



Reigate & Banstead
BOROUGH COUNCIL
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TO	Executive
DATE	Thursday, 16 th September 2021
EXECUTIVE MEMBER	Portfolio Holder for Neighbourhood Services

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Housing Enforcement Policy and Amendment to the Officer Scheme of Delegation
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RECOMMENDATIONS
<p>(i) That the Housing Enforcement Policy provided as Annex 1 be approved.</p> <p>(ii) That additions to the Officer Scheme of Delegation contained within the Council's Constitution be approved, as set out in Annex 2 in relation to Section 5 (Housing and other Residential Accommodation).</p>
REASONS FOR RECOMMENDATIONS
<p>A documented housing enforcement policy is required to ensure clear and consistent enforcement decisions are taken in relation to the enforcement of housing standards. The original Housing Enforcement Policy was approved by Executive in 2018, and as well as a number of general updates, is returned for Executive approval due to a proposed change of approach regarding charging for the service of formal enforcement notices.</p> <p>The Officer Scheme of Delegation needs to be kept up-to-date and for that purpose it is necessary to add some newly introduced legislation to ensure that all necessary enforcement powers available under the legislation can be utilised.</p>
EXECUTIVE SUMMARY
<p>The Housing Enforcement Policy was originally approved by Executive in 2018 and sits alongside the Environmental Health and Licensing Enforcement Policy. It covers in more detail than is appropriate for the whole service policy, the options available for enforcement of housing standards, primarily in the private rented sector. The main change proposed is</p>

the introduction of charges for the service of specified formal enforcement notices. The policy has also been updated to include a number of new powers to be used when regulating licensed mobile home sites and electrical safety standards in the private rented sector, and to make a number of general updates and improvements to clarity

While the Head of Service with responsibility for Environmental Health has delegated authority to refresh the Housing Enforcement Policy regularly as and when new legislation comes into force, where any significant variations of regulatory approach are proposed, this must still be returned for Executive oversight. The proposed introduction of charges when serving specified formal housing enforcement notices is considered to be such a significant variation of approach, and thus the Policy is presented to Executive for approval.

To enable the practical day-to-day functioning of a local authority, the council may delegate its powers, as it sees fit, to committees, officers and others. The Council's Constitution contains an Officer Scheme of Delegation that documents which decisions are delegated and this report seeks to update that scheme, which is necessary from time to time to incorporate new legislation and to reflect changes in the organisation of functions and services.

It is important that officers' delegated authority be very clearly documented and evidenced to ensure that enforcement action can be shown to be appropriately authorised. An addition is requested to the Council's Officer Scheme of Delegation, to allow new legislative provisions to be enforced where appropriate.

Executive has authority to approve these recommendations.

STATUTORY POWERS

1. The Regulators' Code is a statutory Code of Practice introduced under Section 23 of the Legislative and Regulatory Reform Act 2006. Regulators covered by the code should have an adopted Enforcement Policy in place that incorporates the requirements of the code.
2. The Council is the enforcing authority for a wide variety of housing standards legislation, primarily aimed at securing standards in the private rented sector. This includes the Housing Act 2004 and regulations made under it, as well as the Housing and Planning Act 2016.
3. The updated policy references some new regulations that have been made since the last revision, including the Electrical Safety Standards in the Private Rented Sector Regulations 2020 and the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020.
4. Section 37 of the Local Government Act 2000 requires the Council to prepare, keep up to date and publicise a Constitution. The Scheme of Delegation forms Section 3 of the Constitution. Power exists under section 101 of the Local Government Act 1972 to arrange for the discharge of their functions by officers of the authority.

BACKGROUND

5. Having in place a documented enforcement policy demonstrates compliance with the Regulators Code and serves to inform investigating officers and decision-makers of the framework in which they operate, in addition to providing information to those people and businesses which are regulated and those protected by regulation. While Environmental Health also has a 'whole service' Enforcement Policy, that covers all of Environmental Health and Licensing, it is necessary to supplement this with a more detailed and specific Housing Enforcement Policy, due to the large number of different pieces of legislation applicable to housing enforcement and the wide range of enforcement options available under this legislation.
6. This detailed housing specific policy therefore complements the main enforcement policy, while providing the more detailed framework necessary to support sound regulatory decision making. It is necessary to have a clearly stated policy on how these enforcement options, including both criminal and civil sanctions, will be applied and the factors that will be taken into consideration when enforcing this legislation.
7. It is also sought to amend the Council's Scheme of Officer Delegation to incorporate new housing related legislation, the Electrical Safety Standards in the Private Rented Sector Regulations 2020.

KEY INFORMATION

Introduction of Charges for Formal Notices

8. The introduction of charges for formal notices is the most significant change proposed in the Housing Enforcement Policy and is the rationale for seeking Executive approval of the policy update. While the Head of Service with responsibility for Environmental Health has delegated authority to refresh the Housing Enforcement Policy regularly as and when new legislation comes into force, where any significant variations of regulatory approach are proposed, this must still be returned for Executive oversight.
9. The Housing Act 2004 and The Mobile Homes Act 2013 allow the Council to charge for the service of certain formal enforcement notices to recover the administrative costs and other expenses of the action. To date the Council has not charged for these notices but is now seeking to amend the Housing Enforcement Policy to introduce charges.
10. Formal enforcement notices are legal documents which require the responsible person to take action to remedy an identified problem. Failure to comply with these is an offence punishable by conviction and in some cases, by imposition of a civil financial penalty. The fundamental principal in making a charge for service of a formal enforcement notice is that it should recover the cost of the Council's time in investigating and assessing the issues resulting in service of the notice.
11. The default expectation on all landlords and responsible persons is that their properties will comply with minimum legal standards and that the Council's involvement to enforce standards is a last resort. Complaints about housing

conditions are generally not investigated unless the complainant can show that they have previously raised the matter with their landlord and had no response after allowing a reasonable amount of time to remedy matters. Inspections will in most cases be advised in advance and landlords will have had every opportunity to rectify issues without the need for the Council to become involved. It is therefore not unreasonable that those who require formal intervention should bear the costs of the Council's time in having to do so.

12. It is proposed to introduce a flat rate charge of £450 for the following types of notice; Housing Act 2004:

- serving an improvement notice under section 11 or 12
- making a prohibition order under section 20 or 21
- taking emergency remedial action under section 40
- making an emergency prohibition order under section 43 or
- making a demolition order under section 265 of the Housing Act 1985

Mobile Homes Act 2013:

- Compliance Notices under section 4

13. Additional costs would be charged for external contractors providing specialist assessments e.g. if an electricians report was required in order to determine what remedial action was required in order to take enforcement action. Enforcement charges will be reviewed annually as per the Councils fees and charges setting process.

14. Where enforcement action is taken under the Housing Act 2004 in respect of more than one Housing Health and Safety Rating Scheme hazard and results in service of more than one notice or order, a separate charge will apply to each notice or order served. Where appropriate, hazards may be combined on one notice or order if the remedial works are similar to reduce the hazards.

15. There may also be other circumstances where it is appropriate for legal reasons to serve a number of separate notices or orders (for example, subsequently being able to carry out works in default), but where the Council will decide it is appropriate not to charge for all notices served.

16. The charge proposed is based on a breakdown of officer time required to prepare and serve a formal notice, which is then costed based on calculated officer hourly rates. These include salary (including on-costs of National Insurance and pension) and back office recharge costs. The hourly rates costs used are an established method of consistently charging for staff time at the true cost of providing the service, giving confidence that a robust process has been used to calculate all proposed charges. The approach is consistent with the Council's corporate Fees & Charges Policy that is approved as part of budget-setting each year.

17. Most, but not all Surrey authorities charge for notices, with some using an hourly rate and some a flat fee system. An invoice and Demand for Payment (charge notice) is

issued by the authority when the notice is served. If this is not paid, it is placed as a charge on the property and subject to debt recovery procedures.

18. The numbers of such notices served are not large, with the following providing an indication of how many notices would have come into scope for charging from recent years:

2020-21 = 2

2019-20 = 14

2018-19 = 19

2017-18 = 7

19. The Covid-19 restrictions during 2020-21 resulted in reduced inspections and as such formal enforcement action was lower than is typical.

Mobile Home Sites Enforcement

20. The Policy has been updated to include more detail on the enforcement options available for regulation of licensed mobile home sites available under the Mobile Homes Act 2013. Following the introduction in July 2021 of the Fees and Charges Policy for Licensed Mobile Home Sites, a proactive programme of periodic inspections of licensed mobile home sites is planned, on risk based intervals. This will include some review and updating of licence conditions and possibly some formal enforcement.
21. The Policy has also been updated to include The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, which came into effect from 1st July 2021. From that date and by 1 October 2021, all site owners must have submitted an application to be assessed as fit and proper persons and to be included on a register of fit and proper persons.
22. The approach to enforcement on licensed mobile home sites will be slightly different to that taken for matters under Housing Act 2004 provisions. For example, more use of informal means will be utilised, in line with government guidance on enforcement of these sites. This is in part because the provisions relating to the Deregulation Act 2015 on protection from retaliatory eviction of tenants who have made complaints about housing conditions, do not apply in these sites. There will therefore be a more graduated approach to enforcement taken.
23. Where possible, an informal approach will be taken in the first instance, except where there is a significant risk to health or damage to property, or evidence of previous non-compliance. This would mean working towards an agreed schedule of works to achieve the necessary outcome within reasonable timescales. While formal enforcement action will generally be focused on poorly managed or badly run sites and will be risk based, if an informal approach does not achieve compliance, then action will be escalated to formal enforcement.
24. Compliance Notices served under Section 4 of the Mobile Homes Act 2013 would be subject to a charge of £450 per notice.

Electrical Safety Standards in the Private Rented Sector Regulations 2020 and Addition to the Scheme of Delegation of these Regulations

25. These Regulations concern the minimum standards applying to the testing and condition of electrical installations in privately rented accommodation. They require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested to the Council.
26. The Regulations impose a duty on the Council to serve a remedial notice where it considers there to be a breach of the landlords duties, which requires the landlord to take remedial action within 28 days. Should a landlord not comply with the notice, the Council may arrange for any urgent remedial action to be taken themselves, with the tenants consent.
27. The Council may recover the costs of taking any remedial action. The Regulations also provide for Civil Financial Penalties up to a maximum of £30,000 to be imposed for breaches. The Policy includes the factors that are taken into account in determining the amount of any Civil Financial Penalties.
28. This new legislation is not reflected in the current Scheme of Delegation and to enable the new provisions to be utilised effectively, delegation of the Council's duties and powers to officers is recommended.

OPTIONS

29. The following options may be considered:
 - a) Agree the recommendations to adopt the revised Housing Enforcement Policy and to add the legislation outlined above to the Council's Scheme of Delegation, as set out in the Annexes. This is the recommended option.
 - b) Make amendments to the Annexes and then agree the recommendations as set out in the revised Annexes.
 - c) Do not agree the recommendations. This will significantly hinder the Council's ability to utilise the new provisions, as set out below, and is therefore not recommended.

Rationale

30. **Adopt** the revised Housing Enforcement Policy - this is the recommended option at 29a. The introduction of notice charges will support the Council in its objectives to be a financially self-sustaining Council and to generate additional income and build our financial resilience, by adopting a cost recovery model for enforcement of private sector housing, where this is permitted in legislation. It will also allow for appropriate enforcement of new provisions.

31. **Amend** the revised Housing Enforcement Policy in light of Council feedback at 29b – to approve some, but not all, of the proposed Policy elements would require officers to work with Executive to ascertain which elements should be implemented immediately, and which require further action. To amend the Policy proposals risks under recovery of the costs of enforcement, and the service being unable to meet the income budget expectation that is already in place.
32. Do not adopt the revised Housing Enforcement Policy at 29c – not to adopt the Policy would miss an opportunity to effectively recover some of the costs of housing enforcement, and the service being unable to meet the income budget expectation that is already in place. This would be contrary to the Council’s own objectives and the corporate Fees and Charges Policy. It would also result in the Council being unable to enforce new provisions which have come into effect since the policy was first introduced.

LEGAL IMPLICATIONS

33. There are significant legal implications for incorrect enforcement decisions, as the Council could be vulnerable to legal challenge and incur substantial legal costs in the event of incorrect process being followed. Regular revision and updating of the Housing Enforcement Policy reduces the risk of this happening.
34. Inclusion of the details of enforcement notice charges in the Policy ensures that decisions around the imposition of charges are fair and transparent and can be appropriately applied.
35. There are also significant legal implications for not having an appropriately updated scheme of delegation, in this case in relation to the new electrical safety standards requirements. If enforcement action were to be taken but delegations were not satisfactory, the Council could be vulnerable to legal challenge and incur substantial legal costs. Alternatively, the absence of appropriately delegated authority could impair our ability to appropriately enforce statutory provisions.

FINANCIAL IMPLICATIONS

36. The revenue income generated by any notice charges will be credited to the Housing Standards Environmental Health cost centre. This budget already includes an ambitious income budget, following the outcome of the Service and Financial Planning process for 2019-20, which saw the income budget increased by £22,000 to a total of £35,000. This change accompanied budget growth, in the form of an additional officer post to undertake residential licencing and enforcement work, the business case for which included an expectation of increased income generated by licensing and enforcement activity. The income budget is therefore already in place and the introduction of charges proposed in the updated enforcement policy will contribute to generation of revenue income already in the budget, rather than representing an opportunity to add new income to the budget.
37. If an average of 10 chargeable notices were issued each year (based on analysis of the number of in scope notices served over the last four financial years), the

introduction of the proposed notice charges might be expected to generate £4,500 additional net income annually.

38. The proposed policy has been subject to review by the Finance team who have confirmed it is consistent with the Council's overarching Fees and Charges Policy that is approved as part of the budget-setting process each year.
39. While new fees and charges are generally introduced from April to coincide with the new financial year, in this case agreement is sought to implement the notice charging provisions set out in the policy with immediate effect. This is because delaying until the new financial year would risk other enforcement actions being impacted by having an out of date policy in place.
40. The charges proposed would apply until the end of the 2022-23 financial year and would then be subject to annual review in accordance with the corporate Fees and Charges Policy. It is expected that as a minimum charges would be increased annually from 1 April each year in line with Consumer Price Index (CPI) inflation increases. In considering setting a charge that will extend to the end of the next financial year, the cost calculations include anticipated cost increases for 2022-23 in the hourly rates used.

EQUALITIES IMPLICATIONS

41. This duty has been considered in the context of this report and it has been concluded that the equality and diversity implications arising from this report would be neutral overall. It would also have a positive impact in terms of impact on deprivation, as one aspect of deprivation can be living in poorer housing conditions, and robust enforcement action against non-compliant landlords or duty holders, helps to protect the interests of vulnerable residents and improve living conditions.

COMMUNICATION IMPLICATIONS

42. In most cases where successful enforcement action is undertaken, there is liaison with the Communications Team, to discuss the merits of publishing the action, with a view to discouraging non-compliance among others. This generally relates to successful prosecutions and Civil Financial Penalties.
43. With regard to the introduction of charges for the service of formal notices, this possibility would be communicated to duty holders prior to service of formal notices, such that they would be fully aware that continued non compliance with legal standards would be expected to result in a charge if formal action was subsequently required. Information on notice charges will also be included on the Council website under the Private Sector Housing pages.
44. The other main change in the proposed Housing Enforcement Policy relates to the enforcement of licensed mobile home sites. These are already subject to a separate piece of work involving the introduction of site licence fees, the new Fit and Proper Person test and more regular proactive site inspections. As such there has already been a series of information letters sent to both residents and site operators, detailing these actions.

RISK MANAGEMENT CONSIDERATIONS

45. There are no significant risks associated with accepting the recommendations. There are substantial legal (and therefore financial) risks in not accepting the recommendations.

OTHER IMPLICATIONS

46. The changes proposed in the Policy will involve some additional workload in the Environmental Health team. The introduction of notice charges will require some additional administrative stages, which have been factored into the proposed cost of the notice and will therefore be recovered by the charge itself. The work associated with notice charges has also been discussed and agreed with the Finance and Debt Recovery teams, but as the numbers of chargeable notices served is expected to remain small, this is not thought to present a workload or capacity issue for these teams.
47. Ongoing work with licensed mobile home sites, including more regular proactive inspections will also generate more work in the team. Changes to the legislation and guidance in recent years to allow for more targeted and effective enforcement options, are expected to result in some increased enforcement activity associated with licenced mobile home sites, with subsequent resource demands.
48. It should be possible to accommodate these demands following previous growth in the team in the form of an additional officer post to undertake residential licencing and enforcement work, agreed during Service and Financial Planning for 2019-20.

CONSULTATION

49. No consultation has been carried out, as the policy impacts will mostly be felt by non-compliant duty holders, who are not a group that it is generally possible to identify and engage with.

POLICY FRAMEWORK

50. The introduction of enforcement notice charges is well aligned with the themes and priorities of the Councils Five Year Plan, 'Reigate and Banstead 2025'. In particular our objectives to be a financially self-sustaining Council and to generate additional income and build our financial resilience, in order to sustain services through responsible and sustainable commercial activities. It would also be aligned to the Corporate Fees and Charges Policy; in that it seeks to maximise potential income by operating as a 'Full Cost Recovery' model by default.

BACKGROUND PAPERS

Please list any background papers here. A full definition of a Background Paper (with instructions) can be found in the [Report Writing Guide](#) on the Web Library.

1. Corporate Plan 2015-20 - [http://www.reigate-banstead.gov.uk/council and democracy/about the council/plans and policies/corporate_plan/index.asp](http://www.reigate-banstead.gov.uk/council_and_democracy/about_the_council/plans_and_policies/corporate_plan/index.asp)
2. Equality Impact Assessment