

Slough Borough Council

Report To:	Cabinet
Date:	21 st November 2022
Subject:	Housing Regulation Enforcement, Licensing and Civil Financial Penalties Policies
Lead Member:	Cllr Pavitar Kaur Mann
Chief Officer:	Richard West
Contact Officer:	Rhian Richards - Housing Regulation Manager / Garry Tallett - Group Manager, Community Safety, Housing Regulation & Enforcement
Ward(s):	All
Key Decision:	YES
Exempt:	NO
Decision Subject To Call In:	YES
Appendices:	Appendix A: Enforcement Policy Appendix B: Licensing Decisions Policy Appendix C: Revised policy and Protocol for issuing Civil Financial Penalties Appendix D: Equalities impact Assessment

1. Summary and Recommendation

1.1. This report introduces the following policy documents pertaining to the regulation of private sector housing in Slough:

- Housing Regulation Enforcement Policy
- Revised Protocol for Civil Financial Penalties
- Licensing Decisions Policy

Recommendations:

Cabinet is recommended to:

1. Approve the Housing Regulation Enforcement Policy, Licensing Decisions Policy and Revised Policy and Protocol for Issuing Civil Financial Penalties under the Housing and Planning Act 2016 (Appendix A, B and C).
2. Delegate authority to make minor amendments to the policies, to the Executive Director for Place and Communities, following consultation with the Lead Member for Housing.

Reason:

The existing Regulatory and Enforcement Services Enforcement Policy is an overarching policy, setting out the general principles which underpin the Council's approach to enforcement and regulation. However, to ensure the Council's enforcement decisions are transparent, and to take account of legislative changes, and lessons learned from practice, the housing regulation team propose the introduction of new detailed, service specific policies.

Commissioner Review

"Commissioners support the recommendations"

2. Report

Introductory paragraph

- 2.1. According to 'Doing Right by Slough-Corporate Plan 2022-2025, creating *'an environment that helps residents live more independent, healthier and safer lives'* is a strategic priority for the Council; and *'Better leveraging of our powers to improve quality of housing stock in public and private sector landlords'* is cited as a key area of focus in achieving that objective. If the Council's ambition is to be realised, effective regulation of the private rented sector, which makes up more than 30% of all housing in Slough, is essential.
- 2.2. For regulation and enforcement to be effective, it must be targeted where the risk of harm is greatest and must utilise the full range of informal and legal interventions available. The policies presented by this report set out how the housing regulation team will use the full range of enforcement tools, allowing officers to design the most appropriate intervention for each case, based on the level of risk.
- 2.3. For enforcement to be cost effective, and to limit the risk of costly legal challenges, activity must also be proportionate, consistent, transparent, and accountable; the policies introduced by this report follow these principles and will therefore contribute to the objective within the corporate plan to build *'organisational capability, capacity and resilience,'* in part through *'robust policies, procedures and guidance.'*

Options considered

The alternative to adopting the policies is to continue to operate using only the Council's generic Regulatory and Enforcement Services Enforcement Policy, and to continue to apply the existing Policy and Protocol for Issuing Civil Financial Penalties. This option potentially limits the scope of the use of certain enforcement tools which are not expressly mentioned in the existing policies, such as Rent Repayment Orders and Banning Orders, and limits the ability of the Council to effectively deal with legal challenges against enforcement action.

Background

- 2.4. The Legislative and Regulatory Reform Act 2006 and the Regulators Code (Better Regulation Delivery Officer, 2014) require the Council to uphold

certain principles in the exercise of its regulatory functions; to be transparent, accountable, proportionate and consistent.

- 2.5. In pursuance of those principles Slough Borough Council devised its Regulatory and Enforcement Services Enforcement Policy (updated in 2020), to which officers with relevant delegated authority must have regard when taking enforcement decisions. This policy broadly sets out the general principles underpinning the Council's approach to enforcement and regulation across the full range of functions undertaken by officers in regulatory and enforcement roles.
- 2.6. However, it has become increasingly apparent that the wide range of regulatory and enforcement tools available to those regulating private sector housing, and the implementation of discretionary property licensing schemes in Slough in 2019, necessitates the introduction of a more narrowly focussed, sector specific suite of policies.
- 2.7. Furthermore, the housing regulation team's existing protocol for issuing civil financial penalties for housing offences, which was approved by Cabinet in 2017¹ requires revision; as despite being utilised to issue appropriate sanctions to several offenders (some of which were detailed in a report to the Customer and Community Scrutiny Committee on 6th July 2022), the protocol does not sufficiently take account of the differing levels of culpability and seriousness in offending behaviour in Slough. The existing policy does not include breaches of consumer protection regulations relating to Estate Agents, which are enforced by Trading Standards.
- 2.8. Consequently, the housing regulation team has drafted two new policies, and revised one existing policy relating to the regulation of private housing in Slough. The policies are designed to take account of legislative changes, and lessons learned through the practical experience of officers. The policies do not represent a dramatic departure from the existing approach to regulation in the private sector, and are meant to complement, rather than replace the existing generic Regulatory and Enforcement Service Policy.
- 2.9. In drafting the documents, the housing regulation team has sought the views of relevant services across the Council, that may be affected by the implementation of the policies including housing demand, planning and building control, trading standards, food and safety, resilience and enforcement, community safety; and where comments were received from those teams, they have been incorporated in the policies.
- 2.10. The policies were presented to the Customer and Community Scrutiny Panel on 7th September 2022. The panel suggested, given that housing is a key determinant of health and wellbeing, that the Health and Well-being board be consulted, and the policies have since been sent to them for comment. No comments were received from the Health and Wellbeing Board.
- 2.11. The scope of the policies was the primary concern of the Panel, specifically that other than in cases where there is a statutory imperative, or where there is an immediate and serious risk to public health or safety, housing regulation do not make interventions in properties operated by social housing providers. Officers explained to the panel that tenants of social providers have alternative methods of recourse where their landlords fail to meet regulatory standards, and that although there are elements of the Housing Act 2004 that are tenure neutral, specifically Part 1 of the

¹ <https://democracy.slough.gov.uk/ieListDocuments.aspx?CId=109&MIId=5758&Ver=4>

Housing Act 2004; social housing providers are generally exempt from others, including, for example, HMO and Selective Licensing. Furthermore, it is the case that the Council cannot regulate or take enforcement action against itself.

- 2.12. Following the discussion, the panel made the following motion: *‘To explore the possibility that the housing regulations policies considered by the Panel, be extended to include all housing sectors within Slough.’*
- 2.13. A brief description of the policies and further information about how they will contribute to the delivery of the Council’s statutory functions, while upholding the principles of transparency, accountability, proportionality and consistency is provided in this report; with the draft policies themselves contained within the Appendices.
- 2.14. *Housing Regulation Enforcement Policy*

This policy aims to provide a framework for decision making across the full range of private sector housing activities including.

- Addressing housing conditions using the Housing Health and Safety Rating System and enforcement tools under Part 1 of the Housing Act 2004
- Licensing of houses of multiple occupation and other houses under Parts 2 and 3 of the Housing Act 2004
- Implementing Part 4 of the Housing Act 2004 relating to Interim and Final Management Orders and Interim and Final Empty Dwelling Management Orders
- Investigating cases of alleged unlawful eviction or harassment under the Protection from Eviction Act 1977
- Enforcing minimum safety standards in privately rented accommodation as set out in the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020; The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

It is the Council’s intention that this policy fulfils the requirement to maintain policies relating to the Council’s use of the Rogue Landlord Database, Rent Repayment Orders and Banning Orders as set out in the following statutory guidance:

- Rent repayment orders under the Housing and Planning Act 2016 Guidance for Local Housing Authorities’ (Department for Communities and Local Government now Department of Levelling up, Housing and Communities (DLUHC), 2017)
- Database of rogue landlords and property agents under the Housing and Planning Act 2016: Statutory guidance for Local Housing Authorities (Ministry of Housing, Communities and Local Government (now DLUHC), 2018)
- Banning Order Offences under the Housing and Planning Act 2016: Guidance for Local Housing Authorities (Ministry of Housing, Communities and Local Government (now DLUHC), 2018)

The policy provides an overview of the powers available to officers working in private sector housing, and sets out in general terms, the circumstances in which those powers will be exercised. The policy is flexible enough to allow officers and managers to use their professional judgement; ensuring that proportionality, fairness and consistency are at the fore front of decision making. The policy also reflects the Council’s overarching commitment to taking a risk-based approach to all its regulatory activities as set out in the Enforcement and Regulatory Services Enforcement Policy.

If approved and implemented the policy will contribute to a culture of openness and accountability in the housing regulation team; providing residents, property owners and others, with the information they need to challenge the Council's decision making if they feel it has been flawed.

If approved, the policy will be published on Slough Borough Council's website and will be referenced by officers undertaking regulatory or enforcement activities in the context of private sector housing.

2.15. Property Licensing Decisions Policy

This policy sets out the principles which underpin decisions relating to property licensing, including:

- Granting or refusing to grant an HMO licence under Section 64 of the Housing Act 2004
- Granting or refusing to grant a Selective licence under Section 88 of the Housing Act 2004
- Deciding whether to revoke or vary an HMO or Selective Licence under Sections 69/70 or 92/93 of the Housing Act 2004
- Deciding whether to issue a temporary exemption notice under section 62 or 86 of the Housing Act 2004
- Determining whether to issue an HMO designation under section 255 of the Housing Act 2004

To date these decisions have been made having regard to the Council's enforcement policy and based on the criteria set out in the legislation. However, there are matters not specifically listed in the legislation which the Council can consider relevant in making their decisions, such as historic conduct of the proposed licence holder or manager with respect to maintenance of properties, engaging with the Council and their response to complaints about ASB and Nuisance. This policy sets out the Council's expectations regarding these matters, and how breaches or failures in property management will be treated when determining whether a person(s) is 'fit and proper' to hold a licence or manage a property.

2.16. Revised Policy and Protocol for issuing Civil Financial Penalties for certain Housing Act Offences

The Council's original '*Policy and Protocol for issuing Civil Penalties for Certain Housing Offences*' was approved by Cabinet in 2017. Since then, it has been used to issue 7 Civil Financial Penalties, details of which were presented to the Place and Community Scrutiny Committee on 6th July 2022.

However, having applied the protocol in several cases the housing regulation team is of the view that the penalty bands used by officers to calculate the level of financial penalty, are insufficiently flexible and do not adequately differentiate between the different levels of offending behaviour, or between the size and scale of the operators in the sector.

For example, under the current protocol an offence which presents little risk of harm, committed by a landlord with one property who is deemed to have 'medium' culpability will attract a fine with a starting point of £7500. If a large operator, like an estate agent commits a similar offence, it will attract a fine with the same starting point of £7500. Although the current protocol does allow for the fine to be adjusted to

reflect the financial assets of the offender, the amount by which the fine can be varied is limited and as such it would be more appropriate to have a range of different 'starting points' depending on the scale of the offender's operation.

The 'Revised Policy and Protocol for Issuing Civil Financial Penalties for Certain Housing Act offences' that accompanies this report seeks to address the shortcomings of the existing policy through the introduction of offender categories which are determined based on the number of properties 'operated' by the offender. In addition, the policy retains the option of reducing or increasing the fine to reflect the existence of mitigating or aggravating factors; but rather than specifying a fixed adjustment for each factor, it allows for an overall adjustment to be made which in the judgement of the officer reflects the mitigating and aggravating factors in their entirety.

The revised Protocol was devised having full regard to 'Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities' which was published in 2017 by the then Ministry of Housing, Communities and Local Government (now DLUHC)

3. Implications of the Recommendation

3.1 *Financial implications*

3.1.1 It is foreseeable that the implementation of the policies could lead to a marginal increase in the amount of enforcement activity which may in turn increase the demand for legal support services. However, this demand and any associated increase in costs will be offset by improvements in the quality of information and evidence gathered by officers; and in the robustness of their decision making. This will both deter erroneous legal challenges and allow legal support services to deal with cases more swiftly and efficiently.

3.1.2 Income received from any civil financial penalties issued under the revised Protocol for Issuing Civil Financial Penalties can be retained by the local housing authority if it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

3.1.3 The Enforcement Policy clarifies the Council's approach to recovering costs for certain enforcement action. Local procedures, which set out the practical process for recovering costs are already in place but are being refreshed and updated. The combination of the policies and local procedures should make it easier for the Council to recover costs where it is legally possible to do so, for example, where the Council has carried out works following non-compliance of a statutory notice, therefore reducing unnecessary financial burdens on Council budgets.

3.2 *Legal implications*

3.2.1 The policies which are the subject of this report will support the Council in its duties to enforce relevant housing legislation, and support officers in determining the most appropriate course of enforcement action, which could include informal and formal action and the use of financial penalties as an

alternative to prosecution in some areas. Whilst the risk of successful legal challenges against action taken by the Council will always be there, this risk can be limited by ensuring that decisions are supported by a robust policy framework and are taken by officers with the appropriate training and delegated authority. Challenges to individual decisions will follow the relevant legal process.

- 3.2.2 The policies and revised protocol which form the basis of this report are should also improve the transparency, consistency and decision making in respect of private sector housing.

3.3 Risk Management implications

Type of Risk	
Economic/ Financial	The financial implications of the policies are discussed in section 3.1. Choosing not to adopt the policies would constitute a lost opportunity to improve the Council's processes for recovering enforcement costs and issuing financial penalties in place of prosecutions. Unlike court fines, civil financial penalties can be retained by the Council, if they are used to further the Council's enforcement activity pertaining to private sector housing.
Political	The Corporate Plan ² commits the Council to recovering through, amongst other things, 'better leveraging of our powers to improve quality of housing stock in public and private sector landlords'. Robust policies and procedures will ensure that regulation is targeted and effective, reducing the risk of the Council failing to meet its strategic aims.
Health & Safety	Swifter and more effective decision making in housing regulation will help reduce the risk of harm to tenants, and the wider community which will benefit from improvements in property conditions and management.

² <http://insite/media/6865/corporate-plan-2022-25-doing-right-by-slough.pdf>

Environment	<p>Poor property management is associated with increased incidences of fly-tipping and environmental crime which pose a risk to the local environment. The policies encourage more effective regulation in the Private Rented sector and therefore their adoption is likely to improve the local Environment within the Borough.</p>
Legal/Regulatory	<p>The policies have been devised having regard to all relevant legislation and statutory guidance and as such their adoption reduces the risk of successful legal challenges against the Council which can be costly and resource intensive.</p>
Reputational	<p>Erroneous decision making and poorly designed policies increase the risk of successful legal challenges and damage the reputation of the Council, undermining its authority and credibility as a regulator. The policies introduced by this report are designed to limit the risk of reputational damage to the Council and have been written with reference to all relevant legislation and statutory guidance. If the policies are approved, the housing regulation team will revise its local procedures to ensure that the policies are properly applied, and that there is an appropriate level of scrutiny of officer decision making by managers and legal services. The officers that are expected to use the policies will be fully briefed on their correct practical application, and officers will be held to account using the Council's performance management processes</p>
Programme and Projects	<p>The pressure on Temporary Accommodation services is recognized as a Corporate Risk. The Council relies on private landlords to house homeless individuals and families, and it is therefore important to ensure that the Council's regulatory activity is not overly bureaucratic, or burdensome on good landlords. This must be balanced with the protection of resident health, safety and well-being and the need to ensure that public funds are not used to subsidise the businesses of rogue or irresponsible landlords. Publishing the policies will assist good landlords to understand their legal obligations and make it easier for them to engage with the Council. Improving the relationship between the Council and good landlords may benefit other housing services across the Council who rely on private landlords to provide emergency and long-term accommodation. The policies should allow the Council to more easily identify and sanction poor landlords, which can then be avoided by the Council.</p> <p>The policies make clear that there are circumstances where it will be appropriate for the Council to decide <i>not</i> to make an intervention and this may assist the housing regulation in managing the expectations of residents, therefore reducing demand on the service.</p>

3.4 *Environmental implications*

3.4.1 The environmental impact of the policies is likely to be positive, as better regulation of privately rented properties will improve property management, reducing negative impacts such as fly-tipping and anti-social behaviour.

3.5 *Equality implications*

- 3.5.1 The Council is duty bound to have regard to the objectives set out in section 149 of the Equalities Act 2010, namely, to eliminate victimisation and harassment, advance equality of opportunity and foster good relationships between those who possess certain protected characteristics, and those that don't. Protected characteristics include sex, race, religion or belief, gender, sexual orientation, disability, age, marriage or civil partnership and pregnancy and maternity. In accordance with the equality duty, an equalities impact assessment has been undertaken, and is attached in Appendix D.
- 3.5.2 Equalities data relating to regulatory and enforcement activities carried out by Slough Borough Council has not been routinely collected by the services delivering the regulatory functions, as such there are currently no written procedures or infrastructure to allow this data to be easily collected. The EQIA accompanying this report has been devised using open-source data on the local population in its entirety, and such data may not precisely reflect the demographic characteristics of those directly impacted by the policies.
- 3.5.3 The Assessment acknowledges the need for further data collection in relation to the impact of enforcement in the private sector and the housing regulation team will explore the possibility of gathering relevant demographic data from clients, subject to all relevant data protection requirements and the Council's policies. The team will look at the benefits and risks associated with the collection of such data and the technical feasibility of collection using the current systems and processes. One option might be to retrospectively survey those that have had contact with the service, though this approach has limitations as respondents will be self-selecting, and many may choose not to respond. Regulatory teams are in the early stages of a project to replace the existing case management IT system, and there is an opportunity to ensure that any system allows for collection of equalities monitoring data so the impact of future initiatives can be more effectively monitored.
- 3.5.4 Within the first 12 months regular governance and performance management discussions between the housing regulation manager and the group manager for community safety, housing regulation and enforcement will be used to monitor the impact of the policies; 12 months from the date of implementation the housing regulation team will conduct a formal review of the impact of the policies on the level of enforcement as measured by the number of formal actions; the success of the enforcement action as measured by the number of cases resolved and number of successful challenges; and the qualitative impact on residents, particularly in relation to hazards removed from properties etc. As part of this review the housing regulation team will undertake an analysis of a sample of cases to identify any unintended impacts associated with the implementation of the policies. If necessary, a further EIA will be completed, and amendments made to the policies. The review will be recorded and escalated to the relevant Director/Associate Director in the first instance. Substantial changes will be subject to further member scrutiny and approval.

4. Background Papers

None