

Cherwell District Council

Executive

5 July 2021

Revised Housing Standards Enforcement Policy

Report of Assistant Director Housing and Social Care Commissioning

This report is public

Purpose of report

The report sets out an updated and extended policy to be adopted in relation to the regulation and enforcement of housing standards.

1.0 Recommendations

The meeting is recommended to :

- 1.1 Approve the *Housing Standards Enforcement Policy 2021* for adoption by the Council.

2.0 Introduction

- 2.1 This policy has been produced following a review of several existing policies, which it will replace, but also covers a number of recent legislative provisions which are not yet covered by policy and are included for the first time.
- 2.2 Drawing several separate policies together will simplify what has become a growing number of related policies. The new policy will improve clarity and ensure that information about the Council's approach to the enforcement of housing standards is easier for the public and officers to access and interpret. It will also assist with future policy reviews.

3.0 Report Details

- 3.1 The *Housing Standards Enforcement Policy 2021* is a significant document. It sets out the powers the Council has at its disposal to regulate and improve housing in the district, the Council's approach to enforcement, and how it intends to use the

available powers. It will supersede and replace most, but not all, existing policies in relation to the enforcement of housing standards¹.

3.2 The new policy has been developed following a detailed review of the 3 existing policies below, which it will replace.

- *Housing (Private Sector) Policy 2012*
- *House Condition Enforcement Policy 2012*
- *Housing Health and Safety Rating System (HHSRS) Policy 2012*

The legislation underpinning those policies has remained substantially unchanged; so although content has been reviewed and refreshed, much is reproduced in the new policy without significant change.

3.3 We have also taken the opportunity to incorporate the substance of the following existing policies into the new policy and they too will be replaced by it.

- *Recovery of Costs Policy 2019*
- *Civil Penalties Policy 2018*
- *Smoke & Carbon Monoxide Alarms Regulations Policy 2015*

Minor revisions to the matrices (established in the *Civil Penalties Policy* and in the *Smoke & Carbon Monoxide Alarms Regulations Policy*) used to calculate the appropriate level of penalties have been included in the new policy to reflect experience gained in the use and application of the penalty powers. It is intended that the revised matrices will be used as the Council's models for penalty setting and, as well as providing for current penalty setting requirements, can be applied (wherever appropriate) in relation to any future legislation for which the Council is required to set its own penalty levels.

3.4 The new policy also includes policy provisions covering the following legislation for the first time. These provisions are further explained below:

- *Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020*
- *The Tenant Fees Act 2019*
- *Redress Schemes for Letting Agency and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014*

3.5 **Electrical Safety Standards (ESS) in the Private Rented Sector**

3.5.1 The ESS Regulations were introduced under the *Housing and Planning Act 2016* and came into force on 1 June 2020. Since 1 April 2021 they have applied to all specified tenancies. The Regulations introduce new duties for landlords of non-HMO² properties in relation to electrical safety standards and certification. For landlords of HMO properties, the ESS Regulations replace the existing duties under

¹ The *HMO Standards Policy 2018* and the *HMO Licensing Policy 2018* are the 2 most significant exceptions, both of which will continue as separate policies because of their size and specific content. The *Minimum Energy Efficiency Standards (MEES) Policy 2020* will also remain a separate policy.

² House in multiple occupation.

the *Management of Houses in Multiple Occupation (England) Regulations 2006*, and introduce an additional mandatory condition for inclusion in HMO licences.

- 3.5.2 The Regulations require that electrical installations in the private rented sector must meet BS 7671: 2018 (*the electrical safety standards*) whilst properties are occupied, and a new Electrical Installation Condition Report (EICR) must be provided by a qualified person³ at least every 5 years.
- 3.5.3 The Council, as local housing authority, must serve a remedial notice if it has *reasonable grounds* to believe a landlord has failed to obtain an EICR or carry out remedial or investigative work necessary to achieve a satisfactory EICR. The Council may, with the consent of the tenant(s), arrange for that work to be carried out and then recover the costs incurred.
- 3.5.4 Where the Council is satisfied, *beyond reasonable doubt*, that a landlord has breached a duty under the regulations it may impose a financial penalty of up to £30,000. The new policy proposes use of the penalty matrix previously adopted in relation to Housing Act offences (and included in a revised form in this policy) to determine appropriate penalties for offences under these Regulations (see section 4.4 and Appendix 2A of the new policy). It also proposes that this matrix may be updated to reflect changes in guidance, best practice and tribunal decisions with approval from the Assistant Director, Housing and Social Care Commissioning.
- 3.5.5 There is a right of appeal to the First Tier Tribunal against the imposition and amount of any penalty.
- 3.5.6 Income received by the Council from financial penalties under this legislation must be used to fund further enforcement of the private rented sector.
- 3.5.7 The specific policy provisions relevant to this legislation are included at section 4.4 of the new policy (attached as Appendix 1).

3.6 **The Tenant Fees Act**

- 3.6.1 The Tenant Fees Act 2019 (TFA 2019) has applied to all private rented sector tenancies since 1 June 2020 and prohibits the charging of fees, except where expressly permitted, by landlords and letting agents.
- 3.6.2 The duty to enforce the TFA 2019 falls to Oxfordshire Trading Standards as the local weights and measures authority, but Cherwell has a discretionary power to enforce certain provisions⁴.
- 3.6.3 Discussions at Service level between Oxfordshire Trading Standards and Cherwell District Council's Housing Service led to the conclusion that effective enforcement will be enhanced if the Council determines that it will use the discretionary powers available to it and if both organisations adopt a coordinated approach. That approach is set out and confirmed in the new policy and, like that adopted by OCC (and approved by its Cabinet on 16/3/21), it takes account of the model Policy and

³ "qualified person" means a person competent to undertake the required inspection and testing and any further investigative or remedial work in accordance with BS 7671:2018 (the electrical safety standards).

⁴ Specifically : *Section 1* (prohibitions applying to landlords), *Section 2* (Prohibitions applying to letting agents) and *Schedule 2* (treatment of holding deposits).

Guidance documents produced by Bristol City Council⁵ and of the Government's Statutory Guidance for Enforcement Authorities.

- 3.6.4 In terms of enforcement, a first breach of the legislation is dealt with as a civil breach with a financial penalty of up to £5,000. Any further breach within 5 years can result in a penalty of up to £30,000 or prosecution as a criminal offence. The new policy again proposes use of the penalty matrix previously adopted in relation to Housing Act offences (and included in a revised form in this policy) to determine appropriate penalties for offences under these Regulations.
- 3.6.5 There is a right of appeal to the First Tier Tribunal against the imposition and amount of any penalty.
- 3.6.6 Income received by the Council from financial penalties under this legislation has to be used to fund further enforcement of the private rented sector.
- 3.6.7 The specific policy provisions relevant to this legislation are included at section 5.2 of the new policy (attached as Appendix 1).

3.7 Redress Schemes for Letting Agency and Property Management Work

- 3.7.1 *The Redress Schemes for Letting Agency and Property Management Order 2014* makes it a legal requirement for anyone engaging in lettings agency work or property management work (subject to certain exclusions) to be a member of a Government approved Redress Scheme.
- 3.7.2 The Order makes the Council responsible for enforcing this legislation within its district⁶ and, where the Council is satisfied *on the balance of probabilities*, that a person has failed to comply with the requirement to belong to a redress scheme, it may impose a monetary penalty up to a maximum of £5,000. Further penalties can be issued if subsequent or continued non-compliance is found.
- 3.7.3 The matrix at section 5.3 and Appendix 2B of the new policy will be used to determine the penalty level, and it is proposed that this matrix may be updated to reflect changes in guidance, best practice and tribunal decisions with approval from the Assistant Director, Housing and Social Care Commissioning.
- 3.7.4 The imposition of a financial penalty can be appealed to the First Tier Tribunal on grounds of an error of fact, law or that the amount of the penalty is unreasonable.
- 3.7.5 Income received by the Council from financial penalties under this legislation may be used by the authority for any of its functions.
- 3.7.6 The specific policy provisions relevant to this legislation are included at section 5.3 of the new policy (attached as Appendix 1).

⁵ Bristol City Council was appointed by the Government to be the designated Lead Enforcement Authority for the purposes of the TFA 2019.

⁶ For offences involving failure to publish prices on a website, the enforcement authority is the local authority in whose area the head office of the non-compliant lettings agent or property manager is located.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The new policy replaces a number of existing policies and refreshes and updates their content without introducing any significant changes, but it also takes account of 3 pieces of legislation for which specific policy provisions were not previously in place. By grouping previously separate policies together, the new policy will make information easier to find and use for both officers and the public. It will also assist with future policy reviews.

5.0 Consultation

- 5.1 Since the new policy is principally concerned with refreshing and consolidating existing policies, no consultation has been undertaken.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: As an alternative to adopting the new policy the existing policies could remain in place. This is not recommended because the 3 existing policies dating from 2012 require review and the Council would also still have to approve separate policies for the legislation (set out in section 3.4 of this report) which is not currently covered by policy.

7.0 Implications

Financial and Resource Implications

- 7.1 The adoption of the new policy presents no financial risk to the Council. The extension of the policy to include provisions relating to three additional pieces of legislation, which all provide for the imposition of civil penalties, will potentially result in additional income for the Council. The amount of any such income will however depend on relevant offences being committed, the level of penalty determined appropriate in each case and the outcome of any appeals raised.

Comments checked by:

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Legal Implications

- 7.2 The adoption of the new policy presents no legal issues for the Council. It confirms which legislative powers the Council must enforce, which discretionary powers it will apply and the basis for making associated decisions about enforcement options. In large part it reproduces existing policy provisions but is extended to cover three additional pieces of legislation, two of which impose mandatory duties on the council and the third of which it is proposed the Council will enforce in parallel with OCC (which has mandatory enforcement duties). All three of the pieces of

legislation which are to be covered by policy for the first time provide for the charging of financial penalties. The approach applied to the setting of those penalties is legally compliant. It is also in keeping with the approach already established by the Council for other penalties associated with breaches of housing legislation and therefore raises no issues.

Comments checked by:

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Risk Implications

- 7.3 No risks have been identified in connection with the adoption of the new policy.

Comments checked by:

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Equalities Implications (Equality, Diversity and Community)

- 7.4 An Equality and Climate Impact assessment has been undertaken and is provided with this report at Appendix 2.

Comments checked by:

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8.0 Decision Information

Key Decision (Executive reports only; state N/A if not Executive report)

Financial Threshold Met: No

Community Impact Threshold Met: Yes

Wards Affected

All

Links to Corporate Plan and Policy Framework

- CDC Business Plan 2021-22: Housing that meets your needs; specifically, *Support vulnerable people* and *Raise standards in rented housing*.
- Housing Strategy 2019-2024, Cherwell - A Place to Prosper: specifically, Priority 2, Improve the quality and sustainability of our homes

Lead Councillor

Councillor Lucinda Wing – Lead Member for Housing

Document Information

Appendix number and title

- Appendix 1: Housing Standards Enforcement Policy 2021
- Appendix 2: Equality and Climate Impact Assessment

Background papers

None

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