



Cabinet Member Report

Decision Maker:	Councillor Heather Acton, Cabinet Member for Communities and Regeneration
Date:	July 2021
Classification:	General Release
Title:	Private Housing & Lettings Enforcement Policy 2021
Wards Affected:	All
Key Decision:	An entry was included in the Forward Plan of Key Decisions enabling a decision to be made from 28 th June 2021
Financial Summary:	The proposed penalties to be adopted is set out in the appendices to the Policy, appended to this report.
Report of:	Sue Jones, Head of Service Public Protection & Licensing

1.0 Executive Summary

- 1.1 Westminster has the largest private rented sector in England with an estimated 52,700 properties¹ making up 43% of all housing. It has grown over the last decade, both in numbers and as a proportion of all housing in the city – making up 40% of the stock in 2011, with 41,900 properties. Rents in Westminster are some of the highest in London, behind only Kensington and Chelsea and the City of London. The cheapest room in a shared house can cost around £160 per week and a median rent for a one-bedroom home is 41% higher than the London average – rising to 65% higher for a two-bedroom home. The way in which people rent accommodation has also changed significantly with both regulated and unregulated online platforms offering easy access to rooms in multiple occupancy properties.
- 1.2 We recognise that the majority of this housing is in good condition, let fairly and is well managed. However, conditions in the private housing market tend to be less satisfactory than any other occupancy type. There are some landlords and agents who exploit tenants and rent sub-standard, overcrowded and potentially dangerous accommodation. Not only does this impact the tenants but it can also affect neighbours and the local community. The risk of overcrowding and fire can also be greater, with many converted buildings, not originally designed for multiple and mixed use occupation.
- 1.3 With the expansion of the private rented sector, a large letting agent industry has also grown in London, which accounts for around 40% of all letting agents in England. It is

² MHCLG estimate

estimated that there are 10,000 such agents now operating in London. There is also evidence of widespread non-compliance with legal requirements in the sector. Recent (2018-19) enforcement data from the London boroughs suggests that only around a half (54%) of London letting agents were fully compliant with the law when inspected by Trading Standards Officers.

- 1.4 The Council is committed to ensuring that all our homes in Westminster are safe, in good condition, are let fairly and are well managed. It is further committed to protecting tenants and landlords by ensuring that all property agents in Westminster are compliant with the relevant regulatory requirements. This policy sets out how we will work with owner-occupiers, lettings agents, landlords, property managers and housing providers to ensure that they are compliant with the law; the decision-making process for sanctions; and the level of penalty we may impose on those who breach their responsibilities and risk residents' safety.
- 1.5 The Council's Private Rented Sector (PRS) Enforcement Policy was introduced in 2018. The Council has revised and expanded this policy to include updates in legislation (such as the introduction of Electrical Safety and Minimum Energy Efficiency Standards Regulations 2020), the enforcement penalties for noncompliance with the Council's Additional Licensing scheme for Houses in Multiple Occupation (HMOs), and the enforcement penalties for letting agent and property management noncompliance (drafted in conjunction with the London Trading Standards Group to ensure consistent enforcement across London). When considering the culpability of letting agents, attention is drawn to the professional status of the sector, as well as the extensive guidance provided by and available from industry bodies, and requirements for compliance from statutory redress schemes.
- 1.6 The revised policy seeks to:
 - set out clearly our approach to standards, lettings and property management enforcement in the Private Housing Sector, and the range of enforcement options available to officers under multiple pieces of legislation;
 - ensure that our enforcement is consistent and transparent;
 - ensure all new legislation is incorporated and acted on within current working practices.
- 1.7 This policy includes:
 - A summary of Landlord, Letting Agent & Property Management Agents' Responsibilities
 - The Council's enforcement approach and how we determine a level of financial penalty for non-compliance
 - The Council's commitment to the National and London Rogue Landlord and Agent database

1.8 If approved the Policy 2021 will come into effect on 1st November 2021

2.0 Recommendations

- (i) That the Cabinet Member for Communities and Regeneration approves the Private Housing and Lettings Policy 2021 and the accompanying Civil Penalties Matrix (Appendix A)
- (ii) That delegated authority is given to the Director of Public Protection and Licensing to approve minor modifications and updates to the policy, such as changes to legislation, in collaboration with the Cabinet Member for Communities and Regeneration.
- (iii) That delegated authority to carry out enforcement and issue penalty notices is given to an officer authorised by the Executive Director of Environment and City Management.
- (iv) That these recommendations, if approved, will be implemented from **4st November 2021**

3.0 Reason for Decision

3.1 The Council requires approval to publish a refreshed and expanded Private Housing and Lettings Enforcement Policy, following the introduction of the Council's additional licensing scheme for HMOs, the national expectation for localised policies that outlines the level of penalty fines related to non-compliance, as well as broader changes to legislation relating to Private Housing Enforcement.

4.0 Private Housing & Lettings Policy 2021 Overview

4.1 The draft Policy is attached at Appendix A. A summary of the key elements of the policy include:

Landlord, Letting Agent and Property Manager Responsibilities

4.2 Landlords and letting agents must be aware of, understand, and fulfil their respective rights and responsibilities in order to maintain and improve housing and trading standards. Responsibilities are wide ranging and are covered across an array of relevant legislation. It is for the landlord and letting agent to ensure they are familiar with them. A summary of responsibilities include the following, which is not an exhaustive list:

- implementation of most repairs within the property
- ensuring the property is safe and free from any hazards

- carrying out any work within a reasonable timeframe
- ensuring the property is fit for human habitation throughout the tenancy term (unless tenants have a fixed term tenancy which began before 20 March 2019)
- complying with any planning or building controls
- licensing HMOs and complying with the conditions of their licence
- ensuring any charges and fees are transparent
- ensuring fees and other relevant information relating to redress and client money protection are displayed on websites and in offices as required
- ensuring no prohibited tenant fees are required
- registering with relevant redress and client money protection schemes if required
- avoiding the use of misleading statements or actions and making false representations
- ensuring that all relevant material information is disclosed at the earliest appropriate stage

Enforcement Approach

- 4.3 The type of enforcement taken will vary according to the legislation or guidance being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In other cases, officers have the ability to use informal action as a first step when appropriate, through working with landlords, letting agents, property managers, residents and others offering advice, information and assistance to aid them to reach compliance. In line with the Corporate Enforcement Policy, where an informal approach fails to achieve the desired result, or a failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. In the most serious contraventions possible action will include prosecution. The choice of enforcement action pursued is considered on a case-by-case basis and the most appropriate enforcement option will be applied accordingly. In every case, enforcement seeks to promote and achieve sustained compliance with the law, ensure that action is taken to deal with serious risks, and ensure that those who breach legislative requirements are held to account.

Penalties

- 4.4 The penalty matrix has been updated to provide a points-based scoring system to ensure fine levels are proportionate to particular offences. This follows extensive research through a working group, consultation with other local authorities and case study exercises. The matrix will assist officers in establishing fair and proportionate fine levels appropriate to the harm caused and the financial means of the landlord.
- 4.5 Included within the policy is:

- A civil penalty matrix for housing offences and electrical safety regulations, to assist in the determination of the most appropriate level of penalty (Appendix A of the Policy).
- A statement of principles for determining the appropriate level of penalty under the Smoke and Carbon Monoxide Alarm Regulations (Appendix B of the Policy).
- A statement of principles for determining the appropriate level of penalty under the minimum energy efficiency standards regulations (Appendix C of the Policy).
- Considerations and the determination by Trading Standards of the appropriate level of penalty for letting agent, property management and certain landlord breaches/offences (Appendix D of the Policy).

4.6 Currently the repayment of penalties is a challenge for landlords and therefore, in an effort to encourage payment, the Council has offered a discretionary 20% discount for financial penalties paid promptly.

4.7 In some circumstances, however, and in particular when breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a penalty notice.

5.0 Equalities Impact Assessment

5.1 The Council must have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

5.2 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

5.3 An Equalities Impact Assessment has been conducted and the council believes that the policy does not impact adversely or discriminate unlawfully against any protected characteristics.

6.0 Consultation

6.1 The policy was drafted by Environmental Health and Trading Standards under Public Protection & Licensing, in consultation with legal, policy, and finance colleagues. There is no legal requirement to hold a public consultation.

7.0 Financial Implications

7.1 The proposed civil penalties matrix and penalty charge amounts are set out in the appendices of the Policy.

7.2 Financial penalties are just one type of enforcement action applied by the council. Financial penalties are expected to act as a deterrent to landlords and letting agents in committing offences, and each case is judged on an individual basis. This means that it is difficult to assess the financial impact.

7.3 The financial impact will be monitored. Any income received from the issue of a penalty will be used to improve Council private housing and lettings working practice in line with regulations.

7.4 Penalty Charges are kept under review and may be subject to change. In any event, they will be reviewed on an annual basis, as is the case for other Council charges.

7.5 Complaint and regulation costs will be met through the distribution of existing resources and as such there are no additional costs for resource requirements to the council arising from the recommendations in the report.

8.0 Legal Implications.

8.1 The Council has a statutory duty as a Local Housing Authority to enforce relevant housing legislation. The Private Housing Lettings and Enforcement Policy sets out a useful framework in which officers of the Council will operate when considering the most appropriate course of enforcement action against landlords, letting and managing agents for failure to comply with legislation including the use of informal and formal action and the imposition of financial penalties as an alternative to prosecution. The policy sets out what action the Council can take and the reasons why.

APPENDICES

Appendix A: Private Housing & Lettings Enforcement Policy 2021

BACKGROUND PAPERS none

**If you have any queries about this report, please contact Ian Hennessy
ihennessy@westminster.gov.uk**

For completion by the **Cabinet Member for Communities and Regeneration**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

.....
(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

.....and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Communities and Regeneration

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.