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Private Rented Sector Housing Enforcement Policy

**Responsible
Officer**

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1. Synopsis

- 1.1. This report considers consultation feedback relating to the draft Private Rented Sector Housing Enforcement Policy, to allow the use of additional civil penalties to enforce electrical safety standards and minimum energy efficiency requirements relating to private rented property.

2. Executive Summary

- 2.1. The Council has a responsibility to regulate private rented domestic accommodation to ensure it is safe to live in, free from health and safety hazards and meets minimum energy efficiency levels. Houses in multiple occupation (HMO) must be licensed and comply with additional requirements relating to health and safety.
- 2.2. Cabinet approved the current Private Rented Sector Housing Enforcement Policy ('the PRSH Enforcement Policy') in July 2019. This Policy was brought into effect to reflect a range of new powers that were given to the Council under the Housing and Planning Act 2016, which included, amongst others, the power to impose civil (financial) penalties as an alternative to prosecution.
- 2.3. The new powers were and continue to be aimed at:
 - tackling criminal, rogue and irresponsible landlords;
 - improving standards in the private rented sector; and
 - ensuring that private rented accommodation is safe, well managed and that property is adequately maintained.
- 2.4. Regulations made under the Housing and Planning Act 2016, the Housing Act 2004 and the Energy Act 2011 have now extended the

powers of the Council to permit civil penalties to also be imposed, as an alternative to prosecution, specifically in relation to electrical safety standards and minimum energy efficiency levels of private rented domestic property.

- 2.5. Following Cabinet approval to undertake a formal consultation on an updated PRSH Enforcement Policy, which incorporated the additional civil penalty powers referred to in paragraph 2.4 above, a six-week period of consultation has been undertaken and the updated PRSH Enforcement Policy has been further amended in response to feedback received. The updated PRSH Enforcement Policy is now presented for adoption by Cabinet.

3. Recommendation

- 3.1. That Cabinet adopts, with any necessary amendments, the updated Private Rented Sector Housing Enforcement Policy as set out at Appendix 1.

REPORT

4. Risk Assessment and Opportunities Appraisal

- 4.1. Shropshire has a wide range of good landlords and letting agents who take their legal responsibilities seriously and provide decent well-maintained homes.
- 4.2. However, there are also a number of rogue, criminal and irresponsible landlords who knowingly flout their legal obligations and rent out accommodation that is substandard, unsafe, unlicensed and/or has poor energy efficiency levels. These landlords create an unfair trading environment that undermines the operation of legitimate and law-abiding businesses.
- 4.3. The current PRSH Enforcement Policy already sets out the enforcement activities that the Council may use to tackle the majority of these concerns, which, in turn, supports good landlords to flourish.
- 4.4. The powers available to the Council have now been extended, and this requires the current PRSH Enforcement Policy to be updated. The Council may, as an alternative to prosecution, impose civil penalties on landlords who are in breach of their duties contained in the following regulations:

- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (‘the Electrical Safety Standards Regulations’)
 - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (‘the Energy Efficiency Regulations’)
- 4.5. The specific duties set out within the above Regulations, where a civil penalty may now be imposed, are detailed in Section 3.0 of the updated PRSH Enforcement Policy.
- 4.6. The updates to the current PRSH Enforcement Policy, together with the Council’s Better Regulation and Enforcement Policy, provide a framework that will assist the Council to improve the safety and energy efficiency of private rented accommodation.
- 4.7. Regulation 11 of the Electrical Safety Standards Regulations gives the Council the power to impose civil penalties of up to £30,000. It is for the Council to determine the level of any civil penalty up to this maximum.
- 4.8. Regulation 38 of the Energy Efficiency Regulations gives the Council the power to impose civil penalties of up to £5,000. It is for the Council to determine the level of any civil penalty within certain individual maximum levels for different types of breaches.
- 4.9. The Council could impose civil penalties in relation to infringements of the legislation without a policy in place. However, by choosing to develop, document and publish a policy, this provides a framework for the Council to enable reasonable decisions to be made and to mitigate the reputational and financial risks that may result from any legal challenge.
- 4.10. A failure to adopt a policy may also limit the ability of the Council to improve the safety and energy efficiency of private rented accommodation.
- 4.11. There is a risk that any substantial increase in the number of private rented sector housing related investigations, where civil penalties are an option, is likely to give rise to a corresponding pressure on existing and limited staffing resources, including resources within Legal Services.
- 4.12. In all instances where civil penalties are being considered as an alternative to prosecution, the Council will still have to be satisfied that if the case were to be prosecuted in the Magistrates’ Court, there would be a realistic prospect of conviction, i.e. the standard of proof remains the same as if the decision had been taken to institute legal proceedings. The Council needs to demonstrate, beyond reasonable doubt, that the offence has been committed

before imposing a civil penalty. For this purpose, officers involved in cases will consult the Crown Prosecution Service Code for Crown Prosecutors and liaise with Legal Services before any decision is made to impose a civil penalty.

4.13. In order to ensure civil penalties are used fairly and are set at an appropriate level, the following factors, as set out in the statutory guidance, first published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities) in April 2017, will be considered:

- severity of the offence
- culpability and track record of the offender
- harm caused to the tenant
- punishment of the offender
- whether it will deter the offender from repeating the offence
- whether it will deter others from committing the offence
- whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

4.14. Where it is intended that civil penalties will be used for the purposes of enforcing the Housing Act 2004 or the Electrical Safety Standards Regulations, both culpability and harm will be taken into account. It is proposed that the method, contained within Section 7 of the updated Policy, will be used to determine the individual level of any penalty imposed.

4.15. Where it is intended that civil penalties will be used for the purposes of enforcing the Energy Efficiency Regulations, it is proposed that the method, contained with Section 8 of the Policy, will be used to determine the individual level of any penalty imposed; in particular, the impact on the following factors will be taken into account:

- the health of the tenants
- the environment
- the cost of heating the property
- the level of fuel poverty

4.16. The approach set out in Sections 7 and 8 of the updated Policy aims to minimise the risk of legal challenge. In the event of such a challenge, the approach will increase the likelihood that the Council will be able to successfully defend such a challenge. However, it is impossible to entirely eliminate the legal risks associated with the use of civil penalties; nevertheless, the updated Policy will assist the Council to mitigate the risks associated with any adverse outcome.

4.17. Both the Electrical Safety Standards Regulations and the Energy Efficiency Regulations provide landlords with the right to make representations to the Council against the intention to impose a civil penalty and ultimately, they have a right of appeal to a First-tier

Tribunal. The Tribunal is an informal body that has the power to quash, confirm, cancel or change any notice, order or decision made by the Council, including increasing or reducing the level of civil penalties.

- 4.18. The Government has made it clear that offenders must not derive any financial benefit from their offending and Tribunals have been briefed on what is expected of them in relation to the use of civil penalties. Whilst Shropshire Council's use of these powers remains untried and untested, there is growing evidence that other local authorities are successfully using the powers where it is appropriate to do so.
- 4.19. Following the decision by Cabinet to approve the consultation on the updated PRSH Enforcement Policy, details of which can be found in the report presented to Cabinet on the 23 March 2022 at Agenda Item 8 ([Agenda for Cabinet on Wednesday, 23rd March, 2022, 10.30 am – Shropshire Council](#)), a public consultation was undertaken over a six-week period from 11 April 2022 to 22 May 2022. The consultation was made generally available to all interested parties, including landlords and tenants, through the Council's Get Involved pages of its website. In addition, direct contact was made, by email, with seven key stakeholders who were signposted to the consultation details on the Council's website. Two responses were received: one from a professional body for estate and letting agents and the other from a membership organisation for owners of land, property and businesses in rural England and Wales.
- 4.20. The consultation responses received are produced at Appendix 2, together with officer comments and actions taken to further amend the updated PRSH Enforcement Policy tabled at Appendix 3. In summary, the external consultation feedback was positive with overarching support for the principles set out in the Policy. The following amendments were made to address specific concerns:
- to confirm that the Council agrees that effective enforcement is achieved more successfully when a collaborative approach with letting agents, landlords and professional bodies is adopted to tackle issues within the private rented sector;
 - to clarify the position that the Council will take in the event that changes are made to legislation during the lifetime of the Policy; and
 - provide an explanation detailing how the Policy will be kept under review and updated.
- 4.21. A number of additional amendments have been made based on internal feedback, which are aimed at providing further clarification, specifically:

- the inclusion of the definition that the Council uses to describe who may be a vulnerable person and acknowledgment that there are specific definitions of vulnerable groups within the Housing Act 2004;
- in the majority of cases, the Council will charge for the issue of enforcement notices based on a fixed rate charge, with additional hours charged at an hourly rate only where there are extenuating/exceptional circumstances that have significantly increased the time taken to issue and effectively deal with an enforcement notice;
- the interest rate charged in relation to the repayment of the costs incurred when the Council has undertaken works in default will be increased from the Bank of England Base Rate +2% to the Bank of England Base Rate +8% to align with the 'statutory interest' rate for late payments on commercial contracts and with interest rates charged by other services within the Council for similar works; and
- confirming that it is HM Land Registry that holds the register of local land charges and not the Council.

4.22. An Equality, Social Inclusion and Health Impact Assessment (ESHIA) has been undertaken and is produced at Appendix 4.

4.23. The assessment has indicated that, as with the existing Policy, the updated Policy should have a positive impact for all communities and groupings within communities, principally by deterring or removing rogue landlords from the Private Rented Sector in Shropshire. Effective enforcement in relation to private rented accommodation, including the use of civil penalties, is likely to improve the life chances of the population generally and particularly those with Protected Characteristics such as older people, those with disabilities and families with children.

4.24. By improving housing standards in respect of electrical safety and ensuring properties have energy performance certificates to at least the minimum level standards, there will be a predicted positive health and safety impact for all tenants. This includes households in the tenth category, social inclusion, that we think about in Shropshire, in addition to the nine Protected Characteristics set out in the Equality Act 2010. The social inclusion category includes people in rural areas and people or households that we may describe as vulnerable. Examples could be households on low incomes or people for whom there are safeguarding concerns, as well as people in fuel poverty.

4.25. The results of the consultation and engagement exercises have been recorded in the ESHIA, together with the actions proposed to enhance the positive impacts and mitigate the negative impacts of the proposals within the Policy. Feedback from the public consultation has been drawn upon in order to further inform the

proposed Policy and to make adjustments, including those that relate to equality impacts, as referred to in paragraphs 4.19 to 4.21 above.

- 4.26. It is acknowledged that responses to the consultation are very low and no responses were received from target groups, e.g. older people and people with disabilities. In this respect, work will continue with those groupings in order to seek to ensure that the identified positive impacts are also enhanced for these households.

5. Financial Implications

- 5.1. The costs associated with the investigation of any criminal matter can be significant, particularly where the matter is contested in the courts. The introduction of financial penalties will, to some extent, reduce the financial burden on the Council insofar as it relates to undertaking legal action in the criminal courts. However, where a civil penalty is imposed, the recipient has the right of appeal to a First-tier Tribunal and any unfavourable outcome may adversely affect the Council's income.
- 5.2. Monies received by the Council from the payment of civil penalties can be retained by the Council to further the delivery of the Council's statutory functions relating to the enforcement activities covering the private rented sector. Any funds that the Council fails to spend on these statutory functions must be paid into central Government's Consolidated Fund.
- 5.3. The fact that proceeds of financial penalties can be retained by the Council will not result in those services that can use these powers becoming self-financing. There are reputational and financial risks associated with funding the relevant statutory services from financial penalties as the penalties are an enforcement, not income generating, tool and consequently must be used in a reasonable and proportionate manner, in line with the principles of good regulation, to secure compliance and long-standing behaviour change.
- 5.4. Furthermore, non-payment of a financial penalty becomes a civil debt and must be pursued through the Council's debt recovery process, which, in itself, incurs additional costs both in terms of officer time and financial payments.

6. Climate Change Appraisal

- 6.1. It is not possible to quantify the outcome of the updated Policy in relation to climate change impacts.
- 6.2. Nevertheless, the fundamental purpose of the Energy Performance Regulations is to drive up energy performance of rented

accommodation by setting a minimum energy efficiency level for such properties.

- 6.3. Whilst the Electrical Safety Standards Regulations are primarily focused on the electrical safety of rented properties, the energy efficiency is likely to be indirectly improved if the electrical installations are modern and effectively optimised from a safety perspective.
- 6.4. It is, therefore, reasonable to conclude that where enforcement powers are used to ensure compliance with both the Energy Performance Regulations and the Electrical Safety Standards Regulations, there will be a positive climate outcome, particularly in relation to energy and fuel consumption. There is a strong likelihood of significant improvements for tenants on low incomes, with associated co-benefits such as improved physical health and mental wellbeing.
- 6.5. With respect to renewable energy sources, proactive enforcement of the legal requirements may also prompt landlords to consider fitting roof-mounted solar panels to reduce energy use and costs for their tenants or to generate an income stream from their property assets.
- 6.6. It is acknowledged that enforcement of both the Energy Performance Regulations and the Electrical Safety Standards Regulations will not generate any potential opportunities for carbon offsetting or specific measures to improve resilience to climate related extreme weather events.

7. Background

- 7.1. In Shropshire, the private rented sector represents 17% of the housing market, which equates to approximately 25,000 properties.
- 7.2. The updated Policy sets out enforcement criteria regarding private rented sector housing which supplements the generic approach to enforcement described in the Council's Better Regulation and Enforcement Policy.
- 7.3. The updated Policy is aimed at the regulation of the private rented sector which includes housing association properties except those owned by Shropshire Council.
- 7.4. The supplementary private rented sector housing enforcement activities set out in the updated Policy include the licensing of houses in multiple occupation (HMO), the service of statutory notices as well as the following measures introduced by the Housing and Planning Act 2016, Housing Act 2004 and the Energy Act

2011 which aim to tackle rogue landlords/letting agents and improve the private rental sector:

- Civil penalties which can be used as an alternative to prosecution
- Rent Repayment Orders (RROs)
- Database of rogue landlords/property agents
- Banning Orders for the most prolific offenders

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

[Shropshire Council Private Rented Sector Enforcement Policy adopted by Cabinet, July 2019](#)

Statutory guidance for local housing authorities published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities):

- [Civil penalties under the Housing and Planning Act 2016, first published April 2017](#)
- [Database of rogue landlords and property agents under the Housing and Planning Act 2016, first published April 2018](#)
- [Rent repayment orders under the Housing and Planning Act 2016, first published April 2017](#)

Non-statutory guidance for local housing authorities published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities):

- [Banning Order Offences under the Housing and Planning Act 2016, first published April 2018](#)
- [Electrical safety standards in the private rented sector, first published June 2020](#)

[Shropshire Council's Better Regulation and Enforcement Policy approved by Council, July 2018](#)

Cabinet Member (Portfolio Holder)

CLlr Simon Jones, Portfolio Holder for Adult Social Care and Public Health

Local Member

The report has county wide application.

Appendices

Appendix 1 - Private Rented Sector Housing Enforcement Policy

Appendix 2 - Consultation Responses

Appendix 3 - Consultation Responses with Officer Comments

Appendix 4 - Equality, Social Inclusion and Health Impact Assessment