

Regulatory Committee

9:30am, Tuesday, 26 June 2018

Private Rented Sector Enforcement Activities

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Report number	
Executive/routine	
Wards	Citywide
Council Commitments	11

Executive Summary

The City of Edinburgh has the largest Private Rented Housing (PRH) sector in Scotland with more than a quarter of Edinburgh households renting from private landlords.

The Council's Private Rented Sector Service was restructured during the transformation of Council services in late 2016. This report provides information on enforcement activity and deals with an outstanding remit on how the Council should approach the powers available to it. The Service continues to evolve and this report identifies further potential service improvements and future enforcement priorities.

Private tenants and the Council seeking repairs to be performed to expected standards may refer landlords to the 'First Tier Tribunal, Housing and Property Chamber'. The First Tier Tribunal was previously known as the Private Rented Housing Panel.

Private Rented Sector Enforcement Policy

1. Recommendations

- 1.1 It is recommended that the Regulatory Committee:
 - 1.1.2 notes the contents of this report and discharges previous remits from Regulatory Committee dated 28 April 2015;
 - 1.1.3 agrees to receive a further report on future enforcement activities;
 - 1.1.4 agrees to receive a further report a draft policy on improving repairs and other matter as set out in paragraph 3.19 - 3.20 and 3.29 – 3.30.

2. Background

- 2.1 The Council has a statutory duty to regulate the Private Rented Housing Sector (PRH). Additionally, the council is required to provide advice to landlords and tenants. There are two outstanding remits to regularly update the committee on enforcement activity undertaken with respect to the PRH sector and to develop a policy on use of additional powers the council has been given to regulate the PRH sector.
- 2.2 The majority of PRH landlords are required to be registered with the Council's Landlord Registration Scheme by the Anti-Social Behaviour (Scotland) Act 2004, including landlords who additionally require a Houses in Multiple Occupation (HMO) licence. Landlords of the following property types are normally exempt:
 - a) A property in which they live all or most of the time with their tenants;
 - b) Registered care homes, boarding schools and other school accommodation;
 - c) Manses and other property used by religious orders;
 - d) holiday homes or short term lets; or
 - e) crofts.
- 2.3 Landlord registration must be renewed every three years. Before registration is accepted the Council considers whether the applicant is a fit and proper person to let property. Failure to register is a criminal offence.
- 2.4 For PRH properties containing more than three unrelated individuals, a licence to operate as an HMO is required in addition to the registration. The licence may be granted up to three years or in accordance with policy one year for a new licence. It is a criminal offence not to be licensed.

- 2.5 It is the role of the Council to ensure that all privately let properties within the city of Edinburgh which are defined as are licensed and meet the requirements of the Housing (Scotland) Act 2006 ('the 2006 Act') as appropriate.
- 2.6 Previously the Council had set up the Private Rented Sector (PRS) Service as a mixture of inspection, administrative and enforcement staff. The structure of the service promoted becoming licensed or registered and therefore enforcement was not prioritised. There was a clear element of duplication with tasks carried out by the Licensing Service.
- 2.7 The Council's PRS Section was restructured as a result of the Transformational Review. All aspects of the service which dealt with licensing and inspections were moved to within the management of the Licensing Service. This removes duplication and improves efficiency. A separate PRS Enforcement Team was created within Regulatory Services, as a dedicated resource to build resilience and increase focus on enforcement. The team comprises six enforcement officers, including a Fire Officer, and is supported by a co-located Police Officer, The new structure began operating on 1 August 2016.
- 2.8 Powers under the Housing (Scotland) Act 2014 allow tenants of PRS properties to escalate concerns about the repair standard of a property to the Tribunal. That Act further allows any breach to be reported to the PRHP by the Local Authority, regardless of whether or not the tenant has requested such an intervention.
- 2.8 There is an outstanding remit to report on how the Council proposes to use these new powers.
- 2.9 The Private Rented Housing Panel was created to carry out functions under the Housing (Scotland) Act 2006 ("the 2006 Act") that created a mechanism allowing tenants to apply to have repair issues determined that were not being resolved by their private landlord. It was set up to administer the legislation in the same manner as the former Rent Assessment Panel, by appointing Committees to determine individual applications at a Tribunal hearing. Provisions of the Private Rented Housing (Scotland) Act 2011 ("the 2011 Act") and the Housing (Scotland) Act 2014 ("the 2014 Act") gave the Private Rented Housing Panel further functions by making amendments to the 2006 Act.
- 2.10 On 1 December 2017 the First Tier Tribunal for Scotland, Housing and Property Chamber replaced the Private Rented Housing Panel.

3. Main report

Numbers of Private Rented Housing and House in Multiple Occupation properties

- 3.1 There are estimated to be 47,000 registered landlords in the city with this equating to over 25% of the housing stock. The number is significantly higher than the Scottish average of 15%. The sector has doubled since the start of the millennium, and as such is a key part of the supply of housing in the City. Exact numbers are not currently available from the new national landlord registration database which

went live in 2017. Work is ongoing resolve issues which would allow each Local Authority to access up-to-date statistics.

- 3.2 As of 31 March 2018 there were 4059 licensed HMOs. The actual number of HMO licences is higher, as one property may have many individual flats or rooms licensed e.g. student accommodation.

Unlicensed or Unregistered Landlords

- 3.3 While the majority of landlords are compliant with statutory duties, there is a small minority who evade their legal responsibilities and seek to avoid landlord registration or HMO licensing requirements.
- 3.4 During 2017/18, the PRS Enforcement team received 160 complaints regarding unlicensed HMOs, and 685 about unregistered landlords or properties. A further 706 enquiries or requests for general advice were received and dealt with, 95% within 14 days.
- 3.5 Investigation and follow-up action resulted in 264 landlords subsequently registering. The Key Performance Indicators (KPIs) for PRS Enforcement 2017/18 are given in full in Appendix 1.
- 3.6 Since the creation of a dedicated PRS Enforcement Team in August 2016, the use of enforcement powers and options has been reviewed. A number of opportunities for a more robust approach have been identified.
- 3.7 Where a landlord is required to be registered but is not, the Council may serve a Rent Penalty Notice (RPN). Similarly, where an HMO is not licensed but should be a Rent Suspension Order (RSO) may be served. Both actions mean that landlords are unable to collect rent from tenants until the matter is resolved. RPNs remain in place until a landlord registration has been submitted, RPOs remain in place until an HMO licence has been granted by the Council.
- 3.8 The impact of an RPN or RSO can be very effective in persuading landlords to seek registration or licence. Historically the Council has not actively used these tools. This has been reviewed, and since September 2017, after taking detailed legal advice, the team has been trialling use of both RPN and RSO powers. Since this approach was introduced, 11 RPNs and 38 RSOs have been served. As a result of serving or the threat of serving, 22 HMO licence applications and six landlord registrations have been received.
- 3.9 Prosecution reports are normally only submitted to the Procurator Fiscal if all other enforcement options have failed, or in cases of persistent non-compliance. During 2017 a total of nine prosecution reports were submitted by the PRS Enforcement Team. So far in 2018/19 no prosecution reports have been submitted. A number are being considered in cases where the landlord has ignored RPNs or RSOs and failed to submit any registration or licence application.

Future Enforcement Priorities

- 3.10 The capacity for enforcement work has increased with the dedicated team, and Members will recall that change to the HMO Licence system were agreed in 2017. The Council has moved to routinely granting properties of a suitable standard and compliance history to three year licences as opposed to one year licences. This move to three year HMO licences will free up inspection resources, which will further increase enforcement activity targeted at landlords not complying with their statutory duties.
- 3.11 A number of potential approaches have been identified to increase the proportion of HMOs licensed and landlords registered. As well as bringing landlords into the system in line with legal requirements, there is a desire to improve standards across the sector.
- 3.12 It can be challenging to gather sufficient evidence to determine whether a property is operating as an HMO. The Council currently has the power under Section 186 of the 2006 Act to serve notice on occupiers of a property or any person receiving rent from it, such as agents, requiring relevant information to be provided. The powers have been used infrequently by the Council. The service will seek to extend use of these powers, but will do so in a carefully considered manner, to take account of potentially vulnerable occupiers who may fear adverse consequences
- 3.13 Liaison with the Revenues and Benefits Service, focusing on payment of housing benefits in respect of PRH properties, could identify any unregistered landlords. A previous small- scale pilot project was successful in persuading landlords to register while avoiding any interruption to their rent payment, and it is intended to look at repeating and expanding this exercise with relevant colleagues in the Council
- 3.14 A small number of landlords may be tempted to evade the registration and licensing systems by simply failing to apply to renew their registration. A detailed monthly report will be put in place identifying those properties or landlords whose registration/licence has expired. These will be matched against renewal applications and any outstanding renewals will be followed up. This detailed matching is subject to the new national landlord register introduced by the Scottish Government being amended to support this functionality.
- 3.15 Landlords attempting to evade registration or licensing may owe Council Tax debt. These individuals will be the subject of targeted enforcement action.
- 3.16 Finally work will be undertaken with stakeholders and partners to better analyse complaints and other sources. The aim will be to compile an intelligence database of landlords that have been flagged, for additional monitoring and targeted enforcement actions
- 3.17 The Letting Agents (Scotland) Regulations 2016 require agents to join a register of letting agents and comply with a code of practice. The Register of Letting Agents is maintained by Scottish Government to ensure that every agent is suitable to do the job and has met minimum training requirements.

- 3.18 It will be a criminal offence to carry out letting agency work if not on the register. If convicted the penalty is a fine of up to £50,000, up to six months imprisonment or both. Agents must have submitted an application by 1 October 2018. The service will introduce procedures to check registration and report non-compliance by agents

Improvements in Advice and Guidance to Landlords

- 3.19 It is recognised that most landlords wish to comply with their legal responsibilities. In order to assist landlords, particularly those new to the sector, it is intended to prepare a guidance document and checklist to be sent out to new landlords on initial registration. This guidance will also cover their responsibilities if the property qualifies as an HMO. This pack will include contact details for an officer who will give further advice and offer appropriate support.
- 3.20 As well as guidance for landlords, it is proposed to prepare a pack for tenants. In addition to general advice and guidance this pack will include a checklist detailing the acceptable standards with which a rented property is required to comply. Any tenant concerned that any standard is not being met will be able to notify the Council detailing the deficiencies, triggering a complaint notification to the Council and providing valuable intelligence regarding the housing rental stock.

Driving up the standard of repair etc

- 3.21 The Private Rented Housing Panel/First Tier Tribunal (Housing and Property Chamber) (PRHP) was created to carry out functions in the private sector under the Housing (Scotland) Act 2006. This created a mechanism allowing tenants to apply to have repair issues which were not being resolved by their private landlord addressed. Let property must reach a standard level of repair known as the 'repairing standard'.
- 3.22 The functions of the PRHP were transferred to the First-tier Tribunal for Scotland (Housing and Property Chamber) on 1 December 2016 as part of the changes introduced by the Tribunal (Scotland) Act 2014
- 3.23 The Repairing Standard means that to meet this standard the property must meet the following criteria:
- a) the property must be wind and watertight;
 - b) the installations for the supply of water, gas, electricity sanitation, heating and hot water must be in proper working order;
 - c) fixtures, fittings, and appliances must be in proper working order;
 - d) any furnishings provided must be safe;
 - e) the property must have suitable smoke/fire detectors and carbon monoxide detection warning;
 - f) must be fit to live in, meeting the 'tolerable standard'.
- 3.24 The property must meet a basic level of repair called the 'tolerable standard'. A property may not be fit to live in if, amongst others, it:
- a) has serious rising or penetrating damp;
 - b) is structurally unstable or subsiding;

- c) doesn't have adequate ventilation, natural and artificial light, or heating;
 - d) doesn't have adequate thermal insulation;
 - e) doesn't have a sink with hot and cold water;
 - f) doesn't have an indoor toilet.
- 3.25 Tenants whose home does not meet the repairing standard can apply to the Tribunal to ensure that their landlord complies with the repairing standard. This is open to those with a short assured, assured, or regulated tenancy.
- 3.26 If a property does not meet the repairing standard, the Council is able to apply to the Housing and Property Chamber. The Council can apply with or without the tenant's consent.
- 3.27 Under amendments provided for in the Housing (Scotland) Act 2014, the PRHP was given further powers to accept applications from the Local Authority to determine whether or not a private rented property met the repairing standard. These powers commenced 1 December 2015. Prior to this change only tenants could make such an application.
- 3.28 Tenants are currently encouraged to make any referral themselves and advised as to the process.
- 3.29 Finally, sections 146 to 153 and Schedule 5 of the 2006 Act give the Council powers to enter and inspect living accommodation, to assess the state of a property and to ascertain whether there is any need to serve a 'HMO amenity notice'. Such a notice requires the owner to carry out works to make it reasonably fit for occupation. If the owner fails to do so the Council may carry out such works and recover any costs from the owner.
- 3.30 The service therefore intends to explore using these powers on a more proactive basis. The service will consult and engage with all relevant stakeholders to draw up a policy on use of these powers, and an action plan to drive up standards in this important sector of housing. In particular, measures will be considered which underpin work in this area by other relevant services such as Shared Repairs and Environmental Health. It would be intended to report back to committee by the end of the year on progress on drawing up this policy.

Other Housing issues

- 3.31 Members will be aware that, either outwith the scope of this committee, or in some cases shared between committees, there are other policy issues being considered by the Council. Examples of these issues include:
- a) Appropriate regulation of the Short Term Lets industry;
 - b) Activity to bring Empty Homes within the city back into use;
 - c) Consideration of introducing Rent Pressure Zone(s) in the city.
- 3.32 The Directorate will ensure that wherever possible work undertaken in this area supports work on these issues and more generally maximising the supply of affordable, good quality housing in the city. It is recommended that this report is forwarded to the Housing and Economy committee in order to ensure that committee is aware of the activity detailed in this report.

4. Measures of success

- 4.1 That HMOs are licensed and landlords are registered in compliance with relevant legislation.
- 4.2 That the PRS Enforcement Team is working efficiently with partner organisations to gather intelligence and ensure a high level of compliance.
- 4.3 That the PRS Enforcement Team is making full use of all powers available in line with best practice guidance.

5. Financial impact

- 5.1 There is no direct financial impact on the Council. All costs are contained within existing income from licensing or landlord registration fees.

6. Risk, policy, compliance and governance impact

- 6.1 The Council has a duty to ensure that appropriate landlords are registered and that HMOs are licensed. Landlords are required to be 'fit and proper', and properties are required to meet minimum standards.

7. Equalities impact

- 7.1 There is no adverse impact on the public sector equalities duty. The service will be developed in line with best practice and be designed to ensure that the interests of tenants, including vulnerable users, is safeguarded.

8. Sustainability impact

- 8.1 There is no environmental impact arising from the contents of this report.

9. Consultation and engagement

- 9.1 The report details planned consultation to take the proposals in this report forward.

10. Background reading/external references

- 10.1 Licensing of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities August 2011, updated January 2012.

Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Regulatory Services Manager

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 469 5822

11. Appendices

11.1 Appendix1 - PRS Enforcement Key Performance Indicators.

