

TEWKESBURY BOROUGH COUNCIL

Report to:	Executive Committee
Date of Meeting:	31 March 2021
Subject:	Civil Penalty, Rent Repayment Order and Minimum Energy Efficiency Standards in Privately Rented Homes Policies
Report of:	Interim Environmental Health Manager
Corporate Lead:	Head of Community Services
Lead Member:	Lead Member for Clean and Green Environment
Number of Appendices:	Three

Executive Summary:

This report is seeking approval of three new policies relating to enforcement in the private rented housing sector which is undertaken by the Environmental Health team. Within Tewkesbury Borough approximately 14%* of the housing stock is in the private sector, run and managed by private landlords.

Changes to legislation in recent years have added a number of tools to the enforcement toolkit available to the Environmental Health team, which can act as a deterrent to irresponsible landlords who flout the law. Specifically, the Housing and Planning Act 2016, introduced amendments to the Housing Act 2004, to allow local authorities to impose a financial penalty (a fine), for certain offences under the Housing Act, as an alternative to criminal prosecution. A Countywide Civil Penalty Policy was implemented in 2018 and the draft policy at Appendix 1 updates that policy.

The same legislation also introduced the ability for Councils to issue Rent Repayment Orders. These can be used, for example, when a landlord has failed to comply with a legal Notice from the Council to undertake certain works or where the landlord has carried out an illegal eviction or has harassed their tenants. The draft policy for Rent Repayment Orders is at Appendix 2.

A third change in recent years was the introduction of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 which came into effect on 1 April 2018 and introduced minimum standards of energy efficiency for private rented property.

The report seeks approval for the adoption of the policies relating to Private Sector Housing matters, specifically:

- 1) Civil Penalty Policy for Housing Related Matters.
- 2) Rent Repayment Order Policy.
- 3) Minimum Energy Efficiency Standards in Privately Rented Homes Policy.

If adopted the new policies will sit under the Environmental Health Enforcement Policy which was adopted in August 2017.

*2011 census data

Recommendation:

1. **To ADOPT the three policies as set out below, thus providing a framework for Officers to operate within, namely:**
 - **Civil Penalty Policy.**
 - **Rent Repayment Order Policy.**
 - **Minimum Energy Efficiency Standards in Privately Rented Homes Policy.**
2. **That authority be delegated to the Head of Community Services, in consultation with the Borough Solicitor, to issue financial penalties as set out within the policies.**

Reasons for Recommendation:

To widen the enforcement options available to the Environmental Health team in dealing with offences under the Housing Act 2004 and related regulations a framework is needed for Officers of the Council to undertake enforcement activity in a manner which is open, proportionate, helpful and transparent and to secure better housing conditions for tenants within the private sector.

Resource Implications:

None directly arising from this report, although it should be noted that implementing the Civil Penalty Policy allows the Council a further opportunity to increase funding, due to the monies being returned to the department to continue enforcement activities within the private rented sector. It should be noted however, that increasing the Council's funding by using these powers will never be the primary reason to use them.

Legal Implications:Delegated authority:

It is recommended that decisions to issue financial penalties (for a Housing Act or Energy Efficiency breach) and to apply for a Rent Repayment Order (RRO) are covered by a delegated authority if they are not already. Delegated authority is important in the above circumstances as financial penalties are being used as an alternative to prosecution and the level of those fines can be quite high. For an RRO it is a decision to instigate legal proceedings in a tribunal.

Involvement of One Legal:

The decisions by Officers to issue penalties or tribunal proceedings are not insignificant and the statutory procedures surrounding the decision-making and the relevant processes are detailed and onerous. One Legal can check each decision is compliant with the many steps required and with the most up to date version of the legislation and guidance. Some of the decision-making processes incorporate threshold tests such as harm and culpability. These types of tests are facets of the litigation world and are likely more familiar to, and therefore easier for, One Legal to categorise (or check) than TBC's Officers. It is recommended that the involvement of One Legal is built into the process for issuing civil penalties and instigating tribunal proceedings.

Risk Management Implications:

None directly arising from this report.

Performance Management Follow-up:

None required.

Environmental Implications:

The use of the Energy Efficiency Regulations will see a positive impact on the environmental efficiency of homes, not only improving the environment in line with our carbon commitments but also financially as properties should become more economical to heat.

1.0 INTRODUCTION

- 1.1 Within Tewkesbury Borough approximately 14% of the housing stock is in the private sector, run and managed by private landlords. Although Tewkesbury Borough has some excellent landlords and letting agents, it is highly likely that some landlords are less scrupulous and irresponsible, who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.
- 1.2 The Environmental Health team has an important role in ensuring that properties in the private rented sector are fit for purpose and that landlords adhere to the relevant legislation to ensure that their properties are safe for the tenants. The majority of the powers available to the team are contained in the Housing Act 2004.
- 1.3 Changes to legislation in recent years have added a number of tools to the enforcement toolbox available to the Environmental Health team. Specifically, the Housing and Planning Act 2016, introduced amendments to the Housing Act 2004, to allow local authorities to impose a financial penalty, also known as a fine, for certain offences under the Housing Act as an alternative to criminal prosecution. A Countywide Civil Penalty Policy was implemented in 2018 and this policy updates that policy.
- 1.4 The same legislation also introduced the ability for Councils to issue Rent Repayment Orders (RRO). These can be used, for example, when a landlord has failed to comply with a legal Notice from the Council to undertake certain works or where the landlord has carried out an illegal eviction or has harassed their tenants. Rent Repayment Orders can be granted to either the tenant or the local authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority.
- 1.5 A third change in recent years was the introduction of the Energy Efficiency Regulations 2015 came into effect on 1 April 2018 and introduced minimum standards of energy efficiency for private rented properties.
- 1.6 This report recommends the adoption of three policies in relation to the Council's functions under the Housing Act 2004 and associated regulations. These policies will be incorporated within the Council's Environmental Health Enforcement Policy 2017 and the Corporate Enforcement Policy.
- 1.7 The powers set out in this report have been available to our Officers since they passed into legislation, it has however, become good practice to have a policy framework that provides guidance to Officers on when and how to use them.

2.0 CIVIL PENALTY – PROPOSED POLICY

2.1 It is proposed that the Council includes the option to impose financial penalties as an alternative to prosecution for the Regulation of Housing Standards and the Licensing of Houses in Multiple Occupation.

2.2 The draft policy at Appendix 1 details how this option may be applied.

2.3 To encourage prompt payment of penalties a discount may be offered as set out below.

Penalty Range	Discount
Up to £10,000.00	10%
£10,000.00 - £20,000.00	15%
£20,000.00 - £30,000.00	20%
Or Payment within 14 days	50%

2.4 Payment by instalments (up to ten) paid monthly by direct debit is possible. To avail themselves of this option, landlords must pay the first instalment within 28 days and submit a formal request to pay by instalments and acknowledge liability for the offence/s.

2.5 Income received from a financial penalty can be retained by the Council provided that it is used to further the local housing authority's statutory functions in relation to its enforcement activities.

2.6 Income generation will never be the driving force for the use of enforcement powers. The driving force will always be to raise standards in the private rented sector.

3.0 RENT REPAYMENT ORDERS – PROPOSED POLICY

3.1 In addition to the powers mentioned above, The Housing and Planning Act 2016 also introduced residential property tribunals and Rent Repayment Order (RRO).

3.2 A residential property tribunal is established to resolve disputes relating to property issues. They deal with matters such as lease extensions, property disputes, boundary disputes and land registration matters.

3.3 A Rent Repayment Order is an order requiring a landlord who rents property in England to -

- repay an amount of rent paid by a tenant, or
- pay a local housing authority an amount of universal credit paid (to any person) in respect of rent under the tenancy.

3.4 A Council or tenant wishing to apply for a Rent Repayment Order must apply to the Residential Property Tribunal.

3.5 The Rent Repayment powers complement other enforcement tools that the Council has under the Housing Act 2004; these are:

- service of legal notices requiring improvement to a property.
- issuing a Prohibition Notice (prohibiting part of or a whole dwelling).
- issuing a Management Order.
- imposing financial penalties.
- undertaking a prosecution.

where the offence is failure to comply with a notice requiring works, the local authority is able to carry out those works in default.

4.0 DUTIES ASSOCIATED WITH RENT REPAYMENT ORDERS

4.1 The Council has a duty to consider applying for a Rent Repayment Order if it becomes aware that a person has been convicted of a relevant offence in relation to housing in its area.

4.2 In deciding whether to apply for a Rent Repayment Order, a local housing authority must have regard to the Rent Repayment Order Guidance for local housing authorities, published by the DCLG (now the Ministry of Housing Communities and Local Government (MHCLG)) in April 2017.

5.0 DISCRETIONARY POWERS ASSOCIATED WITH RROs

5.1 A tenant or local authority may apply for a Rent Repayment Order against a person who has committed a relevant offence in the authority's area but has not been convicted. This could include, for example, where the Council has imposed financial penalties instead of prosecution, where a person has admitted the offence and accepted a caution, or a conviction has not yet been secured.

5.2 A local housing authority may help a tenant apply for a Rent Repayment Order; for example, by helping the tenant to apply or by providing advice.

5.3 The draft policy for Rent Repayment Order is attached at Appendix 2.

6.0 ENERGY EFFICIENCY FINANCIAL PENALTIES POLICY

6.1 The Energy Efficiency Regulations 2015 came into effect on 1 April 2018 and introduced minimum standards of energy efficiency for private rented property.

6.2 These regulations require a minimum standard of energy efficiency to be secured and maintained in private rented properties.

6.3 If a local authority confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months. Local authorities can decide on the level of the penalty, up to maximum limits set by the Regulations, currently £5,000.

6.4 Further detail on the requirements for Councils can be found at in the draft policy at Appendix 3.

7.0 RELEVANT COUNCIL POLICIES/STRATEGIES

7.1 The Council's Corporate Enforcement Policy and the Environmental Health Enforcement Policy 2017.

8.0 RELEVANT GOVERNMENT POLICIES

- 8.1
- Statutory guidance - Civil penalties under the Housing and Planning Act 2016.
 - Statutory guidance - Rent repayment orders under the Housing and Planning Act 2016.
 - Guidance - Domestic private rented property: minimum energy efficiency standard - landlord guidance.

9.0 RESOURCE IMPLICATIONS (Human/Property)

9.1 None directly arising from this report.

10.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

10.1 To secure a sustainable private rented sector.

11.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

11.1 Fundamental to securing health and safety of residents in private rented accommodation.

12.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

12.1 A Countywide Civil Penalty Policy was implemented in 2018 and this policy updates that policy.

Background Papers: None.

Contact Officer: Interim Environmental Health Manager Tel: 01684 272155
Email: kath.stent@teWKesbury.gov.uk

Appendices:

1. Financial Penalties for Housing Offences – Civil Penalty Policy.
2. Rent Repayment Order Policy.
3. Minimum Energy Efficiency Standards in Privately Rented Homes Policy.