

Harborough District Council

Report 5 to *Cabinet* Meeting of 16 January 2023



Title:	Housing Enforcement Policies and Financial Penalties
Status:	Public
Key Decision:	Yes
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Portfolio Holder:	Cllr Whelband, Portfolio Holder for Housing and Communities
Appendices:	<ol style="list-style-type: none">1. <i>Appendix A – Housing Enforcement Policy</i>2. <i>Appendix B – Housing Enforcement Civil Penalties Policy</i>3. <i>Appendix C – Minimum Energy Efficiency Standards Policy</i>4. <i>Appendix D – Smoke and Carbon Monoxide Policy</i>

Executive Summary

- i. The Housing Enforcement Policy will complement the council's approved generic enforcement policy and sets out clearly the council's approach to enforcement to reduce the risk of successful challenge.
- ii. Formal enforcement action is only considered as a last resort or where there is a serious and imminent risk to tenants, and officers will work with landlords in the first instance to resolve issues informally.
- iii. The Housing Enforcement Policy and financial penalties do not impose any additional regulatory burden on private landlords as they should already be compliant with the various legislative requirements.
- iv. The introduction of Civil Penalties and other financial penalties provides a wider range of tools to the council when considering the most appropriate course of action to take where there has been a breach of relevant legislation and landlords have not complied with an enforcement notice served on them.

Recommendations

It is recommended that Cabinet:

1. **Approve, subject to consultation identifying no significant impacts upon a draft policy, the following draft policies:**

- a) **The Housing Enforcement Policy (appendix A)**
- b) **The Housing Enforcement Civil Penalties Policy (appendix B)**
- c) **The Minimum Energy Efficiency Standards Policy (appendix C)**
- d) **The Smoke and Carbon Monoxide Policy (appendix D).**

- 2. **Reconsider any draft policy which is the subject of a representation that has a significant impact upon the proposed policy.**
- 3. **Delegate to the Director of Governance and Law the authority to incorporate minor amendments required following consultation into the policies, in consultation with the Cabinet Member for Communities Wellbeing and Housing.**

Reasons for Recommendations

- v. Local Housing Authorities (“LHA”) are the primary enforcement agency for ensuring the protection of the health, safety and welfare rights for occupiers and visitors in private sector housing within England and Wales.
- vi. The housing enforcement policy sets out the general approach of Harborough District Council (“the council”) to private sector housing enforcement and it sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.
- vii. The introduction of civil penalties or financial penalties provides officers with a different tool to deal with non-compliant landlords and can be used as an alternative to prosecution. The council must have approved and published policies before they can issue financial penalties.

Purpose of Report

- 1. To seek approval of the council’s approach to housing enforcement to ensure that there is transparency for owners, landlords, agents and tenants of private sector and social housing properties through the Housing Enforcement Policy and more specific enforcement powers including the introduction of civil penalties for certain housing offences.

Background

- 2. The council has a statutory duty to enforce a wide range of legislation, with regulatory functions being delivered by several service areas across the council. To ensure there is transparency and consistency in the approach to enforcement across the council there is a general overarching Enforcement Policy which was approved by Cabinet in December 2015.
- 3. The council is now looking to introduce an overriding private sector housing enforcement policy that sits under the Generic Enforcement Policy and to consider new ways of dealing with offences by way of civil penalties for example.
- 4. Whilst the council will always try and work with landlords, there are occasions where more formal action is required. The policy sets out the approach of the council to housing enforcement and it sets out what owners, landlords, their agents and tenants can expect from officers and reduces the risk of successful challenge.

5. Authorised officers within the Environment Team have both statutory duties and discretionary powers to undertake enforcement action, using a range of legislation to address issues arising at rented properties, caravan sites and mobile home sites.
6. None of the policies within this report increase the regulatory burden on landlords who should already be compliant with the legislation but provide officers with alternative means of enforcement for those few landlords in the district who are not willing to comply with existing legislation.

Details

Housing Enforcement Policy

7. Whilst the council will try to work with landlords informally to ensure they are compliant with the various pieces of legislation covering the private rental of properties, there is on occasion, the need to take more formal action to remove an immediate issue or where landlord do not engage or do not undertake any improvement works required informally for example.
8. The Enforcement Policy aims to:
 - a. Demonstrate transparency of enforcement with respect to private sector housing, caravan sites and mobile home sites within the district by setting out legal requirements, policies and principles that officers will follow when enforcing legislation;
 - b. Ensure that all properties let as residential properties throughout the district, including those in private ownership, are of good quality and well managed;
 - c. Ensure that all residents of Harborough have a home that is safe, secure, and not overcrowded;
 - d. Improve the condition and energy efficiency of homes in the private rented sector through maintaining decency standards and raising them where possible;
 - e. Ensure Houses in Multiple Occupation (HMO's) are safe and well managed, and all relevant management and licensing regulations are adhered to;
 - f. Ensure private sector housing is not left empty for an unreasonable period of time or becomes an eyesore and nuisance to neighbouring homes;
9. The policy applies to both individuals and businesses and should be read in conjunction with the council's General Enforcement Policy which sets out the overarching parameters of enforcement.
10. The main objectives of the policy are to ensure that:
 - a. Privately rented accommodation, including houses in multiple occupation ("HMO"), and accommodation provided by registered providers of social housing, are free from actionable hazards that affect the health and safety of the tenant, licensee or any visitor;
 - b. Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements;
 - c. Privately rented accommodation meets minimum energy efficiency ratings;
 - d. All licensable properties are licensed, with licence conditions being met;

- e. Targeted action is taken to bring empty homes back into use;
 - f. Owners or occupiers of privately owned accommodation or land do not cause a statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood;
 - g. Caravan and mobile home sites are managed in compliance with site licence conditions and relevant statutory requirements. The domestic minimum energy efficiency standard regulations and assessments for hazards under the Housing Act 2004 do not apply to rented caravans or mobile homes as this property type falls outside the scope of these regulations.
11. The Environment Team will respond to enquiries and complaints about substandard, unsafe, problematic, or empty housing and where standards are not met enforcement action may be taken. The team will always endeavour to work with landlords and tenants to try and resolve issues informally unless there are serious concerns regarding non-compliance.
 12. Decisions will be made by competent and authorised officers, in accordance with legislation and by having regard to enforcement guidance as to the most appropriate course of action. In line with the policy, generally an incremental approach to enforcement will be implemented and where there is non-compliance after an informal approach has been made, formal action will be considered. However, where there are serious breaches of legal requirements, the council will consider formal action in the first instance to safeguard the health, safety and welfare interests of occupiers, visitors, and members of the public.
 13. There has been an increase in the number of housing related enquiries received by the team over the past 5 years, with the most significant increase over the duration of the Covid pandemic as more people were at home for longer periods. The specific Housing Enforcement Policy will ensure a fair and transparent approach to housing and should reduce the risk of successful challenge against any enforcement action if due regard for the policy has been taken in the decision-making process.

Table 1 – housing complaints received by the team over a 5-year period

Year	Number of Complaints received
2021-22	88
2020-21	67
2019-20	54
2018-19	34
2017-18	29

14. A copy of the Housing Enforcement Policy can be found in Appendix A.

Civil Penalties Policy

15. Serious offences and breaches of legislation have until now always been dealt with through the courts, but the reality is that such occurrences are rare. To take a prosecution the case must meet certain tests and action must be in the public interest. Although the courts can

issue fines to non-compliant landlords following a successful prosecution, the cost to the council both financially and in terms of time is great. Judges are required to make allowances for personal circumstances/mitigation and therefore cases can easily be lost on a technicality.

16. Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces several amendments to the Housing Act 2004. The Housing and Planning Act 2016 provides powers that allow the council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.
17. A civil penalty is a financial penalty that may be imposed in instances where there are breaches of legislation which is a criminal act (with the exception of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020). However, before imposing a civil penalty the council must be satisfied 'beyond all reasonable doubt' that a persons' conduct amounts to the relevant housing offence as defined by The Housing Act 2004.
18. A civil penalty can be imposed on a landlord or letting agent or both. The civil penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:
 - a. Section 30 – Failure to comply with an Improvement Notice
 - b. Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)
 - c. Section 95 – Offences in relation to licensing of houses under Part 3 (Inc. Selective Licensing)
 - d. Section 139 – Offences of contravention of an overcrowding notice
 - e. Section 234 – Failure to comply with management regulations in respect of HMO
 - f. Breach of a banning order (section 21 of the Housing and Planning Act 2016)
 - g. Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
19. When determining the level of the civil penalty there are several factors which must be considered as set out in the policy document. These include, but not limited to, the severity of the offence, the harm or potential harm and history of compliance/confidence in the landlord. The maximum amount for a civil penalty is laid down in legislation and cannot exceed £30,000 per offence.
20. There is a right of appeal to a Civil Penalty. The person served with the final notice has the right to appeal to the First Tier Tribunal against the decision to impose a penalty; or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.
21. Appeals can be very time consuming and costly for the council, and an early bird payment reduction can encourage prompt payment. The council can offer a discount to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. The level of discount applied is based on the Court's national sentencing guidelines and the proposed one third early payment reduction mirrors the guidance.
22. Recovery of an unpaid civil penalty would be through the council's debt recovery process.

23. Where a civil penalty is appealed and the First Tier Tribunal confirms or varies the penalty, this decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. This may affect the landlord's ability to obtain future financial credit due to the Register of Judgment Order made against the individual.
24. A copy of the draft Civil Penalties Policy can be found in Appendix B.

Other financial Penalties

Domestic Minimum Energy Efficiency Standards Regulations (MEES)

25. Legislation has been introduced for the regulation of energy efficiency within the private rented housing sector. This imposes an obligation on private sector housing landlords to achieve a minimum energy performance within their properties, demonstrated by an Energy Performance Certificate a rating of at least E or to register a relevant exemption to the regulations. There are several different exemptions within the Regulations which a landlord could apply if they are relevant.
26. A domestic private rented property is deemed "sub-standard" where the energy performance indicator of the property is below the minimum level of energy efficiency of Band E. The energy bandings for a property go from A to G with A being the highest and G being the lowest.
27. The regulations apply to properties let through an assured tenancy, regulated tenancy or a domestic agricultural tenancy and the property is legally liable to have an Energy Performance Certificate (EPC).
28. Within the regulations there is a cap on the expenditure landlords are required to invest to improve energy rating of their property. Landlords will not be required to spend more than £3,500 (including VAT) on energy efficiency improvements. If a landlord cannot improve their property to EPC E for £3,500 or less, they should make all the improvements which can be made up to that amount, then register a relevant exemption.
29. If a local authority believes a landlord may be in breach, they may serve a compliance notice requesting information to help them decide whether a breach has occurred. They may serve a compliance notice up to 12 months after a suspected breach occurred. Failure to comply with a compliance notice may result in a financial penalty being applied.
30. In order to enforce the regulations, the council needs to have a policy on the financial penalties to be applied should a landlord be found to be in breach of the following:
 - a. In breach of the prohibition on letting sub-standard property; or
 - b. In breach of the requirement to comply with a compliance notice; or
 - c. Guilty of uploading false or misleading information to the Exemptions Register.
31. The council as the enforcement authority has the discretion to decide on the value of the financial penalties, up to the maximum limits set by the regulation. The proposed scale of financial penalties is set out in the table below. A local authority can impose more than one financial penalty if there have been multiple breaches up to a maximum of £5000 per property.

Table 2 – Proposed Scale of Financial Penalties under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Breach	Max Financial Penalty as set out in the Regulations	Proposed Harborough District Council Financial Penalty
A) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than three months	£2000 plus a publication penalty	£1000 plus a publication penalty for first offence at property (with 33% early payment discount available)* £2000 plus a publication penalty for subsequent offences at property (with 33% early payment discount available)
B) Where the landlord has let a sub-standard property in breach of the Regulations for three months or more	£4000 plus a publication penalty	£2000 plus a publication penalty for first offence at property (with 33% early payment discount available) £4000 plus a publication penalty for subsequent offences at property (with 33% early payment discount available)
C) Where the landlord has registered false or misleading information on the PRS Exemptions Register	£1000 plus a publication penalty	£1000 plus a publication penalty (with 33% early payment discount available)
D) Where the landlord has failed to comply with compliance notice	£2000 plus a publication penalty	£2000 plus a publication penalty (with 33% early payment discount available)

*early payment discount applies if penalty paid within 14 days of issue. The discount would be removed if an appeal against the notice is submitted. As before the level of discount mirrors the national sentencing guidelines.

32. A copy of the MEES Policy can be found in Appendix C.

Smoke and Carbon Monoxide (England) Regulations 2015

33. The regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The regulations exclude registered providers of social housing. The duty requires that landlords ensure that:

- a. A smoke alarm is installed on each storey of premises where there is living accommodation;
- b. A carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel burning appliance;
- c. That checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.

34. Where the council believes that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord.
35. If the landlord then fails to take the remedial action specified in the notice within the timescale, the council can require the landlord to pay a penalty charge. The charge potentially made up of two parts, the punitive element (punishment) for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to any remedial works arranged and carried out by the council's contractors.
36. As with the MEES financial penalties, the council has the discretion to set the level of financial penalty to be applied up to the maximum amount set out in the legislation. The proposed level of penalties is set out in the table below

Table 3: Proposed Scale of Financial Penalties under the Smoke and Carbon Monoxide Regulations 2015 (as amended)

Breach	Max Financial Penalty as set out in the Regulations	Proposed Harborough District Council Financial Penalty
For the first breach to comply with a remedial notice	£5000	£2500 (with 33% early payment discount available)
For any subsequent breach to comply with a remediation notice.	£5000	£5000 (with 33% early payment discount available)

37. The council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served. Should a subsequent appeal be made, the discount will be removed.
38. The Smoke and Carbon Monoxide Financial Penalties Statement can be found in Appendix D.

Implications of Decisions

Corporate Priorities

39. The provision of good quality accommodation to all sectors which is safe and warm is vital to support the Governments focus on the provision of decent homes for all and supports the council's key priorities as set out below:

Priority 2: Promoting health and wellbeing and encouraging healthy life choices and

Priority 3: Creating a sustainable environment to protect future generations

Financial

40. Income received from financial penalties is retained by the council if it is used to support statutory functions in relation to its private rented sector enforcement. There is currently insufficient information to be able to estimate the level of income that may occur from the introduction of any of the policies.
41. The policies include an early payment discount of 33% if the payment is made within 14 days of issue of the notice provided no appeal is lodged. The level of discount applied is in line with the court's national guidance.

42. The proposed financial penalties for the MEES and Smoke and Carbon Monoxide Regulations are based on a reduced amount for the first offence, however any subsequent offences would result in the maximum penalty fine.
43. The financial penalty amount for the MEES and Smoke and Carbon Monoxide Regulations will be reviewed annually in accordance with the council's fees and charges policy but cannot exceed the maximum penalty fine amount set out in the legislation. This would not apply to the Civil Penalties as the amount of penalty is calculated on a case-by-case bases in line with the procedure set out in the policy.
44. Any legal action can be costly and demanding on resources and the ability to consider an alternative to prosecution as a penalty for non-compliance is supported. Offering an early payment discount may reduce the risk of appeal against a civil penalty or other financial penalty notice which whilst reduces the income received by the council, would reduce the resource demands of the legal and environment teams to respond to any appeal.

Legal

45. There are many statutory or discretionary pieces of legislation enforceable by the council. The housing enforcement policy provides open and transparent information on the council's approach to housing enforcement and reduces the risk of legal challenge.
46. Whilst there is no legal duty on the council to issue a financial penalty for a breach of the legislation, the civil penalties and other financial penalties policies widen the enforcement tools that are available to the enforcement officers to encourage compliance by landlords by acting as a deterrent against non-compliance

Policy

47. The council is not able to impose financial penalties without having an approved and published policy to support the decision-making process.
48. Having an effective and robust enforcement policy and associated financial penalties policies supports the provision of safe, warm and healthy living conditions in properties within the district. This links directly to the Council's key priorities as set out in paragraph 39 of this report.

Environmental Implications including contributions to achieving a net zero carbon council by 2030

49. The Minimum Energy Efficiencies Standards Financial Penalties policy provides a regulatory framework for improving the energy efficiency in the private rented sector.

Risk Management

50. Having clear and transparent published policies will reduce the risk of successful challenge against any proposed housing enforcement action.

Equalities Impact

51. Initial Equality Impact Assessment has been undertaken and the assessment will be reviewed following the consultation process. The initial assessment did not identify any negative impact on any protected characteristic.
52. There is a significant need for affordable good quality accommodation in the district. In general, private rented property in the district is well kept, but there are some cases where the properties fall below the expected standard, with landlords not fulfilling their legal or statutory requirements prior to renting. This can leave tenants at risk of harm due to a range

of hazards in the property especially as the number of private and social rented properties in the district is below the England average as set out below.

53. Data from 2021 census shows that Harborough has:

- a. 42.5% homes owned outright;
- b. 37.7% homes owned with a mortgage or loan;
- c. 12.1% private rental (lower than the England average of 19%);
- d. 7.7% social rent (lower than the England average of 17%);

54. The lower number of rented properties in the district reduces the choice and opportunities for tenants to find suitable accommodation.

Data Protection

55. No personal data is contained in, or impacted by, the content of this report.

Summary of Consultation and Outcome

56. The draft policies were considered at the Scrutiny Panel for Performance meeting of 23 June 2022 and the comments and feedback from the panel have been incorporated into the final documents. This included the streamlining the Civil Enforcement Policy and incorporating process flows into the policies and where appropriate including relevant timeframes for actions.

57. Subject to the approval of the recommendations for this report, the policies will be subject to public consultation. Representations received will be considered by either the Cabinet or the Director of Governance and Law & Interim Monitoring Officer in consultation with the relevant Cabinet member depending on the significance of the representations received.

Alternative Options Considered

58. None were considered .

Background papers

Meeting of the [Scrutiny Panel for Performance 23rd June 2022](#)