

Report title	Amendment to Housing Enforcement and Charging Policy	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Peter Bilson City Assets and Housing	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All Wards	
Accountable Director	Kate Martin, Service Director – City Housing	
Originating service	Private Sector Housing	
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Report to be/has been considered by	Strategic Executive Board	2 October 2018

Recommendations for decision:

The Cabinet is recommended to:

1. Approve an amendment to the Council's housing enforcement and charging policy to underpin a more robust, proactive and zero tolerance approach to enforcement.
2. Approve the adoption of a new scheme of discounts applied to licensing fees, up to a maximum of 50% cumulative discount, as set out at paragraph 15.4 of this report, to encourage the active engagement of landlords with accreditation at a local, regional and national level, as part of the policy.
3. Approve the adoption of changes to the duration of Houses in Multiple Occupation licences to encourage landlords to apply for a Houses in Multiple Occupation licence in a timely manner as set out in paragraphs 18 and 19 of this report.
4. Approve penalties for late submission of Houses in Multiple Occupation licence applications as discussed in paragraph 17 of this report.

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[NOT PROTECTIVELY MARKED]

5. Approve a revised discount structure for the early payment of Civil Penalties discussed in paragraph 22 of this report.

1.0 Purpose

- 1.1 The purpose of this report is to utilise recent key changes in the law to refresh and amend the existing housing enforcement and charging policy.
- 1.2 To ensure that the refreshed policy maximises the positive effect on the quality of private sector housing and contributes to the ambition outlined 2030 City Vision and Public Health Vision which highlights good quality housing as a key determinant of health and wellbeing.
- 1.3 To ensure that the new powers are used to penalise the criminal landlords within the City providing some of the worst housing conditions and to incentivise and promote the work of the good landlords providing safe and healthy accommodation for our most vulnerable residents within the private rented sector.

2.0 Background

- 2.1 The Housing Enforcement and Charging Policy was approved by Cabinet at their meeting on 13 September 2017.
- 2.2 Contained within that policy document was all relevant legislation and powers conferred to the Council to effectively discharge duties under the Housing Act 2004.
- 2.3 In December 2017 Central Government announced plans to extend the mandatory licensing of Houses in Multiple Occupation (HMO). The exact details of the changes were not decided until very recently in 2018.
- 2.4 An initial paper presented to the Housing Board earlier this year recommending a more robust approach to landlords who continue to provide the worst housing conditions and put the lives of their tenants in danger was welcomed.
- 2.5 A culmination of these events has led to the need for certain amendments to be made to the existing enforcement policy.

3.0 Private Sector Housing Service

- 3.1 Historically the private sector housing service has always operated a light touch enforcement approach, with the emphasis on education and engagement rather than enforcement.
- 3.2 This approach has worked well for some landlords, but others have used it as an opportunity to continue bad practises as the Council would provide them with additional time if caught. This is evident by the same portfolio landlords committing serious offences repeatedly, the increasing number of poorly managed HMO's and dangerous conditions being witnessed by officers every day.

- 3.3 The Homeless Reduction Act 2017 has strengthened the duty on local authorities to discharge their homelessness duty into the private sector. The cap on welfare benefits and the increased age criteria of the shared room rate has made the market fertile for HMOs.
- 3.4 Whilst it is recognised that HMOs are the only realistic and affordable housing solution for an increasing number of single people under the age of 35, without the proper regulation of HMOs we are at risk of sending some of our most vulnerable clients into the most dangerous conditions, where alcohol and drug dependency is prevalent.
- 3.5 Central Government, having recognised the need for more stringent regulation within the private rented sector, in particular HMOs, have armed local authorities with stronger powers such as the provision to issue Civil Penalties up to £30,000 per offence and have extended the mandatory licensing of HMOs.
- 3.6 When issued with these powers, the direction from Central Government was an expectation that they will be used by local authorities to their maximum effect, as a way of either forcing criminal landlords to comply or to drive them out of the market.

4.0 Rent with Confidence

- 4.1 Since 2016 the private sector housing service in conjunction with Public Health have operated a star rating scheme for private landlords and properties.
- 4.2 Wolverhampton were the first local authority to operate a scheme of this kind as a way to engage with landlords, improve housing standards and to aid tenants in making better choices. This has included advisory inspections, incentives and discounts for the good landlords. To date over 1,000 landlords are registered on the scheme.
- 4.3 However there is a cohort of landlords who refuse to engage with the Council and continue to operate in a criminal manner.

Enforcement

5.0 Current Enforcement

- 5.1 Private Sector Housing receives approximately 550 requests for service each year. These are from tenants living in private rented properties in need of assistance, as well as referrals from other agencies such as the police and fire services.
- 5.2 Until now it was believed that these were the most vulnerable members of the private rented market and the service was targeting time and resources into this area.
- 5.3 However, following proactive checks on properties as part of multi-agency operations such as with colleagues from the United Kingdom Visa and Immigration Service; these properties were found to be in poor condition. Due to the vulnerable nature and status of this particular cohort of residents they were unable to complain to the Council's service. These circumstances allow unscrupulous landlords to exploit such people and keep them in some of the worse conditions, knowing that there will be no recourse.

5.4 Another such area of concern is that of the migrant population within the Private Rented Sector who, due to language barriers or being unaware of their rights or the help available, can be easily exploited by unscrupulous landlords. These people are also at particular risk of issues such as modern-day slavery.

6.0 New Approach

6.1 The private sector housing service will now be adopting a proactive, intelligence led approach.

6.2 Information gathered from internal sources such as housing benefits, council tax, environmental health and public protection and external partnerships such as the police and fire service, will be used to target areas with large numbers of potential HMOs.

6.3 Officers will be tasked to carry out unannounced visits of properties to ascertain occupancy and conditions.

7.0 Zero Tolerance

7.1 Where evidence of poor conditions, such as overcrowding, fire and other hazards are witnessed, private sector housing will adopt a zero-tolerance approach.

7.2 This will be effective where licensable HMOs are found to be operating without a licence and where HMOs are found to be in poor conditions in contravention of the HMO management regulations.

7.3 In order to ensure fair, consistent and proportionate enforcement, each case will be prepared in line with our enforcement policy and offenders will always be given the opportunity to make representations for why they have broken the law.

8.0 Impact of intervention

8.1 When dealing with illegal HMOs, officers will be minded to the fact that tenants could face homelessness as a result of the Council's intervention. This will always be balanced with the risk posed to individuals by remaining in such conditions. Where issues such as illegal eviction are suspected, a dedicated illegal eviction and harassment officer will work within the team to investigate such cases and prosecute perpetrators where necessary.

8.2 Officers may also uncover issues which are highly prevalent in poorly managed HMOs such as human trafficking, modern day slavery, criminal behaviour relating to drug abuse and sex trade.

8.3 When not already present, joint working protocols will be put in place with the police service, fire service, gang masters licensing authority and the United Kingdom Visa and Immigration Service.

HMO Licensing

9.0 The Housing Act 2004 introduced the mandatory licensing of certain Houses in Multiple Occupation. The criteria set in the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 was:

- A property with 5 or more occupants, from 2 or more households, sharing amenities bathrooms/kitchens, the property having three or more storeys.

The City of Wolverhampton Council have licensed 130 under this definition.

10.0 New licensing Regime

10.1 As of 1 October 2018 the definition of mandatory licensing changes (as per the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018) to:

- A property with 5 or more occupants, from two or more households, sharing amenities bathrooms/kitchens. The requirement of three storey has been removed.

It is estimated that an additional 500 properties will fall under this criteria.

11.0 Licensing Enforcement

11.1 Private Sector Housing have historically always given the landlord of a licensable HMO operating illegally, a grace period of 28 days to apply for a licence.

11.2 This has allowed a culture of non-compliance as there is no recourse for landlords once found operating outside of the law.

12.0 New Zero Tolerance Approach

12.1 Where landlords are found operating a licensable HMO without a licence, they will be subject to enforcement either via a civil penalty or prosecution.

HMO Licensing Fees

13.0 Licence Fees

13.1 The current fee for a HMO licence in Wolverhampton is £650. This fee was calculated using a national best practise toolkit which included various elements of licensing such as the administration, processing, inspections and enforcement.

14.0 Current HMO Licensing Fee Discounts

14.1 Cabinet approved a discount framework in September 2017 that gave the following discounts in line with Rent with Confidence:

- 5 Star – 100%
- 4 Star – 66%
- 3 Star – 33%

14.2 The rationale behind this discount structure was that good landlords who do not require additional officer time or resource should not subsidise bad landlords.

15.0 Gaskin V Richmond 2018

15.1 A case heard in the high court this year where a landlord refused to pay the full licence fee to the local authority on the basis that it was excessive, has resulted in the following decision:

- a. The court determined that the fees charged by local authorities for the licencing of a House in Multiple Occupation (HMO) can be based only on the cost of processing the licence application.
- b. The fees cannot include a sum to cover other costs that the council incur in running a licencing scheme, for example the costs of enforcement.

15.2 Due to this ruling we are no longer able to offer 100% discount to even the best (5 stars) landlords as the administration cost for processing licences is the same for all landlords.

15.3 On this basis, the following alternative discount structure is proposed:

15.4 Discounts available:

- 10% for landlords who are members of the Midland Landlord Accreditation Scheme
- 10% for landlords who are members of the Residential Landlord Accreditation Scheme / National Landlords Association
- 10% for 3 stars landlord and property
- 20% for 4 stars landlord and property
- 30% for 5 stars landlord and property
- Total cumulative discount available is a maximum of **50%**

16.0 Extension to Mandatory Licensing of Houses in Multiple Occupation Commencement Date

16.1 The commencement date of 1 October 2018 has been set by Central Government with no lead-in period. This means anyone operating a licensable HMO without a licence or at least without having submitted a valid application for a licence is breaking the law.

Communication

16.2 The private sector housing service has followed a communication plan to educate landlords and ensured that they are adequately notified of this change in the law. The plan has involved the following:

- Letters were sent to all existing landlords of the then licensable HMOs in 2017.

- Officers have communicated this change to all landlords with whom they have made any contact.
- The Council's website has been updated with details of the change since February 2018.
- All emails sent out by officers contain the details of the change in legislation.
- A quarter page advert has been published in the Express and Star newspaper for 4 weeks beginning in August 2018.
- All screens in the Civic Centre and all libraries have detailed changes to this piece of legislation.
- All social media linked to the Council has had regular updates on this change since December 2017.
- Landlords have been updated quarterly at the private sector housing forum.

17.0 Penalties for late Submission of Applications of existing HMOs

- 17.1 It is proposed that late applicants will as a rule not be able to avail themselves of the discounts proposed above.
- 17.2 Furthermore, they may also be issued with a shorter licence period depending on factors such as if they are a portfolio landlord and thus would have been aware of the changes in law. The proposed change to licence duration is discussed below:

18.0 Current Duration of Licences

- 18.1 Section 68(4) of the Housing Act 2004 provides for a local authority to issue a licence for a maximum period of 5 years. There is no minimum term set and, historically, the Council has issued a five-year licence to all.

19.0 Proposed Licence Duration

- 19.1 Landlords applying before 1 October 2018 for existing licensable HMOs or within 1 month of commencement of a new licensable HMO will receive a five year licence.
- 19.2 Landlords of existing HMOs applying between 1 October 2018 and 1 April 2019 will receive a three year licence.
- 19.3 Landlords of existing licensable HMOs applying for a licence after 2 April 2019 will receive a one year licence.
- 19.4 The Council will take action against Landlords found to be operating a licensable HMO without a licence, and will be issued with a Civil Penalty or prosecuted. If they subsequently apply for a licence, they will be given a one year licence with no discounts. On renewal, they may be issued with a longer term licence if there is evidence of an improvement in working practices.

20.0 Licence Conditions

20.1 Where conditions are attached to a licence with a timescale to comply, a reinspection will be carried out when compliance is due and failure to comply with said condition(s) will result in enforcement in the form of service of a civil penalty or prosecution.

21.0 Civil Penalties

21.1 The issuing of a civil penalty will be considered as an alternative to prosecution for the following offences:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004) i.e. operating a licensable HMO without a licence;
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004); i.e. not complying with conditions on a licence
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004).
- Breach of a banning order (section 21 of the Housing and Planning Act 2016).

21.2 The level of civil penalty will be based upon the matrix approved in the original enforcement policy.

22.0 Discount for level of Civil Penalties

22.1 Whilst the proactive and zero tolerance approaches discussed in this report aim to fine the criminal landlords and punish them appropriately, provision will be made for the effective rehabilitation of offenders.

22.2 First offenders, where admission of guilt is forthcoming at the earliest opportunity and remedial works are carried out without delay, will be afforded discounts based on aggravating and mitigating factors of the case.

23.0 Evaluation of alternative options

23.1 The alternative of continuing to enforce in a reactive and light touch way will mean that some of our most vulnerable residents who cannot complain to us will continue to be exploited by criminal landlords and be forced to live in the worst housing conditions.

24.0 Reasons for decisions

24.1 Worsening conditions within the private rented sector along with additional powers from Central Government with direction to use them to their maximum capacity make the

proactive, zero tolerance enforcement approach the most appropriate and effective way to tackle this very serious issue.

25.0 Financial implications

25.1 Whilst the principal driver for this approach is to ensure that housing standards within the private rented sector improve; ensuring vulnerable residents in the City are able to live in safe and healthy conditions; the issuing of civil penalties provides for local authorities to heavily, financially penalise landlords. It is for each local authority to then report back to MHCLG how much income was generated and to evidence how and where this was used to ensure better enforcement and growth of improved housing conditions.

25.2 Penalties will be calculated by taking into account the following factors:

25.3 Culpability

25.4 The level of culpability of the landlord will be deemed as low, medium or high. Factors taken into consideration will be portfolio landlords, members of landlord accreditation schemes or landlords who have previously been subject to intervention (education or enforcement) by the Council would be reasonably expected to know their legal responsibilities.

25.5 Harm

25.6 The level of harm will be deemed as low, medium or high. Factors taken into consideration will be for example, lack of fire detection in HMOs, structural, electrical hazards.

25.7 Penalty

25.8 Taking these two factors into account and using the financial penalty grid provided nationally as best practise and adopted in the originating enforcement policy; a fine is determined.

25.9 The financial implications of this approach will result in the service generating income through civil penalties. By direction of central government, this income must be ring fenced to the private sector housing team and put towards more and better enforcement.

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26.0 Legal implications

26.1 As mentioned previously, the introduction of Civil Penalties provides for an appeal to the Land Tribunal, which may delay the process and challenge the Council. This needs to be taken into account in the type of enforcement chosen but also for staff availability and training.

26.2 Specific training is being provided on a case by case basis and specific training will be provided to the team to deal with the new zero tolerance policy.

26.3 A robust enforcement mechanism has now been put in place for consistency and to guard against any type of challenge.

[LW/26092018/K]

27.0 Equalities implications

27.1 This report has significant equal opportunities implications as many people living in the private rented sector and in particular in HMOs, suffer multiple deprivation and endure some of the worst housing conditions. They are also some of the most vulnerable members of society who are exploited by criminal landlords. The robust approach set out in this report aims to serve and protect the health, safety and wellbeing of these very people.

28.0 Environmental implications

28.1 There are no environmental implications arising from this report.

29.0 Human resources implications

29.1 Additional officers may be required based on levels of enforcement.

30.0 Corporate landlord implications

30.1 There are no corporate landlord implications arising from this report.

31.0 Schedule of background papers

Cabinet – 18 October 2017 [‘Housing Enforcement and Charging Policy’](#)