

TITLE OF REPORT: **Gateshead Private Sector Housing Enforcement Policy**

REPORT OF: **Anneliese Hutchinson, Service Director, Development,
Transport and Public Protection**

Purpose of the Report

1. This report seeks approval of the Gateshead Private Sector Housing Enforcement Policy, to enable use of the newly enacted provisions of the Housing and Planning Act 2016, that tackle the rogue landlords and property agents who knowingly rent out unsafe and substandard accommodation.

Background

2. The private rented sector is an important part of our housing market, housing 4.3 million households in England. In Gateshead, the number of private rented homes have increased from 8 – 15% of total homes in the Borough between 2006 and 2016.
3. Nationally, the quality of privately rented housing has improved over the past decade with surveys showing that 82% of private renters are satisfied with their accommodation and stay in their homes for an average of 4 years.
4. However, problems remain and in response the Government has created new legislation to help local authorities to tackle the rogue landlords and property agents who knowingly rent out unsafe and substandard accommodation. The purpose of the legislation is to compel those landlords and property agents to either improve the standard of any accommodation they rent out and to comply with their obligations, or to leave the sector entirely.
5. The Housing and Planning Act 2016 is the first primary legislation relating to private sector housing conditions since The Housing Act 2004. It requires local authorities to adopt a local policy to enforce the new duties within the Act relating to private sector housing.

Proposal

6. The legislation introduces a package of measures intended to enable local authorities to effectively tackle these rogue or criminal landlords and property agents. The package incorporates:
 - the extension of Rent Repayment Orders to include illegal eviction, or failure to comply with certain statutory notices (came into force on 06 April 2017)

- Financial penalties of up to £30,000 as an alternative to prosecution when landlords have committed certain housing related offences (came into force on 6 April 2017)
 - Banning orders to prevent the most serious and prolific offenders from engaging in letting and property management work (came into force on 6 April 2018)
 - a national database of rogue landlords/property agents convicted of certain offences (or who have received multiple financial penalties as an alternative to prosecution in relation to certain offences), intended to help local authorities to share information and make better enforcement decisions (came into force on 6 April 2018).
7. It is proposed that the above provisions of the Housing and Planning Act 2016 are implemented in Gateshead in accordance with the Housing and Planning Act 2016 Private Sector Housing Enforcement Policy at Appendix 2.

Recommendations

8. Cabinet is asked to recommend the Council to:
- (i) approve the Gateshead Private Sector Housing Enforcement Policy as set out in Appendix 2;
 - (ii) approve the use of the above provisions of the Housing and Planning Act 2016, that seek to tackle the rogue landlords and property agents who knowingly rent out unsafe and substandard accommodation; and
 - (iii) approve that the Council's Constitution is amended to include a delegation to the Service Director, Development, Transport and Public Protection to implement the above provisions on behalf of the Council.

For the following reasons:

- (i) The Council has a duty to comply with the new legislation.
- (ii) These powers have been made available to help to tackle the poor standard and management of rented homes and to provide local authorities with an alternative to prosecution.
- (iii) Use of the powers will protect tenants, discourage unscrupulous behaviour by landlords and complement other interventions and public and private investment in neighbourhoods where there are high concentrations of private rented homes.

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Policy Context

1. The proposal to embed new legislation within the Housing and Planning Act 2016 to improve private sector rented housing in Gateshead, is consistent with the Council's strategic approach of making Gateshead a place where everyone thrives. It specifically supports the Council's pledges to put people and families at the heart of everything we do and to tackle inequality so people have a fair chance.

Background

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3. Nationally, the quality of privately rented housing has improved over the past decade with surveys showing that 82% of private renters are satisfied with their accommodation and stay in their homes for an average of 4 years.
4. However, problems remain and in response the Government has created new legislation to help local authorities tackle the rogue landlords and property agents who knowingly rent out unsafe and substandard accommodation. The purpose of the legislation is to compel those landlords and property agents to either improve the standard of any accommodation they rent out and to comply with their obligations, or to leave the sector entirely.
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Proposal

6. The proposed local policy for Housing and Planning Act 2016 Gateshead Private Sector Housing Enforcement is attached as Appendix 2. The detail of how Gateshead will comply with the new duties is outlined below.

Rent Repayment Orders

7. Current powers relating to Rent Repayment Orders were created by the Housing Act 2004. A rent repayment order ("RRO") is an order which may be made by the First-tier Tribunal on the application of the local housing authority (LHA) or a tenant if the landlord commits certain offences related to the rented property. Under a RRO a landlord may be required to repay up to 12 months' rent to a tenant, or where the rent was paid (directly or indirectly) with Universal Credit or Housing Benefit, a RRO may require the landlord to pay the local housing authority a sum equivalent to the benefit received in that period.

8. The offences for which RROs could be used were previously very limited, such as where a landlord had failed to obtain a licence for a property that was required to be licensed. The additional circumstances where RROs can now be used have been extended by the Housing and Planning Act 2016 and now also include;
 - Failure to comply with an Improvement Notice, commonly used to require improvements to the standard of a rented home
 - Failure to comply with a Prohibition Order made to prevent rooms or unsuitable properties being used as rented homes
 - Breach of a Banning Order created to prevent the most serious and prolific offenders from engaging in letting and property management work
 - Use of violence by a landlord to secure entry to a rented home
 - Illegal eviction or harassment of tenants
9. The Housing and Planning Act 2016 sets out that the landlord must have committed one of the above offences, but need not have been prosecuted and convicted. The Council, in applying for the RRO must be able to satisfy the First-tier Tribunal that the offence has been committed by the landlord, beyond reasonable doubt.
10. Improvement Notices and Prohibition Orders are issued and made by the Council as the Local Housing Authority, specifically following investigation and action taken by Environmental Health Officers and Technical Officers within the Private Sector Housing Team, often following a request for help from a private rented tenant, and sometimes following a complaint from a resident living next to a poorly maintained rented property. The Team also undertakes pro-active inspections of rented homes provided by landlords whose tenants have had most cause for complaint in order to improve property and tenancy management standards, to improve the sustainability of tenancies, prevent homelessness and contribute to tackling neighbourhood issues such as waste issues and noise and anti-social behaviour.
11. The Council is not able to take direct action against landlords that use violence to secure entry to a rented home, this rests with Northumbria Police and the Crown Prosecution Service. The Private Sector Housing team has a close working relationship with Northumbria Police and intends to take steps to raise the profile of this offence amongst Police Officers so that where landlords are found by Police to have behaved in this way, the team is notified and consideration is given to whether a RRO is sought.
12. The Protection from Eviction Act 1977 makes it an offence for a landlord to behave in a way that intends to cause a private tenant to give up their tenancy. This might include harassment of a tenant that is behind with the rent or threatening to evict a tenant when they request that repairs be carried out. The Team can prosecute landlords who have been found to have committed this offence and would consider the seeking of a RRO to recover the rent that has been paid in these circumstances.

Financial Penalties

13. In relation to the regulation of private rented homes Financial Penalties are a relatively new concept. The Housing and Planning Act 2016 has created a mechanism for the

Council to impose a Financial Penalty on an individual or organisation as an alternative to prosecution, for the following housing offences contained within the Housing Act 2004;

- Failure to comply with an Improvement Notice
- Offences in relation to licensing of Houses in Multiple Occupation
- Offences in relation to licensing of homes included within Selective Landlord Licensing areas
- Failure to comply with an overcrowding notice
- Failure to comply with management regulations in respect of Houses in Multiple Occupation

14. Government consulted during 2015 in relation to the proposal to create Financial Penalties and expressed disappointment at that time in relation to the relatively low numbers of prosecutions for housing related offences. The consultation revealed that prosecutions were found to be time consuming, minimal in number due to the enforcement approach taken by local authorities (informal action first, followed by formal action when advice, guidance, support has been found to be ineffective), often unsuccessful in achieving particularly high fines at Court, and costly to Councils. Whilst some fines that result from successful prosecutions are helpful in changing landlord behaviour, they are paid to Government, and provide no ongoing resource for local authority enforcement activity.
15. The ability to prosecute for the above housing related offences has not been removed, Financial Penalties have been created as an alternative route to tackling rogue landlord behaviour, and whilst guidance has been provided in relation to how Financial Penalties will operate alongside other sanctions (i.e. a landlord cannot be prosecuted and issued with a Financial Penalty for the same offence) the legislation and statutory guidance do not offer clear direction on how a local authority should decide between prosecution and Financial Penalty. A proposal on how and when Financial Penalties will be used in Gateshead is included at Appendix 2.
16. In setting the Financial Penalty amounts, Ministers made clear that they expected this power to be used robustly as a way of tackling the worst landlords. In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government stated, "*It is important to raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants*".
17. Aside from setting a maximum amount of £30,000, Government has issued statutory guidance and instruction that local housing authorities develop their own policy on determining the appropriate level of financial penalty in a particular case, with generally the maximum amount to be reserved for the very worst offenders. Statutory guidance also states that local authorities should use their existing powers to as far as possible make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

Banning Orders and Banning Order Offences

18. A Banning Order is an order by the First-tier tribunal that bans a landlord from;
- Letting housing in England
 - Engaging in English letting agency work
 - Engaging in English property management work, or
 - Doing two of more of those things

Breach of a Banning Order is a criminal offence.

19. Government has prescribed a number of offences that are relevant to letting and property management, that if a landlord be convicted of, a local authority can seek to 'ban' the landlord from the above activities, for a minimum period of 12 months. Banning Order Offences are wide ranging and include; unlawful eviction and harassment of a tenant, housing standards offences under the Housing Act 2004, overcrowding of a property, fire and gas safety offences, letting to someone disqualified from renting as a result of their immigration status, and serious criminal offences including fraud, specified violent and sexual offences, offences involving the mis-use of drugs, concealing criminal property, stalking, breach of a Community Protection Notice, theft, burglary, blackmail and handling stolen goods.
20. The breadth of Banning Order Offences represents a huge step forward in protecting potentially vulnerable people from renting their home from those that might seek to take advantage of them. Prior to this it has been possible in England to be a 'landlord' without any qualifications, background checks and with little fear of redress. We know that some privately rented property portfolios are used to some extent as a location for organised criminal groups activities to take place (housing of those who are trafficked, or farming of cannabis for instance) or as part of the business of organised criminal groups. Carrying out letting or property management work will become more difficult for such individuals and groups as a result of the existence of Banning Orders and Offences.
21. Local authorities are expected to document their own policy on when to pursue a Banning Order and to use this on a case-by-case basis. Government has recommended that the seriousness of the offence, previous convictions of the landlord and the harm that may (continue to) be caused to a tenant are factors that should be considered in deciding whether to apply for a banning order, and in deciding how long the ban should be in place. The policy should also seek to punish the offender in a way that is proportionate to the severity of the offence, at a high enough level to seek to drive the worst offenders from the sector and to deter others from repeating or committing similar offences. This proposed Policy is attached at Appendix 2.
22. Government has indicated that banning orders should be pursued for the most serious offenders and that local authorities should share information with other local housing authorities to establish whether a landlord has committed offences in other areas.

23. It is of note that a Banning Order does not invalidate any tenancy agreement held by the occupiers of a rented home, tenants do not lose their rights as a result of their landlord being subject to a Banning Order.

Database of Rogue Landlords and Property Agents

24. This is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. Database users will be able to view all entries, including those made by other local housing authorities, enabling authorities to track individuals operating across boundaries and focus enforcement action on individuals and organisations who knowingly flout their legal obligations.
25. Local authorities must make an entry on the database for a person or organisation that has received a Banning Order and can make entries for a person who has been convicted of a Banning Order offence and/or who has received two or more Financial Penalties in respect of a Banning Order Offence within a period of 12 months.
26. Government guidance has been produced to help local authorities to decide whether to make an entry on the Database, and this has been reflected in the Policy included at Appendix 2.
27. The Database is operated by the Ministry of Housing, Communities and Local Government (MHCLG) and will operate as a password protected web-based portal. There is no charge for local authorities to use the Database.

Legal Position

28. These powers came into force in April 2017 and 2018. They are not retrospective and will not apply to offences committed before those dates. In relation to RROs, a duty has been placed on local authorities in that they must consider applying for a RRO when they become aware that a landlord has been convicted of any of the offences listed above. Similarly, the Council must update the Rogue Landlord Database when as a result of its activities, a landlord receives a banning Order.
29. Whilst Government has intended to allow local housing authorities to tackle rogue landlords through an alternative to prosecution, using RROs and Financial Penalties powers will require the same standard of proof to be met as a prosecution. This means that before taking any formal action, the Council should be satisfied that if the case were to be prosecuted in the magistrate's court, there would be a realistic prospect of conviction.
30. The Council would be required to demonstrate beyond reasonable doubt that the offence had been committed and would be required to provide this evidence in relation to Financial Penalties, should an appeal be made to the First-tier Tribunal and in any application for a RRO.
31. The powers have effectively changed the way enforcement for the prescribed housing offences can take place. Investigations and action to secure improvements to homes or to prevent tenants from living in dangerous accommodation will not change, but

Financial Penalties can be imposed, and repayment of rent sought without reference to a Court in relation to the offence, unless an appeal is made.

32. How the new powers will be used in Gateshead is included in the proposed Policy at Appendix 2.

Delegated Powers

33. The legislation makes clear that it is the role of the local housing authority to use the new powers. Within the Council, current Housing Act 2004 powers rest with Service Director, Development Transport and Public Protection, within Communities and Environment. This position is best placed to take decisions on the use of these new powers on a case by case basis in accordance with the proposed Policy.

Consultation

34. The Cabinet Members for Housing have been consulted on this proposed policy. Benchmarking has also been carried out with other North East Councils to ensure a consistent approach to enforcement and penalty setting.
35. If approved, the enforcement approach and potential for unscrupulous landlords and property agents to incur fines through the use of RROs and Financial Penalties will be included within Council News, with links on Gateshead Council's website and by alerts on social media. Information will be provided to national landlord's associations, which may have members operating in the Gateshead area, and to members of Gateshead Private Landlords Association.

Alternative Options

36. The Council must consider the use of RROs when a landlord or property agent has been convicted of one of the prescribed offences. The proposed policy approach set out at Appendix 2 will provide the Council with a clear and robust policy with which to undertake this statutory duty.
37. Should the Council's activities lead to a Banning Order, the Council must make an entry on the Rogue Landlords database.
38. The ability to impose a Financial Penalty has been provided as an alternative option to Prosecution. Government expects that local authorities develop their own policy on when it will be appropriate to prosecute and when to impose a Financial Penalty and to decide which option to pursue using that policy on a case by case basis. Prosecution may continue to be the most appropriate option where an offence is particularly serious or where the landlord has committed similar offences in the past. The policy sets out how the options will be considered on a case by case basis.

Implications of Recommended Option

39. Resources

a) Financial Implications -

Funding the inspection and enforcement activity

The Council already has the skills, mechanisms and authority in place through the Private Sector Housing Team within Communities and Environment to investigate the offences described and to take the forms of action that already exist with the Housing Act 2004. Development and early implementation work to use the new powers will be significant but within the scope of the Team and achievable with the resources available.

To increase the scale of inspection and enforcement relating to rented homes the Government has created the Rent Repayment Orders and Financial Penalties (Amounts Recovered) England Regulations 2017 alongside the Housing and Planning Act 2016. These regulations make provision about how a local housing authority must treat the monies recovered. Any such monies may be retained by the Council provided that they are used to fund functions given to a local housing authority under Parts 1 to 4 of the 2004 Act (inspection, enforcement, licensing), Part 2 of the 2016 Act (RROs) (or connected with the enforcement of, or promotion of compliance with the law of housing or landlord and tenant by a landlord or a property agent as they relate to the private rented housing). If those monies are not used for that purpose the Council must pay them into the Consolidated Fund.

The Strategic Director, Corporate Resources confirms that there are no financial implications for the Council unless monies earned from RROs and Financial Penalties fail to be re-invested in Private Sector Housing Team inspection and enforcement activity. Monies earned that are not reinvested in this way must be paid to the Consolidated Fund.

To track the use of the RRO and Financial Penalty powers and the monies earned the Private Sector Housing Team database 'Authority Public Protection' (APP) will be amended to include a framework against which activity and monies earned can be recorded and monitored. Corporate Finance's recommendations about invoicing those who incur a Financial Penalty and tracking debt using the Corporate 'Agresso' Financial Management system will be followed. Private Sector Housing Team management will work closely with Corporate Finance to ensure that the team is adequately staffed, and monies appropriately spent.

The costs that may be incurred in defending appeals to the First-tier Tribunal are difficult to quantify at this stage, and whilst very few appeals to Tribunal are currently made against Private Sector Housing related enforcement work it is possible that in making Financial Penalties, this will increase. It is encouraging that in the seventeen months since Financial Penalties came into effect, the First-tier Tribunal has received just six appeals in respect of appeals against Financial Penalties made by northern Local Authorities, and none have been quashed as a result. A Private Sector Housing Team member has recently met proactively with members of the Tribunal to better

understand their methods and to ensure that decisions made to impose Financial Penalties are robust and likely to be successfully upheld in the event of an appeal.

A robust policy approach to enforcement, and supervision and monitoring of the use of the Powers will be required to protect against unsuccessful enforcement action. This is set out in Appendix 2.

Debt recovery

RROs and Financial Penalties seek to influence the behaviour of the worst landlords. A proportion of landlords will pay when in receipt of the notice that the Private Sector Housing Team will issue when a Financial Penalty is imposed, or when a First-tier Tribunal orders the repayment of benefit monies received. It is likely that those whose behaviour is the most serious and prolific will seek to avoid their responsibilities and will require debt recovery action from the Council's Litigation team. Taking swift and timely action against these landlords will be critical to impact upon their behaviour in relation to the management of their rented homes.

The approach to Debt Recovery action is set out in Appendix 2 and has been created in consultation with Gateshead Council's Litigation Team.

Other financial implications

There will be no impact on compliant business, charities or voluntary bodies. There will be a financial impact experienced by those who break the law.

b) Human Resource Implications

Existing staffing resources within the Private Sector Housing Team will be used to develop and implement the policy. The ability to seek RROs or to impose Financial Penalties will not in themselves trigger more property inspections or enforcement activity at the outset but will provide additional routes to tackling the unscrupulous practices that already come to the Team's attention. Monitoring and review of the use of the RRO, Financial Penalty and Banning Order powers will be undertaken to ensure that any monies earned are reinvested in inspection and enforcement activity. This may allow in due course the appointment of additional staff. This monitoring and review will be carried out in consultation with the Council's Corporate Finance officers.

c) Property Implications - None

40. **Risk Management Implications** - It is essential that the implementation of the proposed policy approach set out within Appendix 2 is carefully managed and monitored to ensure that in the absence of Court proceedings decisions to impose Financial Penalties and to seek RROs are robust and in accordance with the agreed policy. To avoid reputational damage or the costs associated with avoidable successful appeals against enforcement action, evidence demonstrating offences will be sufficient, admissible, reliable and credible in accordance with the CPS Code for Crown Prosecutors.

41. **Equality and Diversity Implications** - The proposal will not discriminate against any groups or individuals within Gateshead in relation to their protected characteristics.
42. **Crime and Disorder Implications** - The new powers have been created to allow local authorities to tackle rogue and unscrupulous landlords. The worst offenders are sometimes also those that are connected with organised crime, and that use rented homes as part of their criminal activity. This might include the operation of brothels, cannabis farming or human trafficking. The ability to punish these offenders and to disrupt their activity within the private rented sector will contribute to tackling associated crime and disorder.
43. **Health Implications** - Housing condition and health are closely connected. Private Sector Housing Stock data for Gateshead shows that the areas with concentrations of privately rented homes that do not meet basic minimum standards are also those with the highest levels of deprivation. This proposal seeks to use the new powers to change the behaviour of those who let homes that are in a poor condition, or to encourage them to leave the sector entirely. It is intended that the condition of homes and the behaviour of those that manage privately rented homes will be improved as a result.
44. **Sustainability Implications** - None.
45. **Human Rights Implications** - None
46. **Area and Ward Implications** - Requests for help from private sector tenants are received and investigated from all areas and wards of Gateshead, and whilst there is no intention to target geographically the use of the new powers, it is possible that greatest activity will take place where demand from tenants, and the proportion of private rented stock is highest, in central Gateshead and parts of the west of the Borough.