

Cherwell District Council

Executive

2 July 2018

Policy to Implement Enforcement Powers Provided by the Housing and Planning Act 2016

Report of Assistant Director Housing

This report is public

Purpose of report

This report explains certain enforcement powers to deal with rogue landlords provided by the Housing and Planning Act 2016, and seeks approval of 3 policies that will allow the Council, as the local housing authority, to implement and make use of those powers.

1.0 Recommendations

The Executive is recommended to:

- 1.1 Adopt the policy for imposing civil penalties as an alternative to prosecution in appropriate cases, as detailed in Appendix 1, with immediate effect.
- 1.2 Adopt the policy dealing with applications for rent repayment orders, as detailed in Appendix 2, with immediate effect.
- 1.3 Make the Assistant Director Housing responsible for determining the uses to which retained civil penalty funds and retained rent repayment should be put.
- 1.4 Adopt the policy dealing with applications for a banning order against persons convicted of specified offences, as detailed in Appendix 3, with immediate effect.

2.0 Introduction

2.1 The Housing and Planning Act 2016 introduced a range of enforcement measures as part of the Government's drive to ensure non-compliant landlords are unable to operate in the sector and unable to gain a financial advantage over landlords who meet their obligations and provide a good standard of rented property; these include:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force on 6 April 2017)

- Extension of rent repayment orders to cover unlawful eviction, breach of a banning order and certain other specified offences (came into force on 6 April 2017).
- Banning orders for the most serious and prolific offenders (came into force 6 April 2018).
- Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (came into force 6 April 2018).

3.0 Report Details

Civil Penalties

- 3.1 The civil penalty powers contained in the Housing and Planning Act 2016 complement the existing enforcement tools that local authorities have under the Housing Act 2004, i.e. to prosecute and/or carry out works in default where landlords fail to comply with housing legislation. They have the advantage of providing a potentially simpler and quicker outcome and also enable the local authority to retain the penalty for the specific purpose of resourcing private sector housing enforcement work.
- 3.2 Civil penalties are available as an alternative to prosecution for the following housing offences:
- Failing to comply with an improvement notice (s.30 Housing Act 2004)
 - Failure to comply with management regulations in respect of Houses in Multiple Occupation (s.234)
 - Offences in relation to licensing of Houses in Multiple Occupation (s.72)
 - Offences in relation to licensing of houses under Part 3 of the Act (s.95)
 - Offences of contravention of an overcrowding notice (s.139)
 - Breach of a banning order (s.21 Housing & Planning Act 2016)
- 3.3 The Ministry of Housing, Communities and Local Government (MHCLG) has produced guidance that sets out the factors that must be taken into account when determining an appropriate level of penalty (up to a maximum of £30,000), but it is for the 2 Councils (CDC and SNC) to determine their specific approach. It is recommended that both Councils should adopt the same approach.
- 3.4 The framework recommended for adoption in this report has, with their consent, been developed from the matrix created by Oxford City Council and is one they have successfully implemented. It enables officers to consider all the relevant factors and calculate an appropriate level of penalty on a prescribed basis. This approach will aid consistency and offer transparency to the enforcement process and will assist in the event that appeals are made against any civil penalty decisions. The matrix approach will also facilitate future amendment if required at any stage (e.g. in response to any further regulations or guidance released by the Secretary of State).
- 3.5 The proposed Civil Penalties Policy is attached as Appendix 1, and includes the matrix that will be used as the basis for determining the appropriate penalty in each case.

3.6 Enforcement officers will review and assess each case to determine whether to issue a civil penalty or undertake other enforcement interventions in line with the Councils' enforcement policies. It should be noted that if a civil penalty is considered the most appropriate action, a prosecution cannot be sought. Banning Orders, which can only be sought following conviction, will be reserved for the worst offenders; so civil penalties are likely to be the more frequent enforcement approach taken in response to relevant breaches of the Housing Act 2004.

3.7 Civil penalties are subject to appeal in the First-tier Tribunal (Property Chamber) (FtT). It is essential that penalties are set at a reasonable level which it can successfully defend on appeal but statutory guidance makes clear that fines should be of a sufficient level to act as a deterrent and remove any gain derived through failure to comply.

Rent Repayment Orders

3.8 Rent Repayment Orders were introduced by the Housing Act 2004, but only applied in the event of a failure to licence a qualifying property. The Housing and Planning Act extends the scope of Rent Repayment Orders (RROs) to cover a much wider range of offences. Relevant offences are:

- Violence for securing entry, s.6(1) Criminal Law Act 1977
- Unlawful eviction or harassment of occupier, s.1 Protection from Eviction Act 1977
- Failure to comply with an improvement notice, s.30 Housing Act 2004
- Failure to comply with a prohibition orders, s.32 Housing Act 2004
- Control or management of unlicensed HMO, s.72(1) Housing Act 2004
- Control or management of unlicensed house, s.95(1) Housing Act 2004
- Breach of a banning order, s.21 Housing and Planning Act 2016

3.9 The Council now has a duty under the Housing and Planning Act to *consider* applying for an RRO if it becomes aware that a person has been convicted of one of the above offences. In all likelihood it will be the Council that secures such a conviction.

3.10 The Council also has a discretionary power to consider applying for an RRO if it becomes aware that a landlord has committed an offence but has not yet been convicted. In these cases it would be necessary to satisfy the First-tier Tribunal, beyond reasonable doubt, that the offence has been committed. This could include cases in which the landlord has admitted the offence and accepted a caution.

3.11 In addition, there is a further discretionary power for councils to assist tenants to apply for an RRO themselves, in cases where the council chooses not to do so. That might take the form of providing advice or legal assistance to lodge claim forms or attend hearings, for example.

3.12 The MHCLG has produced statutory guidance to help local housing authorities use their powers to seek Rent Repayment Orders and regard must be given to this guidance.

3.13 The proposed Rent Repayment Order Policy, which takes full account of the statutory guidance, is attached as Appendix 2.

Banning Orders

3.14 On successful conviction of a relevant offence, the Council may apply to the First-tier Tribunal (FtT) for a banning order and the Government has made clear¹ that it expects banning orders to be used for the most serious offenders. The housing-related offences regarded as banning order offences include:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977

Any of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (Section 30)
- Offences in relation to licensing of HMOs (Section 72)
- Allowing a HMO that is not subject to licensing to become overcrowded (Section 139)
- Failure to comply with management regulations in respect of HMOs (Section 234)
- Failure to comply with a Prohibition or Emergency Prohibition Order (Section 32)
- An offence under the Health and Safety at Work Act etc. Act 1974 where a person
- Contravenes Section 36 of the Gas Safety (Installation and Use) Regulations 1998
- An offence under Section 32 of the Regulatory Reform (Fire Safety) Order 2005

3.15 If the FtT makes a banning order, a landlord (or property agent) is banned from:

- Letting houses in England
- Engaging in English letting agency work
- Engaging in English property management work
- Doing two or more of those things

3.16 Breach of a banning order is a criminal offence.

3.17 The proposed Banning Order Policy, which takes full account of the non-statutory guidance produced by MHCLG, is attached as Appendix 3.

4.0 Conclusion and Reasons for Recommendations

4.1 The proposed policies present members with the opportunity to ensure the Council has the range of enforcement options available to deal effectively with rogue landlords and to protect our residents. In relation to Rent Repayment Orders the proposed policy will also ensure the Council can demonstrate compliance with the duty to consider making an RRO in applicable circumstances.

¹ MHCLG, Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities

5.0 Consultation

None

6.0 Alternative Options and Reasons for Rejection

- 6.1 The first alternative option would be to not adopt the new policies relating to the discretionary Civil Penalty and Banning Order provisions but to adopt the Rent Repayment Order Policy in isolation. That would cover the Council's duty as regards RROs. That approach would forego the additional powers and tools available to officers to crack down on rogue landlords who knowingly rent out unsafe and substandard accommodation. It would also prevent the Council from taking advantage of the additional funding that would be available to assist with the enforcement of appropriate conditions in the private rented sector (see section 7.3 below).
- 6.2 The second alternative would be to reject the three policies in their entirety, but that would leave the Council with no means of fulfilling its duty to consider RROs.

7.0 Implications

Financial and Resource Implications

- 7.1 The Government has published guidance which provides for the income from civil penalties to be retained by the local authority. The income must be used to cover the administration and legal costs and expenses incurred in carrying out its private sector enforcement function.
- 7.2 It is anticipated the process of imposing a civil penalty will be more streamlined and less costly than taking a prosecution; however, it should be noted that officers must ensure that sufficient evidence of the offence is properly gathered and recorded to the level required for a prosecution.
- 7.3 The implementation of civil penalties, in common with existing prosecution activity, is within the scope of the existing work of the Private Sector Housing Team and will not require additional resources to implement. However, prosecution cases are extremely time intensive and the reality is that some cases are not currently recommended for prosecution even though the threshold for action is met. The introduction of Civil Penalties is therefore likely to result in an increase in activity, on the basis that cases reaching a 'prosecution threshold' are likely to be subject to a civil penalty. In the event that an additional resource proves necessary to make full benefit of the new power, the retention of the civil penalties will provide potential funding for that resource. This report recommends that the Assistant Director Housing will determine the uses to which retained penalty funds should be put.
- 7.4 Operating costs for RROs will be covered within existing resources. Although there may also be some increase in costs associated with debt recovery if landlords do not pay the civil penalty charge or RRO.

- 7.5 For RROs, where money from housing benefit or Universal Credit has been paid to the landlord in respect of the rent, this will be repayable to the Council and must be used for further enforcement of the private rented sector. Any other money the tenant has paid in respect of the rent will be repayable to the tenant. The maximum amount of rent that can be recovered under an RRO is capped at 12 months.

Comments checked by:

Kelly Wheeler Principal Accountant, 01327 32230,
kelly.wheeler@cherwellandsouthnorthants.gov.uk

Legal Implications

- 7.6 There is a risk of legal challenge from landlords to the civil penalty, firstly to the Council after receiving the Notice of Intent and secondly to the First-tier Tribunal once the Final Notice has been received. There may therefore be an increase in the number of appeals received. However, enforcement action is already subject to appeal to the same Tribunal.
- 7.7 There may be some additional requirement for legal support and input in relation to Civil Penalty appeals, and both Banning Order and Rent Repayment Order applications to the FtT.
- 7.8 Since there is a mandatory duty to consider making a Rent Repayment Order in specified circumstances, each Council must have in place a policy that sets out how it will discharge that duty. The proposed RRO Policy meets that need.

Comments checked by:

Amy Jones, Solicitor, 01295 221987 amy.jones@cherwellandsouthnorthants.gov.uk

Risk implications

- 7.9 The new enforcement powers that are the subject of this report are intended to bear down on rogue and non-compliant landlords. There is no reputational risk to the Councils in using those powers effectively, but conversely, there would be a risk in failing to utilise the available powers.
- 7.10 The Councils would be at risk of challenge and reputational harm in the event they did not have in place a suitable policy that sets out how they will discharge that duty (see Legal Implication comment at 7.3 above).

Comments checked by:

Louise Tustian, Team Leader – Insight Team,; 01295 22 1786;
louise.tustian@cherwellandsouthnorthants.gov.uk

Equalities implications

- 7.11 To the extent that vulnerable people frequently have the fewest options when finding private rented accommodation and are often restricted to poorer quality homes, enforcement of this legislation has the potential to help those residents in particular by ensuring their landlords provide accommodation that meets appropriate standards.

Comments checked by:

Caroline French, Policy & Projects Officer, Business Transformation Team 01295 251586; Caroline.french@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: Yes

Wards Affected

All

Links to Corporate Plan and Policy Framework

Corporate Priorities to Serve the Residents and Business and Safeguard the Vulnerable

Joint Business Plan 2018-19: Thriving Communities and Wellbeing - Provide and support health and wellbeing; Safeguard the vulnerable

Lead Councillor

Councillor John Donaldson, Lead Member for Housing

Document Information

Appendix No	Title
Appendix 1	Civil Penalties Policy
Appendix 2	Rent Repayment Order Policy
Appendix 3	Banning Order Policy
Background Papers	
None	
Report Author	Tim Mills, Private Sector Housing Manager
Contact Information	01295 221655 Tim.mills@cherwellandsouthnorthants.gov.uk