properties.
 - How we will target, use intelligence and work with other services/organisations to enforce against rogue landlords.
 - Raise the profile of the service to increase accessibility to tenants, landlords and other stakeholders.
 - Consult on the actual sanctions, the level and graduation of fines and the rationale behind these within the policy.
- 5.5 Through this process, we wish to take this opportunity to have a conversation with the private rented sector around effective regulation, which should lead to the development of a comprehensive policy and future service. We wish to build on our successful enforcement outcomes, and the preventative and reactive work that currently takes place and give officers a range of effective tools to tackle the worst conditions and landlords in West Suffolk.

6. Status and development of the policy

- 6.1 We expect that the Councils will be asked to consider adopting the policy in April 2018, with enforcement procedures/sanctions from that time. This will enable us to develop our approach with partners and ensure effective working practices. In the interim, existing powers and practices will continue to be used to regulate serious conditions and non-compliance in the sector.
- 6.2 The development of the policy is regarded as an opportunity to engage positively with landlords and other stakeholders to build on the good work being undertaken by the vast majority of landlords to comply with housing standards and rent properties out that are safe and hazard free.
- 6.3 The focus of policy development is on tackling and dealing with the very worst landlords, and deterring any bad landlords from starting to operate in the area, whilst working with those that wish to grow the sector in terms of much needed better quality housing.

7. Summary

- 7.1 The new powers contained within the policy will provide a useful set of enforcement tools to supplement the current regulatory work of the service to protect tenants from living in unsafe conditions, and potentially vulnerable people being exploited.
- 7.2 It will support other legislation being brought in to protect residents and regulate the private rented sector.
- 7.3 The development, with stakeholders, and consultation of the policy will provide an opportunity to promote the service we offer and the most effective way to enforce this new legislation. We will be able to promote our preventative and reactive regulatory agendas, and better landlords will see that we want to work with them, not only to achieve compliance, but to deliver a sector that provides adequate supply of decent homes.

8. Documents attached

Appendix A: Details of the legislation

Appendix B: EQIA Screening

Appendix C: Timeline to approval/implementation

APPENDIX A

A summary of the new provisions within the Housing and Planning Act 2016

The Housing and Planning Act 2016 ('The Act') came into force in several stages in 2017. The provisions for civil penalty notices and Rent Repayment Orders commenced on 1 April 2017, the provisions for banning orders commenced on 1 October 2017.

1. Requirement for a policy

- The Act requires a local authority to have its own civil penalties policy before its provisions can be implemented.
- The Civil Penalties Policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed. Complementing the Enforcement Policy, it will play a significant role in helping the Council to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.

2. Provisions of the Act

The Act provides Local Housing Authorities an alternative enforcement option for non-compliance with certain Housing Act 2004 offences rather than taking a prosecution in Court. Although the burden of evidence will be the same for a civil penalty as it is for a prosecution, prosecutions can be both time consuming and expensive. The provisions do not replace the option for prosecution, and it is expected that a prosecution would still be taken in the most serious of cases or for repeat offenders.

- **Civil penalties.** Civil penalties came into force on the 1 April 2017 and provide powers for housing authorities to issue financial penalties of up to £30,000 as an alternative to a prosecution in respect of the following offences:
 - Failure to comply with an improvement notice
 - Failure to licence houses of multiple occupation (HMO)
 - Offences in relation to licensing of HMOs
 - Failure to comply with an overcrowding notice
 - Breach of management regulations in respect of Houses in Multiple Occupation.
- Civil penalties are designed to act as a punishment to the offender, deter others, and to remove financial benefit the offender may have obtained as a result of committing the offence.
- **Banning Orders.** The use of banning orders is designed to prevent rogue landlords and/or property agents from letting property for a fixed period of time, from holding an HMO licence or from making a prohibited disposal of property. The banning order must be made for a minimum of 12 months. A banning order can be made by a first Tier Tribunal if a person is convicted of a Banning Order Offence which will be specified in regulations.
- Breach of a banning order is an offence, a person being guilty on summary conviction may face a fine and/or imprisonment for a period of up to 51 weeks. The Authority will have a Statutory Duty to enter data on a National Database of Rogue Landlords. The Authority may as an alternative to prosecution impose a civil penalty fee of up

to £30,000 if it decides beyond all reasonable doubt the person has breached a Banning Order.

- **Rent repayment orders.** The First Tier Tribunal may issue a rent repayment order to any landlord who has been convicted of:
 - Eviction or harassment under Protection from Eviction Act
 - Failure to comply with an Improvement Notice
 - Failure to comply with a Prohibition Order
 - Control or management of unlicensed HMO or house
 - Failure to comply with a banning order
 - Violence for securing entry under the Criminal Law Act 1977.
- **Database of Rogue Landlords and Agents.** The government is to establish a database of rogue landlords and give access to local authorities.
- A local authority will be given powers to maintain the database and **must** include details of any landlord who has received a banning order. They **may** include landlords who have been convicted of banning order offences, or who has received at least two financial penalties in 12 months for banning order offences, but authorities must first give notice to the landlord which may be appealed

3. Implications for local authorities

The council has a statutory duty as a Local Housing Authority to enforce relevant Housing legislation and officers must be delegated under the Act to carry out their functions. The council must have regard to any Statutory Guidance issued in relation to determining the level of any civil penalty. The Act allows the Authority to use income from civil penalty charges to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

The authority must be satisfied, **beyond reasonable doubt**, that an offence has occurred and there must not have been a conviction or pending action in respect of the offence. Prosecution should be considered where an offence is particularly serious or where the offender has committed similar offences in the past. The legislation does not permit local housing authorities to impose a civil penalty and prosecute for the same offence.

Before imposing a civil penalty, the Authority must first serve a 'Notice of Intent' and consider written representations. An appeal provision is in place to the First Tier Tribunal in relation to the decision to impose a civil penalty or the amount of the civil penalty.

The maximum civil penalty of £30,000 is expected to be reserved for the worst offenders. The actual amount levied in any particular case should reflect the seriousness of the offence, as well as taking account of the landlords previous record of offending. The following factors should be considered to help ensure that the civil penalty is set at an appropriate level:

- Severity of offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence.