

# Enforcement Policy for Private Sector Housing

## Housing Committee Tuesday, 25 January 2022

Report of: Executive Head of Communities

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Purpose: For decision

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Publication status: Open

Wards affected: All

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### **Executive summary:**

Private sector housing plays a significant part in the housing provision within Tandridge. The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. The sector represents 14% of the total housing stock in the district.

The Council has a legal duty under Section 3 of the Housing Act 2004 to keep housing conditions in its area under review to identify any action that may need to be taken to deal with unsatisfactory housing that presents a health and safety hazard to the occupiers.

The Council is required to publish a Private Sector Housing Enforcement Policy (the Policy) so that members of the public, landlords and tenants are informed about the duties and powers of the Council, know what to expect from the service and to promote consistency in the delivery of the service. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure the private sector housing in Tandridge is well maintained.

The type of action taken to deal with a problem property will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In other cases, Officers have the discretion to use informal action as a first option and this approach is the one adopted by this Council wherever possible. Informal action includes working with property owners, tenants and others to provide advice and information to help them to comply with housing legislation and make their property a safe place to live.

In addition to providing details about the range of notices that the Council may serve on landlords and agents to require repairs or the closure of a property that its unsafe, the Policy includes information about the Council's power to charge for the service of formal notices under the Housing Act 2004. It provides information about the requirement to licence certain Houses in Multiple Occupation (HMO) and detailed information about the penalties that the Council may impose where there is a contravention of the legislation and notices that the Council may serve are not complied.

The Council has the power to impose financial penalties under a range of legislation.

For example, the Housing and Planning Act 2016 introduced penalty charges as an alternative enforcement tool to prosecution and can be imposed for certain offences under the Housing Acts, including overcrowding, failure to licence an HMO, breach of licensing conditions, or failure to comply with an Improvement Notice. The 'Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004' forms part of the main Policy. It sets out how the Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

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### **This report supports the Council's priority of:**

'Creating the homes, infrastructure and environment we need'

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### **Recommendations to Committee:**

That:

- A. the Private Sector Housing Enforcement Policy and the associated policy documents, including the approach to agreeing Civil Penalties, as outlined in Section 11 and Appendix 3 of the Policy, be approved and adopted;
- B. authority be delegated to the Executive Head of Communities, in consultation with the Chair and Vice Chair of the Housing Committee, to make any minor amendments to the policy that may be necessary when it is reviewed annually; and
- C. the introduction of a charge for the service of Housing Act notices, as outlined in Section 4.1, which has been set in accordance with the current principles for fees and charges, be noted.

## **Reason for recommendations:**

The Council has a legal duty under the Housing Act 2004 to keep housing conditions in its area under review to identify any action that may need to be taken to deal with unsatisfactory housing that presents a health and safety hazard to the occupiers.

The Council is required to publish a Private Sector Housing Enforcement Policy so that members of the public, landlords and tenants are informed about the duties and powers of the Council, know what to expect from the service and to promote consistency in the delivery of the service.

This Policy and the enforcement work carried out under it contribute to meeting Objective 2 in the Housing Strategy 2019- 2023, 'Improving the quality and the use of the existing stock'. The review of the Policy also completes one of the actions listed in the Housing Strategy; to 'Review Enforcement Policy to ensure it reflects current legislation, policy and good practice and publish on the Council's website'.

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### **1. Introduction and background**

- 1.1 Private sector housing plays a significant part in the housing provision within Tandridge. The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. The sector represents 14% of the total housing stock. Whilst it is recognised that the majority of the housing in this district is in good condition and well managed, there will always be a proportion of private housing, particularly in the private rented sector, which is not maintained to the required standards and is poorly managed.
- 1.2 The Council, as a local housing authority, has a legal duty under Section 3 of the Housing Act 2004 to keep housing conditions in its area under review, with a view to identifying any action that may need to be taken. It has a responsibility to deal with unsatisfactory housing that presents health and safety hazards to the occupiers.
- 1.3 The Private Sector Housing (PSH) enforcement role is delivered by the Environmental Health and Licensing Partnership which works across Tandridge and Mole Valley District Councils. The agreement to form the partnership between the authorities was originally signed in February 2017 and was amended in August 2019 to include the delivery of PSH enforcement. There is one full time Private Sector Housing Officer providing this service across the Tandridge District. The post sits within the Residential and Environment Team of the Partnership.

- 1.4 It is important for local authorities to publish a Private Sector Housing Enforcement Policy so that members of the public, landlords and tenants are informed about the duties and powers of the Council, know what to expect from the service and to ensure consistency in the delivery of the service. The policy also provides clarity around the need to take legal proceedings and provides guidance for those seeking to lodge an appeal against action taken.
- 1.5 There have been some significant changes in the government's approach to dealing with private sector housing in recent years, including the introduction of new wider ranging legislation to tackle poor housing conditions and poor management. These changes in policy and the additional legal framework need to be reflected in our local approach and included in our enforcement policy. For example, legal measures to help local housing authorities to crack down on 'rogue landlords' and the extension of the mandatory licensing regime of houses in multiple occupation (HMOs).

## **2. The Policy**

- 2.1 The Private Sector Housing Enforcement Policy (the Policy) outlines the Council's approach to ensuring that standards are met, good practice is maintained, and all properties let as residential dwellings, those in private ownership, and properties under registered provider control throughout Tandridge are of good quality and are well managed. (The full Policy is provided at Appendix 1 to this report.)
- 2.2 The Policy details how the Council will regulate standards in private sector housing in Tandridge. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure the private sector housing in Tandridge is well maintained. Whilst the Policy details the range of enforcement powers available to the Council, including verbal advice, the service of notices, imposing civil penalties and prosecution, it is not an exhaustive list and is not intended to be a definitive interpretation of the legislation.
- 2.3 The Policy aims to set out in one place the Council's approach to enforcement and the wide range of enforcement options available to officers under multiple pieces of legislation. It ensures that enforcement action is transparent and the approach consistent. The review of the Policy also ensures that all recent legislation and government guidance is incorporated into the Policy and the service is delivered through informed and up to date procedures.
- 2.4 The aim is to raise standards in private sector housing throughout Tandridge, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

### **3. Enforcement Approach**

- 3.1 The type of enforcement taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In other cases, Officers have the discretion to use informal action as a first option and this approach is the one adopted by this Council wherever possible. Informal action, when appropriate, includes working with landlords, tenants and others to provide advice, information and assistance to assist them to reach compliance with housing legislation.
- 3.2 Where an informal approach fails to achieve the desired result, or a failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. In the most serious contraventions, possible action could include imposing civil penalties for breaches of the Housing Acts or prosecuting the offender.
- 3.3 The type of enforcement action to be used is always determined on a case by case basis, after consideration of the specific circumstances of the particular case such as the nature of the breach, the risk posed to occupants, how urgently action needs to be taken and how willing the landlord/owner is to take the action necessary. In every case, enforcement seeks to:
- Remove or reduce a risk to health and safety
  - Ensure that landlords take action to deal immediately with serious risks
  - Promote and achieve sustained compliance with the law
  - Deter landlords who breach legislative requirements from future breaches
- 3.4 The Policy provides information about when the Council will carry out an inspection of a property and about the types of Statutory Notice it may serve to require improvements to a property and the other enforcement action it may take. The powers available relate to enforcement in both individual family dwellings and HMOs.

### **4. Power to charge for the service of Housing Act Notices**

- 4.1 The Council has the power, under the Housing Act 2004, to make a charge as a means of recovering certain administrative and other expenses incurred in serving certain Housing Act notices. The charge for each notice will be based on time spent by the officer in gaining entry to a property, visiting and inspecting the property to determine appropriate action and the administration costs for the production of a Notice or Order. The charge is determined in accordance with the Fees and Charges Principles. The Policy includes information about this power in section 7.5 and it is proposed that charges are introduced in the next financial year 2022/23.

- 4.2 In addition to the range of powers and duties required under the primary legislation, the Housing Acts, there are a number of Regulations and Orders made under those Acts laying down additional powers and duties. These are also included in the Policy.

## **5. Redress Schemes for Lettings Agency Work and Property Management Work**

- 5.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 requires all letting agents and property managers to register with one of three government approved redress schemes. This means that tenants and landlords with agents in the private rented sector are able to complain to an independent organisation about the service they have received.
- 5.2 The Council may impose a maximum penalty of £5,000 where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. The level of penalty is to be determined by the Council and the Policy states how officers will follow the procedure for issuing a monetary penalty as defined in the 2014 Order.

## **6. Smoke and Carbon Monoxide**

- 6.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) require private sector landlords to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance (for example a coal fire or a wood burning stove). They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy.
- 6.2 The Council will issue a remedial notice where it has reasonable grounds to believe a landlord has not complied with one or more of the requirements. The landlord must comply with the notice within 28 days. If they do not, the Council is required to carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met.
- 6.3 The Council may impose a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice. The Regulations require the Council to be open and transparent regarding the civil penalty and publish a Statement of Principles, which it will follow when determining the amount of a penalty charge. The Policy provides information about the Regulations and includes the Statement of Principles that the Committee is requested to consider as part of the wider Policy.

## **7. Power to impose civil penalties for Housing Act offences**

- 7.1 In recent years, legislation has changed to allow councils to issue penalty notices in defined circumstances within the private sector housing enforcement. The Housing and Planning Act 2016 introduced penalty charges as an alternative enforcement tool to prosecution and can be imposed for certain offences under the Housing Acts, including overcrowding, failure to licence an HMO, breach of licensing conditions, or failure to comply with an Improvement Notice.
- 7.2 When considering imposing a civil penalty the Council must have in mind that the same criminal standard of proof is required as for prosecution. Therefore, the Council must satisfy itself that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.
- 7.3 Tandridge's proposed 'Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004' forms part of the main Policy. It sets out how the Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.
- 7.4 The approval and adoption of the Policy by the Committee, which includes information about the Council's powers and responsibilities in relation to civil penalties, will enable the Council to bring these powers into operation.
- 7.5 Any income collected by local authorities, through civil penalties, can be kept by them, provided it is used to further its undertaking of its statutory duties in relation to enforcement activities in the private rented sector.
- 7.6 It should be noted that formal enforcement and the use of these powers in particular should be seen as measures of 'last resort' and the hope is that the powers will act as a powerful incentive to landlords and agents to comply with their legal responsibilities. As such, the measures can be considered as a significant deterrent to landlords and the approval of their introduction will provide the Council with an effective tool.

## **8. Delivery**

- 8.1 The PSH enforcement role is delivered by the Environmental Health and Licensing Partnership which works across Tandridge and Mole Valley District Councils. The inspection of HMOs, family homes and other privately rented accommodation, in accordance with all the Housing Acts and associated Regulations, is already carried out by the PSH Officer within that team. The approval of this Policy will enable the Council to apply charges for the service of notices and apply civil penalties where appropriate for non-compliance.
- 8.2 The timescale for the introduction of these powers will be during 2022/23.

## **9. Financial Implications**

- 9.1 It is possible that the introduction of the new financial penalty regime may result in a small amount of additional income to the Council. However, financial penalties are just one type of enforcement action applied by the Council, and each case is judged on an individual basis. The enhanced penalties are also expected to act as a deterrent to landlords committing offences. This means that it is difficult to assess the financial impact, if any, arising from this change.
- 9.2 When introduced, the financial impact of these changes will be monitored. Any income received from the issue of civil penalties will be used to further our private sector housing working practice in line with regulations.

## **10 Legal Implications**

- 10.1 The Housing and Planning Act 2016 introduced a number of changes, including a power allowing local authorities to impose civil penalties of up to £30,000 as an alternative to prosecution for certain offences under the Housing Act 2004. The amount of penalty is to be determined by local authorities in each case, having regard to statutory guidance. The guidance states that it is expected that the maximum amount is reserved for the very worst offenders and that the actual amount levied in each case should reflect the severity of the offence, as well as taking into account the previous record of the offender and the harm or potential harm caused to the tenant.
- 10.2 The Policy, if approved, will help ensure that the Council's duties to regulate standards within private sector rented accommodation are met. Failure to have an up to date Policy is likely to attract criticism and have an adverse effect on the reputation of the Council.

### **Options**

#### ***Option 1 – Recommended***

*Committee approves and formally adopts the Policy in full, to set out the Council's approach to enforcement in private sector housing and also enable the Council to use its powers to impose civil penalties in certain circumstances.*

#### ***Option 2***

*Committee approves and formally adopts the Policy in part, to set out the Council's approach to enforcement in private sector housing but does not approve the inclusion in the policy of some of the Council's powers to impose civil penalties.*



## **Risk Implications**

### ***Option 1 – Recommended***

#### **Risks**

There are no identified risks associated with this option.

#### **Opportunities**

The Policy enables the Council to utilise its full powers under the Housing Acts and associated legislation to provide the full range of enforcement options and significant deterrents to those landlords who might otherwise contravene the legislation.

### ***Option 2***

#### **Risks**

If the Council only adopts the Policy in part and does not adopt the powers provided under the Housing and Planning 2016, it will not be able to impose civil penalties as an alternative to prosecution in respect of certain offences under the Housing Acts. This would be a missed opportunity to have in place a significant deterrent to those landlords who might consider contravening the legislation and also the loss of an important enforcement tool to deal with those landlords and agents who choose to break the law.

#### **Opportunities**

The Council would still be able to utilise its existing range of enforcement powers under Housing Acts and some of the associated legislation.

## **Communications**

Following adoption of the Policy, a notice will be placed on the TDC website to inform the public that the Policy is in force and a copy of the full Policy will be available to the public free, at the Council offices and on the website.

## **Comments of the Chief Finance Officer**

The Policy does potentially have direct financial implications for 2022/23. However, and as mentioned in Paragraph 9 (Financial Implications), each notice will be determined on an individual basis and the civil penalties, if agreed, may act as a deterrent to landlords committing offences.

If introduced, the financial impact will be closely monitored and managed. Any income received from the issue of civil penalties will be used to further our private sector housing working practice in line with regulations.

## **Comments of the Head of Legal Services**

The legal implications are set out in the body of the report. The Policy is necessary to ensure any action the Council will take is robust, defensible, consistent and transparent.

## **Equality**

It is considered that there are no equality implications for the Committee to consider in respect of the Policy.

## **Climate change**

The improvements to residential properties brought about by the enforcement work undertaken in line with this policy will impact positively on the environment.

## **Appendices**

Appendix 'A' – Proposed Private Sector Housing Enforcement Policy 2022

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