

# Cheshire East Council

## Cabinet Holder for Housing and Planning

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**Date of Meeting:** 1<sup>st</sup> August 2017

**Report of:** Executive Director, Place

**Subject/Title:** Housing Enforcement Policy

**Portfolio Holder:** Councillor Ainsley Arnold, Housing and Planning

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### 1. Report Summary

- 1.1. Cheshire East Council is committed to being a proactive and enforcing Council to create the right conditions for the private rented sector to thrive. We want to, encourage and support good landlords, demonstrating through our actions that poor standards of property management and letting out substandard accommodation will not be tolerated.
- 1.2. Changes brought into effect by the Housing and Planning Act 2016 have provided an opportunity for the Council to strengthen its message to poor landlords by introducing financial penalties and rent repayment orders for certain housing offences, including fire safety offences.
- 1.3. The Cheshire East Enforcement Policy and service specific enforcement policies were approved by Cabinet in July 2016, including a Housing Enforcement Policy. To be able to utilise the new powers conferred on it through the Housing and Planning Act 2016, the Council must amend its existing policy to set out how civil penalties and rent repayment orders will be used.
- 1.4. This report outlines the changes in the legislation and seeks to amend the service specific enforcement policy appended to the Cheshire East Enforcement Policy in relation to Housing functions.

### 2. Recommendation

- 2.1. It is recommended that the Portfolio Holder:
  - Approve the Service Specific Housing Enforcement Policy that is appended to the Cheshire East Enforcement Policy, and
  - Authorise the Executive Director, Place to put all necessary steps in place to implement the Policy.

### **3. Other Options Considered**

- 3.1. There is the option to continue to carry out enforcement activity in line with the Service Specific Housing Enforcement Policy approved in 2016. However, this would not afford us the option of applying civil penalties and rent repayment orders which will act as a deterrent to poor practice in the private rented sector.
- 3.2. The Council could utilise prosecution through the courts as its preferred method of dealing with certain housing offences; this is a slow process and uses considerable legal resources. Civil penalties provide an option that reduces the amount of resource needed to bring a case to a successful conclusion.

### **4. Reasons for Recommendation**

- 4.1. There is a statutory requirement for Cheshire East Council to have an appropriate enforcement policy in respect of the regulatory services that it provides.
- 4.2. The private rented sector is an important part of the housing offer in Cheshire East, with the sector now overtaking social housing in size. It is important that the quality of housing in this sector is regulated to protect residents' health, safety and wellbeing and prevent exploitation of vulnerable people.
- 4.3. Fire safety must be at the forefront of our minds; these additional powers can be used to reinforce the message to landlords that lack of attention to the safety of their tenants will not be tolerated.

### **5. Background/Chronology**

- 5.1. The Cheshire East Enforcement Policy was approved by Cabinet in July 2016 and applies to all regulatory areas delivered by the Council including Environmental Health, Trading Standards, Planning, Building Control, Licensing, Housing, Antisocial Behaviour, Waste and Littering, Parking, the Blue Badge Scheme and Public Rights of Way.
- 5.2. The Enforcement Policy provides guidance to businesses, residents and officers on the range of options that are available to achieve compliance with legislation enforced by each of the services. It is designed to help businesses and individuals understand our objectives and methods for achieving compliance as well as the criteria we consider when deciding the most appropriate response to a breach of legislation.
- 5.3. The Enforcement Policy comprises of an overarching policy of enforcement which is supplemented by appendices for each of the specific regulatory service areas. This arrangement allows for clearer detail on statutory guidance and code of practice that may be specific to individual service areas and which must be considered as part of their regulatory effort. The

service specific Housing Enforcement Policy which is appended to the main Enforcement Policy details the proportionate approach that the Council takes to enforcement of housing standards, and details the sanctions available to the Council.

- 5.4. The Housing and Planning Act 2016 introduced a range of measures to tackle poor landlords, including civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences, and the extension of rent repayment orders to cover additional offences. Both changes came into effect on 6 April 2017.
- 5.5. Statutory guidance issued on 6 April 2017 detailed the requirement for local housing authorities to develop and document their own policy on when to apply these sanctions and should decide each case independently.
- 5.6. Civil Penalties can be used as an alternative to prosecution for the following offences under the Housing Act 2004:
  - Failure to comply with an Improvement Notice (section 30) for hazards such as excess cold, falls, domestic and personal hygiene, and fire;
  - Offences in relation to licensing of Houses in Multiple Occupation (section 72);
  - Offences in relation to licensing of houses under Part 3 of the Act (selective licensing) (section 95);
  - Offences of contravention of an overcrowding notice (section 139)
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234), including fire safety and waste management.
- 5.7. Unlike civil penalty notices in other areas of the Council's regulatory powers, civil penalties for housing offences can not be applied as on the spot fines. They can be used as the culmination of a process where a landlord has failed to carry out corrective actions that the Council requires from them and the appeal and notice periods have expired.
- 5.8. The maximum civil penalty that can be applied is £30,000. The amount of penalty is to be determined by the Council in each case, having regard to statutory guidance which sets out the factors to take into account when deciding on the appropriate level of penalty. Only one penalty can be imposed in respect of the same offence.
- 5.9. The amended Policy details how the Council will establish whether the circumstances of the housing offence(s) warrants a civil penalty or prosecution, taking into account factors such as vulnerable occupants of the property, previous action taken by the Council and previous housing offences.
- 5.10. The Policy also details the level of civil penalties that will be applied. For the most serious offences where there is a serious adverse effect on an occupant, or a high risk of there being a serious adverse effect, and there

is a high degree of culpability, then the maximum civil penalty of £30,000 will be applied. The lowest civil penalty that will be applied is £1,000. A civil penalty should not be a lower cost to offend than to take the appropriate precautions, and in the event that the appropriate civil penalty taking into account the degree of culpability and harm is lower than the cost of works needed to remedy the disrepair, then the civil penalty will be adjusted upwards.

5.11. Rent repayment orders can be applied for by either a tenant or a local authority where a landlord has committed certain housing offences, and a maximum of 12 months rent has to be repaid to the tenant, or where the rent was paid by Housing Benefit / Universal Credit, repaid to the local authority.

5.12. The housing offences where rent repayment orders can be applied for are:

- The landlord has failed to obtain a licence for a property that was required to be licensed (s.72 and s.95, Housing Act 2004);
- The landlord has failed to comply with an Improvement Notice (s.30, Housing Act 2004);
- The landlord has failed to comply with a Prohibition Order (s.32, Housing Act 2004);
- The landlord has breached a Banning Order (s.21, Housing and Planning Act 2016, to be implemented from 1 October 2017);
- The landlord has used violence to secure entry to a property (s.6, Criminal Law Act 1977);
- The landlord has illegally evicted or harassed the occupiers of a property (s.1, Protection from Eviction Act 1977).

5.13. A conviction does not need to be secured before a rent repayment order can be applied for. A Property Tribunal must be satisfied beyond reasonable doubt that an offence has been committed, so a rent repayment order can be applied for alongside the use of a civil penalty for relevant offences, it is not reliant on a prosecution being sought.

5.14. Where a landlord has been convicted of an offence, the Tribunal must order that the maximum amount of rent is repaid (12 months rent). Where an offence has been committed but a conviction has not been sought, then the local authority can apply for an amount of up to the maximum level. The Council's policy is to seek to recover the maximum amount permitted in every case, except where there are mitigating factors such as the conduct of the landlord or the landlord's financial circumstances.

## **6. Wards Affected and Local Ward Members**

6.1. All wards.

## **7. Implications of Recommendation**

### **7.1. Policy Implications**

7.1.1. The Policy supports the Council's ambition to be an Enforcing Authority that is tough on residents and businesses that are selfish and cause harm to others.

7.1.2. The Policy supports Outcome 5 'People live well and for longer' by using our enforcement powers to bring about housing improvements to give everyone the life chances afforded to them by living in a good quality, stable home.

### **7.2. Legal Implications**

7.2.1. The Housing and Planning Act 2016 introduced statutory powers for local authorities to use civil penalties as an alternative to prosecution, and extended the purposes for which rent repayment orders can be used. These powers commenced on 6 April 2017. Statutory guidance issued by the Department for Communities and Local Government on that date stipulated that local housing authorities must have regard to the guidance in the exercise of their functions.

7.2.2. By publishing its Policy, the Council has fulfilled the statutory requirements that it must have documented its own policy on the justification factors for using civil penalties and how it will calculate the level of penalty, and when it will apply for rent repayment orders.

### **7.3. Financial Implications**

7.3.1. Income received from a civil penalty or a rent repayment order can be retained by the local housing authority provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector.

### **7.4. Equality Implications**

7.4.1. The aim of the Policy is to outline a transparent and consistent approach to enforcement across Cheshire East. As a consequence there are no equality implications.

### **7.5. Rural Community Implications**

7.5.1. There are no specific implications for rural communities.

### **7.6. Human Resources Implications**

7.6.1. No extra resources are needed to implement the amended Policy; civil penalties can be used as an alternative to existing powers.

## **7.7. Public Health Implications**

- 7.7.1. The Policy will facilitate services which directly impact on public health. Housing improvements will benefit vulnerable residents' mental and physical wellbeing and reduce demand on health and social care services. Cold and damp homes increase the risk and effects of cardiovascular, respiratory and rheumatoid diseases, as well as hypothermia and mental ill health. Young children, older people and people with an illness or disability are more likely to suffer the effects of cold and damp housing.

## **7.8. Implications for Children and Young People**

- 7.8.1. The Policy will provide opportunities for children and young people in low income vulnerable families to live in safe, warm and comfortable homes.

## **8. Risk Management**

- 8.1. Publication of a Policy which sets out clear criteria provides a robust framework to ensure that decisions about enforcement are made in a fair, consistent and equitable manner.
- 8.2. Failure to adopt an enforcement policy can increase the risk of legal challenge and adverse scrutiny. Care has been taken to ensure that the Council is not unduly constrained in taking the appropriate regulatory action. If a policy is too restrictive then this could be detrimental to fair and effective regulation; conversely there is a need to provide detail to allow individuals and businesses to understand what they might expect as a result of non compliance.

## **9. Access to Information/Bibliography**

- 9.1. A copy of the Cheshire East Enforcement Policy can be accessed via the following hyperlink:

<http://www.cheshireeast.gov.uk/business/enforcement/enforcement-policy.aspx>

- 9.2. Statutory guidance on civil penalties can be accessed via the following hyperlink:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606653/Civil\\_Penalties\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf)

- 9.3. Statutory guidance on rent repayment orders can be accessed via the following hyperlink:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606654/Rent\\_Repayment\\_Orders\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf)

## 10. Contact Information

Contact details for this report are as follows:

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