

To: Cabinet
Date: 24 January 2024
Report of: Head of Planning and Regulatory Services
Title of Report: Private Rented Sector Regulation Policies

Summary and recommendations	
Purpose of report:	The report provides the results from the consultation exercise carried out into three key policies and seeks approval of the following policies attached to the report: <ul style="list-style-type: none"> • Fit and Proper Person Policy • Banning Orders & Rogue Landlord Database Entry Policy • Civil Penalty Policy in relation to residential enforcement
Key decision:	Yes
Cabinet Member:	Councillor Linda Smith, Cabinet Member for Housing
Corporate Priority:	Deliver more affordable housing; Support thriving communities; Pursue a zero carbon Oxford; Enable an inclusive economy
Policy Framework:	Corporate Enforcement Policy

Recommendations: That Cabinet resolves to:	
1.	Note the results of the public consultation shown in the report;
2.	Approve the amended policies, as attached at Appendix 1 – 3 of the report, in relation to: <ul style="list-style-type: none"> • Fit and Proper Person • Banning Orders & Rogue Landlord Database Entry • Civil Penalties in relation to residential enforcement
3.	Delegate authority to the Head of Planning and Regulatory Services to review and update the policies in consultation with the Head of Law and Governance where new legislative powers have been enacted to give the Authority powers to issue fines for private rented homes.

Appendices	
Appendix 1	Fit and Proper Person Policy
Appendix 2	Banning Orders & Rogue Landlord Database Entry Policy
Appendix 3	Civil Penalty Policy in relation to residential enforcement
Appendix 4	Feedback from Consultation Exercise
Appendix 5	Risk Register
Appendix 6	Equalities Impact Assessment

Introduction and background

1. The regulation of private rented residential accommodation is important to the wider Housing Strategy of tackling poor conditions and poor management practices in the private rented sector. These policies are key to this regulatory work. At its meeting in September 2023, Cabinet agreed a 4-week public consultation on these policies.
2. The policies cover:
 - Fit and Proper Person
 - Banning Orders & Rogue Landlord Database entry
 - Civil Penalties in relation to residential enforcement
3. These policies are required either by government or statutory guidance to assist the Council when making decisions in relation to private rented sector enforcement. The policies must be in line with best practice or recommendations made as a result of Tribunal / Court of Appeal cases.

Key findings from the Consultation Exercise

4. The consultation exercise was undertaken using an online questionnaire via the Council's website. The consultation exercise was publicised using the Landlords Newsletter, as well as direct email to selective licence applicants, HMO licence holders and various stakeholders, including tenant groups and the universities. Local Community groups were also encouraged to respond to the consultation via local councillors.
5. In total there were 55 respondents to the consultation questionnaire and 2 direct emails. Of the respondents to the questionnaire 58% were landlords, 11% agents, 4% tenants and 25% members of the public; with 2% declining to answer this question.
6. The key findings were that
 - a. 89% of the respondents found clear policies useful and
 - b. 52% of the respondents agreed or strongly agreed that the policies were easy to understand with 25% of the respondents disagreeing or strongly disagreeing.
7. Respondents were given the opportunity to give feedback to the policies, this can be found in Appendix 4. The key points raised were:
 - a. Concerns about landlords being treated too harshly.

- b. Lack of anti – discrimination measures and ensuring landlords treated fairly.
- c. Concerns about resources for the enforcement of the policies
- d. Support for the policies to be introduced.

Amendments to draft policies

- 8. In response to the consultation the following amendments have been made to the draft policies.
- 9. A paragraph has been added to each policy detailing how in practice the decisions are authorised by senior officers who have not been involved with the investigation, which gives a level of scrutiny to the case officer decision and ensures the policies are applied fairly and consistently.
- 10. The policies have been amended to include details that all authorised officers are trained not only in housing law but also in equality and diversity, unconscious bias and safeguarding. An updated equality Impact Assessment has also been produced. See Appendix 6
- 11. Details of the appeal provisions have also been made clearer in the policies.
- 12. The Civil Penalties policy has been amended due to recent tribunal cases, in particular Leicester City Council v Morjaria [2023] UKUT 129 (LC). This relates to the section of the policy concerning Housing Act 2004 offences, concerning property licensing, (parts 2&3), improvement notices (part1) and HMO management Regulation breaches (part 7). This section of the policy has been amended to include clarity about the starting levels for fines based on the seriousness of the offences; more detail about individual offences and how the fines are assessed for each offence plus a discount for prompt payment.

Financial implications

- 13. It is important that our policies reflect current best practice otherwise 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.
- 14. In Oxford all income derived from civil penalties is used to directly fund enforcement work, which is in accordance with 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.

Legal issues

- 15. All officers who are enforcing legislation in the private rented sector are trained and must have regard to the relevant policies. Referring to updated policies will ensure that officers are operating in accordance with best practice when making decisions. This should reduce the number and success rate of appeals against enforcement actions taken. Officers will also receive training in the use and operation of the policies.

Level of risk

16. The Risk Register is attached as Appendix 5.

Equalities impact

17. Following feedback received during the consultation exercise the Initial Equalities Impact Assessment has been reviewed and is attached as Appendix 6. The Council's enforcement activity is largely focussed on protecting vulnerable people, so it has a neutral or positive impact. Enforcement Action in the residential sector is concerned primarily with improving property condition and management and not specific landlords. Such 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 characteristics as set out in the Equality Act 2010. There is robust oversight of enforcement decisions and Senior Managers, review and authorise certain enforcement action including prosecutions, and will continue to consider equality issues as part of the review.

Carbon and Environmental Considerations

18. 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

19. These policies will ensure that the council will be more transparent and consistent in its decision making when such policies need to be used to tackle rogue landlords operating in the city.

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Background Papers: None