

**To:** Cabinet  
**Date:** 13 September 2023  
**Report of:** Head of Regulatory Services and Community Safety  
**Title of Report:** Private Rented Sector Regulation Policies

<b>Summary and recommendations</b>	
<b>Purpose of report:</b>	To seek approval to proceed to a public consultation on draft policies relating to: <ul style="list-style-type: none"> <li>(i) The assessment of whether an applicant is a Fit and Proper Person to hold an HMO or Selective Licence</li> <li>(ii) Banning Orders &amp; Rogue Landlord Database entry</li> <li>(iii) Financial Penalties in relation to residential enforcement</li> </ul>
<b>Key decision:</b>	No
<b>Cabinet Members:</b>	Councillor Linda Smith, Cabinet Member for Housing
<b>Corporate Priority:</b>	Deliver more affordable housing; Support thriving communities; Pursue a zero carbon Oxford; Enable an inclusive economy
<b>Policy Framework:</b>	Corporate Enforcement Policy

<b>Recommendations:</b> That Cabinet resolves to:	
1.	<b>Approve</b> the following draft policies for public consultation for a period of four weeks: <ul style="list-style-type: none"> <li>(i) Fit and Proper Person Policy</li> <li>(ii) Banning Orders &amp; Rogue Landlord Database Policy</li> <li>(iii) Civil Penalty Policy; and</li> </ul>
2.	<b>Note</b> that a further report will be brought to Cabinet to present the results of the public consultation and any proposed amendments to the draft policies and to seek approval for the final policies.

<b>Appendices</b>	
Appendix 1	Draft Fit and Proper Person Policy
Appendix 2	Draft Banning Orders & Rogue Landlord Database Policy
Appendix 3	Draft Civil Penalty Policy
Appendix 4	Risk Register
Appendix 5	Equalities Impact Assessment

## **Introduction and background**

1. Following the update of the Corporate Enforcement Policy in June 2023 a number of existing policies have been reviewed in relation to private rented sector regulation work within the Council's Regulatory Services team. These policies are required either by government or statutory guidance to assist the Council when making decisions in relation to private rented sector enforcement, and to ensure that the Council's decision-making processes are in line with best practice or recommendations made as a result of Tribunal cases.

## **Fit and Proper Person Policy**

2. The Housing Act 2004 requires the holder of a HMO or Selective licence to be "Fit and Proper". Every licence application must be assessed to ensure that the proposed licence holder is a fit and proper person to hold a licence. When considering whether an applicant is a fit and proper person to hold a licence, the Council uses information it holds but also considers evidence from partners, e.g. Police and Trading Standards. Currently, Council officers use an internal procedure for determining whether a person is fit and proper, however following recent tribunal cases, it is now considered best practice to have an agreed policy and to make this available in the public domain. The policy should provide details of the criteria that will be used when processing licence applications and explain how decisions are made. The determination of not being fit and proper is a serious matter and can mean that a person cannot hold a property licence. This policy will assist with transparency for landlords and ensure a consistent approach to decision making in relation to the assessment of a person as not being fit and proper. The proposed draft policy is attached as Appendix 1.

## **Banning Orders & Rogue Landlord Database policy**

3. The Council can apply to the First Tier Tribunal following a conviction of an individual or business, for relevant housing offences, e.g. failing to comply with an improvement notice or offences in relation to licensing of houses or HMOs. This policy has been developed in line with statutory guidance. The Policy clarifies how the Council decides whether or not to apply for a banning order following a conviction and the considerations made to present a case to the Tribunal. Along with this the policy outlines the criteria to be considered to add someone to the national Rogue Landlords Database, ensuring that the Council is transparent in the decision making in this area. The draft policy is attached as Appendix 2.

## **Civil Penalty policy**

4. This policy was previously agreed by the City Executive Board on 16<sup>th</sup> October 2017 and was reviewed in 2020 following Tribunal decisions. The revised draft policy takes account of all current legislation which can be used to regulate the private rented sector where financial penalties can be imposed as an alternative to prosecution. This policy outlines the criteria and the decision making in setting a level of penalty. The draft policy is attached as Appendix 3.
5. The issuing of financial penalties is a serious matter and there is oversight in each case by senior managers, the Head of Service and Law and Governance before notices of intention are served. Recipients of such notices can make representations to the Council, which must be considered before issuing a final notice. There is then a further statutory right of appeal to the First Tier Tribunal once the final notice has been issued. The revised policy gives clarity and ensures decision making is transparent in this area.

## **Consultation**

6. Whilst there is no statutory duty to consult on these specific policies, as they are relevant to landlords operating in the city and are concerned with serious matters, it is considered good practice to carry out a 4 week targeted consultation. This would be carried out using the following methods:
  - Via the Landlords newsletter
  - Contacting University students and tenants groups
  - Online questionnaire

## **Financial implications**

7. If our policies become outdated and do not reflect current best practice there is a risk that more challenges could be made and that more of those challenges would be successful, which would result in additional costs and a reduction in income from financial penalties.
8. Regulation 4 of the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 restricts the use of civil penalty income to supporting enforcement work in the private rented sector and any funding not so used must be paid to the government. In Oxford all of the income derived from civil penalties is used to directly fund enforcement work.

## **Legal issues**

9. Before commencing an enforcement investigation officers will have regard to the relevant policies, therefore having up to date policies will mean officers are operating in line with best practice when making decisions, and taking a consistent approach to decision making. This should reduce the number and success rate of any appeals.
10. Defendants are entitled to cite the relevant policy when making their case or putting forward any defence and may be able to challenge the Council where policies are out of date or where it cannot demonstrate it has followed its own policy.

## **Level of risk**

11. The Risk Register is attached as Appendix 4.

## Equalities impact

12. The Initial Equalities Impact Assessment is attached as Appendix 5. The Council's enforcement activity is largely focussed on protecting vulnerable people so it has a positive impact. Enforcement Actions are monitored by services, where possible, to identify any race disparity issues and ensure the Council's approach does not have disproportionate adverse impacts on any community including those with protected equality characteristics. There is robust oversight of enforcement decisions and Senior Managers, review and authorise certain enforcement action including prosecutions, and will consider equality issues as part of the review.

## Carbon and Environmental Considerations

13. Many of the enforcement actions taken in the private rented sector result in improved property standards which in turn helps reduce carbon emissions. Renewing the policies and maintaining a successful enforcement regime will have a positive impact.

## Conclusion

14. The review and approval of these policies will assist in ensuring decision making in regulating the private rented sector remains transparent and aligns with best practice. It is also good practice to consult with those affected by such policies and a 4 week consultation exercise will provide an opportunity for feedback before formal approval for the implementation of the new policies is requested at a Cabinet meeting in December.

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**Background Papers:** None