

## **Report of the Strategic Director of Place to the meeting of the Executive to be held on November 7<sup>th</sup> 2017.**

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### **Subject:**

The implementation of new powers introduced under the Housing and Planning Act 2016 to issue civil penalty notices for Housing Act offences.

### **Summary statement:**

The Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. One of these amendments is to introduce a new section into the Act which establishes the legal basis for imposing civil penalties as an alternative to prosecution for specific offences under the Housing Act 2004.

In order to implement these new powers the Council must first adopt and publicise its policy with regard to the use of civil penalty notices for these offences.

Implementation of these new powers also requires the Council's Private Sector Housing Enforcement Policy to be amended.

This report outlines the general implications of the amendments to the Housing Act 2004 and introduces a proposed Policy for the use of civil penalty notices for Housing offences and a proposed amended Private Sector Housing Enforcement Policy to incorporate those legislative changes.

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### **Portfolio:**

**Regeneration, Housing, Planning & Transport**

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### **Overview & Scrutiny Area:**

**Regeneration and Economy**

## **1. SUMMARY**

The Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. One of these amendments is to introduce a new section into the Act which establishes the legal basis for imposing civil penalties as an alternative to prosecution for specific offences under the Housing Act 2004.

In order to implement these new powers the Council must first adopt and publicise its policy with regard to the use of civil penalty notices for these offences.

Implementation of these new powers also requires the Council's Private Sector Housing Enforcement Policy to be amended.

This report outlines the general implications of the amendments to the Housing Act 2004 and introduces a proposed Policy for the use of civil penalty notices for Housing offences and a proposed amended Private Sector Housing Enforcement Policy to incorporate those legislative changes.

## **2. BACKGROUND**

2.1 The importance of decent homes that people can afford to live in is one of the six key objectives within the Council Plan. Addressing poor housing conditions contributes not only to the housing objective within the Council Plan but also more widely as:-

- Good quality housing attracts companies and workers - leading to an economically prosperous district
- Children and young people are better able to benefit from education if they are well housed – leading to a district of excellence in learning
- Good quality housing promotes community safety – leading to a safer place in which to live, work and play
- High quality, affordable, warm homes promote health and wellbeing – leading to a healthy district

2.2 In 2015 the Council commissioned a Stock Modelling assessment of housing conditions in the district. Conducted by the Building Research Establishment, the findings indicate that:

- The importance of the private rented sector in the district has grown significantly from 11% of housing (22,200 dwellings) in 2007 to 18% of housing (39,382 dwellings) in 2015.
- 8,291 (21%) of dwellings in the private rented sector have a Category 1 hazard
- The estimated cost of mitigating all hazards in the private rented sector is £19.8m

A comparison with the results from the previous Stock Condition Survey undertaken in 2007 indicates that there has been a slight improvement in property conditions but that there are still significant issues with property condition in the private sector and, in particular, the private rented sector.

The importance of addressing these poor conditions in order to create a good quality private rented sector for the District is recognised as a priority in the Council's "Housing and

- 2.3 The Housing and Planning Act 2016 introduces a range of new measures to tackle rogue landlords and improve conditions in the private rented sector.

This new legislation will provide a valuable tool to ensure that landlords carry out their roles professionally and should discourage less professional landlords from the sector. It will also help the Council to continue to improve conditions in the local housing market which is particularly important as the size of the private rented sector continues to grow.

- 2.4 Schedule 9 of the Housing and Planning Act 2016 inserts a new section into the Housing Act 2004 which establishes the legal basis for imposing civil penalties as an alternative to prosecution for specific offences under the Housing Act 2004. The Council cannot apply a civil penalty and prosecute for the same offence.

- 2.5 A civil penalty is a financial penalty imposed by a Council on an individual or organisation as an alternative to prosecution. Under the above legislation the Council would be able to impose a civil penalty of up to £30,000 per offence for the following offences under the Housing Act 2004:

- Section 30 – failure to comply with an improvement notice
- Section 72 – mandatory licensing of Houses in Multiple Occupation (HMO)
- Section 95 – licensing under Part 3 of the Housing Act 2004
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO

- 2.6 In order to implement these new powers the Council must first adopt and publicise its policy with regard to the use of these civil penalties.

- 2.7 The powers cannot be applied retrospectively so will not apply to offences committed prior to the implementation date for the legislation, i.e. April 6<sup>th</sup> 2017.

- 2.8 In considering whether use of a civil penalty notice would be appropriate, the Council must ensure that it applies the same criminal standard of proof as that required for a prosecution i.e. the Council must be satisfied beyond reasonable doubt that the landlord has committed the offence. The Council has a Private Sector Housing Enforcement Policy which was formally adopted on February 28<sup>th</sup> 2006. In order to impose civil penalties for Housing offences the existing Enforcement Policy needs to be amended to include these as an option for officers when considering the most appropriate course of action to take.

- 2.9 The Housing and Planning Act 2016 also extends the use of Rent Repayment Orders to cover a much wider range of housing offences.

A Rent Repayment Order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

Applications for Rent Repayment Orders can be made by either a tenant or the Council.

Previously applications for Rent Repayment Orders could only be made where a landlord had been convicted of offences relating to licensing offences under the Housing Act 2004. The new provisions under the Housing and Planning Act 2016 extend the use of Rent Repayment Orders for additional housing offences including:

- Section 30 – failure to comply with an Improvement notice
- Section 32 – failure to comply with a Prohibition Order

The new provisions also mean that an application for a Rent Repayment Order can also be made where a landlord has committed certain offences whether or not they have been convicted of the offence. In such circumstances the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

- 2.10 The need to incorporate these new powers into the Private Sector Housing Enforcement policy has also provided the opportunity to review the existing policy to ensure that it is robust and up to date. This includes the inclusion of the Council's agreed approach to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 as agreed at the Executive on February 10<sup>th</sup> 2015 and the Statement of principles for determining financial penalties under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 which were determined under delegated authority by the Strategic Director of Regeneration and Culture on December 23<sup>rd</sup> 2015. Details of these powers and their implementation are included in the proposed amended Private Sector Housing Enforcement Policy.

The proposed amended Private Sector Housing Enforcement Policy is attached as Appendix 1 to this report.

- 2.11 The overriding principle when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation. The guidance advises that the Council should consider a range of factors when setting the penalty. The factors being:

- Level of culpability
- Level of harm
- Severity of the offence
- Aggravating Factors
- Mitigating Factors
- The penalty should be fair and reasonable
- The penalty to be such as to be a deterrent and remove the gain derived through the failure to comply

- 2.12 Following a decision to impose a civil penalty rather than alternative legal action, the Council must follow the procedure outlined in schedule 13Aa of the Housing Act 2004 and which is outlined in the proposed Civil Penalties policy attached as Appendix 2 to this report.

This procedure includes a requirement that the Council must serve an initial Notice of Intent that the Council intends to impose a monetary penalty within 28 days. During this period the person served with the notice can make written representations and/or could choose to pay the penalty amount. The Council must consider any representations and has the discretion to apply, vary or withdraw the fine. A final notice confirming the penalty must be served following the period for representations.

- 2.13 The Council must, as part of the Notice procedure, set out the amount of the financial penalty, the reasons for imposing the penalty, information about how to pay, the payment period, the appeal process and timeframe and the consequences of failing to comply with the notice.

- 2.14 If the Council decides to serve a final notice, following the 28 day period for representations, then the person can appeal to the First Tier Property Tribunal. During this appeal stage the final notice is suspended until the appeal is determined or withdrawn by either party.

### **3. OTHER CONSIDERATIONS**

- 3.1 Housing officers have been working with colleagues across West Yorkshire to agree a consistent approach across the sub region with regard to the enforcement approach to Civil Penalty notices for Housing Act offences and level of monetary fine. This is important due to the fact that property owners often operate across local authority boundaries.

A number of other proposed new powers in The Housing and Planning Act 2016 are still to be introduced. Officers from the Housing service will continue to work with the other Authorities to ensure shared learning and a consistent approach.

- 3.2 Other proposed new powers in The Housing and Planning Act 2016 include proposals to introduce banning orders and to extend the mandatory licensing scheme for Houses in Multiple Occupation (HMOs). Implementation of further new powers may require further amendments to the Council's Private Sector Housing Enforcement Policy. This report therefore requests that delegated authority be given to the relevant Strategic Director in consultation with the Portfolio holder Regeneration, Housing, Planning & Transport to approve any further amendments that will need to be incorporated, as and when such additional powers come into force, into the Council's Private Sector Housing Enforcement Policy.
- 3.3 There has already been some publicity about the new requirements from landlord organisations to their members but in order to raise awareness of the requirements to a wider audience, it is proposed that the Council should publicise the legislation and the Council's approach to agents, owners and tenants through local media, Stay Connected and the Council's website, etc.

### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 The statutory guidance states that the Council can retain any income derived from civil penalty notices provided that it is used to further the Local Authority's statutory functions in relation to their enforcement activities covering the private rented sector.

### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

There are no significant risks arising out of the implementation of the proposed recommendations.

### **6. LEGAL APPRAISAL**

- 6.1 The Housing Act 2004 already provides a broad range of duties and powers for councils to assist them in their enforcement actions including:
- The service of Formal Notices to require improvements to properties to reduce or eliminate risks to the occupiers
  - Licensing of Houses in Multiple Occupation (HMO)
  - Regulations prescribing management in HMOs

- 6.2 There are presently two main sanctions that are available to the council for breaches of the legal standards; the necessary works can be undertaken and the costs incurred by the council recharged and/or the offenders can be prosecuted.
- 6.3 The Housing and Planning Act 2016 enhances the existing powers and in particular introduces the ability for the Council to impose a civil financial penalty and/or apply for rent repayment orders.
- 6.4 These two powers became available on the 6th April 2017, they are not retrospective and do not apply to offences committed before this date. There are other additional powers that are scheduled to be introduced in October 2017.
- 6.5 The Council is subject to the public sector equality duty pursuant to the Equality Act 2010. When making a decision in respect of this report the Council must have regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation; and
  - advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and
  - foster good relations between those who share a relevant protected characteristic and those who don't.

For these purposes the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In addition the Council also considers any disproportionate impact on persons on low income and low wage. An Equality Impact Assessment has been undertaken on the proposed policy for the Use of Civil Penalties for Housing Offences and is attached at Appendix 3.

- 6.6 Failure to ensure compliance with legislation and relevant standards may compromise the health, safety and welfare of the residents of and visitors to the Bradford Metropolitan District who access private sector residential properties and potentially inhibit the Council's ability to collect the income from any penalties imposed.
- 6.7 An updated Private Sector Housing Enforcement Policy reflecting current legislation reduces the risk of challenge.
- 6.8 This Report sets out the means by which the Council will discharge its statutory enforcement functions so far as they impact on Private Sector Housing and ensure that Private Sector Housing enforcement activities are fair, proportionate and consistent. The policy has been written with regard to the Regulator's Code produced by the Better Regulation Delivery Office.

## **7. OTHER IMPLICATIONS**

### **7.1 EQUALITY & DIVERSITY**

The improvement of housing conditions in the District will have a positive impact on those groups and individuals who suffer multiple disadvantages associated with poor quality and inadequate housing.

An Equality Impact Assessment has been undertaken on the proposed Policy for the Use of Civil Penalties for Housing Offences. This is attached as Appendix 3 to this report.

## **7.2 SUSTAINABILITY IMPLICATIONS**

Clarifying and enhancing the Council's approach to enforcement provides support to residents living in private rented accommodation. As a governance development for the District it seeks to indirectly support social and economic well-being, prosperity and resilience.

The practices and impact of landlords, lettings agents and property managers has a direct impact on people's quality of life and these arrangements for the Housing Standards Team and the Council will be a key development in this respect.

## **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

None.

## **7.4 COMMUNITY SAFETY IMPLICATIONS**

7.4.1 The presence of poor quality privately rented housing within communities can impact on community safety, the fear of crime and the feelings that residents have towards their neighbourhood. As a result, the success of the team in improving property conditions can have a significant impact on whole streets and neighbourhoods.

7.4.2 Poor quality privately rented housing can, in some cases, attract antisocial behaviour and criminal activity. Where necessary the team work with neighbourhood wardens, Neighbourhood Services and the police to highlight and tackle problematic properties and criminal activity, ensuring that action can be taken where possible.

## **7.5 HUMAN RIGHTS ACT**

Proportionality and reasonableness must be applied when setting the level of fine and exercising the discretion to reduce it upon receipt of representations in response to the service of civil penalty notices.

## **7.6 TRADE UNION**

None.

## **7.7 WARD IMPLICATIONS**

Housing Standards work is largely reactive and covers the whole District.

All housing enforcement activity is taken in line with the Council's Private Sector Housing Enforcement Policy.

## **7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)**

None.

## **8. NOT FOR PUBLICATION DOCUMENTS**

None.

## **9. OPTIONS**

- 9.1 Option 1 – to adopt the proposed Policy for the use of civil penalties for housing offences and the proposed amended Private Sector Housing Enforcement Policy and to delegate to the relevant Strategic Director in consultation with the Portfolio holder Regeneration, Housing, Planning & Transport the authority to approve any further amendments to the Council's Private Sector Housing Enforcement Policy as and when additional powers available under the Housing and Planning Act 2016 come into force.**

The Housing and Planning Act 2016 inserts a new section into the Housing Act 2004 which establishes the legal basis for imposing civil penalties as an alternative to prosecution for specific offences under the Housing Act 2004.

In order to implement these new powers the Council must first adopt and publicise its policy with regard to the use of these civil penalties and amend the existing Enforcement Policy to include civil penalty notices as an option for officers when considering the most appropriate course of action to take.

The proposed policy has been developed in conjunction with other West Yorkshire and York authorities and will ensure a consistent approach for this type of offence across the sub region.

A number of other proposed new powers in The Housing and Planning Act 2016 are still to be introduced. Delegating authority to the Strategic Director, Place in consultation with the Portfolio holder Regeneration, Housing, Planning & Transport to make decisions about any further amendments to the Council's Private Sector Housing Enforcement Policy and the proposed Policy for the Use of Civil Penalties for Housing Offences (as and when additional powers available under the Housing and Planning Act 2016 come into force) will obviate the need for additional reports to be considered by Executive in order to implement further powers.

- 9.2 Option 2 – do nothing.**

The Council will not be able to implement civil penalties as an alternative to prosecution for specific offences under the Housing Act 2004 unless it first adopts and publicises a policy with regard to the use of these new powers.

It is proposed that the Council's Private Sector Housing Enforcement Policy be amended to incorporate Civil Penalty Notices and this has provided the opportunity



to review the policy to ensure that it is robust and up to date and to allow the inclusion of the Council's approach to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 as agreed at the Executive on February 10th 2015 and the Statement of principles for determining financial penalties under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 which were determined under delegated authority by the Strategic Director of Regeneration and Culture on December 23rd 2015. Details of these powers and their implementation are included in the amended Private Sector Housing Enforcement Policy (attached as Appendix 1 to this report).

This option would necessitate consideration of a further report to amend the Council's Private Sector Housing Enforcement Policy without the amendments relating to the use of civil penalty notices.

## **10. RECOMMENDATIONS**

It is recommended that Option 1 be approved and:

- 10.1 That the Executive adopts the proposed Policy for the Use of Civil Penalties for Housing Offences as set out in Appendix 2 to this Report.
- 10.2 That the Executive adopts the proposed amended Private Sector Housing Enforcement Policy as set out in Appendix 1 to this Report.
- 10.3 That the Executive delegates to the Strategic Director, Place in consultation with the Portfolio holder for Regeneration, Housing, Planning & Transport the authority to make decisions about any further amendments to the Council's Private Sector Housing Enforcement Policy and the Council's Policy for the Use of Civil Penalties for Housing Offences as and when additional powers available under the Housing and Planning Act 2016 come into force.

## **11. APPENDICES**

Appendix 1: Proposed Private Sector Housing Enforcement Policy

Appendix 2: City of Bradford Metropolitan District Council – Proposed Policy for the Use of Civil Penalties for Housing Offences

Appendix 3: Equality Impact Assessment on the proposed Policy for the Use of Civil Penalties for Housing Offences

## **12. BACKGROUND DOCUMENTS**

Department for Communities and Local Government: Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities