

Regulatory Committee

2.00pm, Monday, 20 May 2019

Private Rented Housing Sector Enforcement Activities

Executive/routine

Wards

Citywide

Council Commitments

1. Recommendations

- 1.1 It is recommended that the Committee:
 - 1.1.1 Notes the contents of this report and discharges previous remits from the Regulatory Committee on 26 June 2018;
 - 1.1.2 Agrees and supports the identified initiatives and priorities for enforcement activities; and
 - 1.1.3 Agrees the draft policy on improving repairs and working with the First Tier Tribunal for Scotland (Housing and Property Chamber).

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Private Rented Housing Sector Enforcement Activities

2. Executive Summary

- 2.1 This report provides details of the Private Rented Housing (PRH) sector Enforcement Activities for 2018/19, and outlines proposed future initiatives and priorities. This report further outlines initiatives to drive up PRH standards, including consulting on a policy covering working with the Housing Repair Tribunal and requiring property owners to carry out improvement works.

3. Background

- 3.1 The City of Edinburgh has the largest PRH sector in Scotland, with over 43,000 registered private landlords.
- 3.2 The Council has a statutory duty to regulate the PRH sector. Private landlords are required to be registered with the Council's Landlord Registration Scheme; and those operating Houses in Multiple Occupation (HMO) require a licence issued by the Council. Subject to limited exemptions, failure to register or to be licensed as required is a criminal offence. Exemptions include renting to family members, resident landlords and holiday lets. The Council is required to consider if any applicant is a 'fit and proper person'.
- 3.3 The Council's Private Rented Services team was restructured during the transformation of Council services in late 2016. Ongoing fine tuning of internal processes will allow the most effective use of resources, particularly in light of the move to three year HMO Licensing.

4. Main report

- 4.1 At April 2019, there are 43,016 registered landlords in the City of Edinburgh and 5,833 licensed HMOs. Over 25% of Edinburgh's housing stock is privately rented, significantly higher than the Scottish average of 15%.
- 4.2 During 2018/19, the PRS Enforcement Team received 353 complaints regarding unregistered landlords or properties, and 152 about unlicensed HMOs. Each complaint is investigated. Some prove to be unjustified. In many other instances,

when contacted the landlord takes immediate steps to rectify any non-compliance. Where landlords continue to evade their legal responsibilities, enforcement action is pursued. A total of 212 landlord registrations applications were received as a result of investigation and enforcement.

- 4.3 Where a landlord is required to be registered but is not, the Council may serve a Rent Penalty Notice (RPN). Similarly, where a HMO is not licensed but should be, a Rent Suspension Order (RSO) may be served. Both actions result in landlords being unable to collect rent until the matter is resolved. This has certainly resulted in landlords taking the enforcement service seriously, and in most instances complying with their responsibilities.
- 4.4 16 RPNs and 38 RSOs were served in 2018/19. As a result of serving such notices, 12 landlord registration applications and 15 HMO licence applications have been received. A further 14 properties have ceased trading as HMOs. Prosecution reports are normally submitted to the Procurator Fiscal when all other enforcement options have been exhausted or in cases of persistent non-compliance. No prosecution reports have been submitted in 2018/19, but a number of investigations are ongoing.
- 4.5 A total of 1,779 complaints and investigation service requests were made to PRS Enforcement in 2018/19. A further 521 enquiries or requests for general advice were received and answered, 82% of these within 28 days. The 2018/19 Key Performance Indicators (KPIs) for PRS Enforcement are given in full at Appendix 1.
- 4.6 Members will recall that changes to the HMO Licence System were agreed in 2017. The Council has now moved to routinely granting three year licences for properties of a suitable standard and compliance history. Previously a one year licence was granted.
- 4.7 Since April 2019 the priorities of the Private Rented Services team have been realigned to make more efficient and effective use of the inspection resources freed up by the move to three year licences. Staff who previously had no spare capacity due to being fully engaged in conducting inspections are now able to answer requests for advice and deal with the initial stages of complaints. Where issues remain unresolved, or require further investigation with a view to enforcement action, these will be passed to the Enforcement Team.
- 4.8 Because of these changes, the Enforcement Team's resources will be concentrated on targeting those landlords requiring robust and sustained enforcement action. Existing enforcement priorities will be expanded in year 2019/20, including:
 - 4.8.1 Investigation of any registered landlord suspected of not being 'fit or proper' and reporting to the Committee for consideration;
 - 4.8.2 More proactive work on targeting all landlords who fail to renew Landlord Registration for their properties, routinely issuing RPNs where appropriate; and

- 4.8.3 Following up all landlords who fail to renew HMO Licences, routinely issuing RSOs where appropriate.
- 4.9 Additionally, the Enforcement Team will develop new initiatives to improve standards and compliance levels, including;
- 4.9.1 Ensuring appropriate physical standards are maintained in let properties, acknowledging that properties may only be formally inspected every three years. This will be achieved by analysing complaints and other intelligence sources before targeting highlighted landlords;
- 4.9.2 Targeting newly built developments to identify let properties and ensure any new privately rented properties are registered or licensed by landlords where required; and
- 4.9.3 Developing robust procedures and intelligence gathering systems in conjunction with Police Scotland to ensure that new landlord registration applications are screened to ensure 'fit and proper' standards. Any applications giving cause for concern to be brought before the committee for consideration.
- 4.10 The Council has powers to enter and inspect living accommodation to assess the state of a property with a view to serving a 'HMO amenity notice', requiring the owner to undertake works to make it reasonably fit for occupation. It is intended to explore more proactive use of these powers, with a view to driving up standards in HMOs.
- 4.11 In line with internal operational changes, the opportunity will be taken to review the current Council advice and guidance available on the Council's website and other sources, in order to ensure that resources are clear and up to date. The Scottish Government has recently published comprehensive guides for tenants and landlords. Appropriate links will be provided on Council webpages.
- 4.12 Since 2 October 2018 it has been a criminal offence to carry out letting agency work without being registered, unless an application was submitted before this date. The Scottish Government Letting Agent Registration Team is responsible for identifying and pursuing any unregistered letting agents operating in Scotland. PRS Enforcement staff are working closely with the Registration Team, passing intelligence and reports of any suspected unregistered agents. Six such reports were passed to the Registration Team in 2018/19.
- 4.13 PRH landlords have a duty to ensure that their let property meets the 'Repairing Standard'. The statutory guidance on determining whether a property meets the repairing standard is attached at Appendix 2. If a tenant believes that a rented house does not meet that standard, they can make an application to the Housing and Property Chamber to decide if the landlord is complying.

- 4.14 The Housing (Scotland) Act 2014 amended the Repairing Standard legislation to allow the local authority to make such an application, with or without the consent of the tenant.
- 4.15 At present the City of Edinburgh Council does not make applications on behalf of tenants but encourages them to apply to the Housing and Property Chamber directly. Exceptions may be made where the tenant is vulnerable and requires support. Currently basic advice is given to support tenants make their own applications to the Tribunal.
- 4.16 It is now intended to consult partners and other interested parties on whether to continue the current approach, or whether applications should be made on behalf of other tenants. It is envisaged that this exercise will be completed by the end of June 2019. The outcomes of this consultation and any resulting policy adjustments will be reported to a future committee.

5. Next Steps

- 5.1 The operational measures outlined will proceed prioritising the initiatives identified. The Directorate will consult and feed back in due course.

6. Financial impact

- 6.1 There will be no additional costs arising from these enforcement activities.
- 6.2 The proposed operational restructuring will improve efficiency and reallocate staff resources freed up by moves to three year licensing.
- 6.3 Improved targeting of landlords failing to renew registration or HMO licences will maximise revenue generation.

7. Stakeholder/Community Impact

- 7.1 The Private Rented Housing Sector is of major significance, and standards affect the quality of life of much of the community. The refocused efforts of the PRS service will better discharge statutory responsibilities and progress targeted initiatives.
- 7.2 There are no significant effects on climate change or sustainable development which require steps to mitigate adverse effects.

8. Background reading/external references

- 8.1 [Private Rented Sector Enforcement Activities Report, Regulatory Committee 26 June 2018](#)

9. Appendices

- 9.1 Appendix 1 - PRS Enforcement Key Performance Indicators 2018/19.
- 9.2 Appendix 2 - Statutory Guidance on the Repairing Standard

Appendix 1

PRS ENFORCEMENT - KEY PERFORMANCE INDICATORS

| KPI | Indicator | Target | Performance | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | TOTAL |
|------|--|--------|------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------|
| PRS1 | Complaints re: HMOs completed within 28 days | 80% | No. received | 19 | 22 | 17 | 23 | 23 | 30 | 26 | 32 | 18 | 31 | 35 | 34 | 310 |
| | | | % | 84 | 68 | 65 | 66 | 57 | 56 | 62 | 54 | 55 | 71 | 78 | 82 | 66.5 |
| PRS2 | Complaints re: rented accommodation / landlords completed within 28 days | 80% | No. received | 86 | 66 | 57 | 49 | 70 | 50 | 50 | 57 | 48 | 37 | 47 | 45 | 662 |
| | | | % | 73 | 80 | 65 | 56 | 50 | 52 | 55 | 53 | 73 | 75 | 79 | 82 | 66.1 |
| PRS3 | PRS Enquiries and advice requests completed within 14 days | 90% | No. received | 58 | 63 | 53 | 45 | 64 | 49 | 48 | 42 | 26 | 36 | 40 | 39 | 563 |
| | | | % | 94 | 93 | 95 | 70 | 81 | 72 | 66 | 72 | 75 | 75 | 95 | 93 | 981 |
| PRS4 | Empty homes brought back into use | | No. closed cases | 0 | 9 | 5 | 0 | 4 | 1 | 5 | 2 | 3 | 2 | 3 | 3 | 37 |

Enforcement Update

| CODE | ACTIVITY | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | TOTALS |
|------|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
| E1 | Suspension of Rent Orders issued | 1 | 0 | 2 | 4 | 1 | 2 | 9 | 4 | 4 | 4 | 3 | 4 | 38 |
| E2 | Rent Penalty Notices issued | 1 | 0 | 1 | 2 | 1 | 1 | 2 | 2 | 0 | 2 | 1 | 3 | 16 |
| E3 | Warning letters issued | 0 | 2 | 0 | 10 | 14 | 7 | 22 | 11 | 33 | 15 | 47 | 41 | 202 |
| E4 | Landlord Registration received due to enforcement | 23 | 22 | 16 | 12 | 21 | 9 | 14 | 19 | 27 | 9 | 17 | 23 | 212 |

The Repairing Standard

The Repairing Standard, contained in the Housing (Scotland) Act 2006, covers the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard.

Landlords must carry out a pre-tenancy check of their property to identify work required to meet the Repairing Standard (described below) and notify tenants of any such work.

Landlords also have a duty to repair and maintain their property from the tenancy start date and throughout the tenancy. This includes a duty to make good any damage caused by doing this work. And, on becoming aware of a defect, landlords must complete the work within a reasonable time.

A privately rented property must meet the Repairing Standard as follows:

- the property must be wind and water tight and in all other respects reasonably fit for people to live in
- the structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order
- installations for supplying water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order
- any fixtures, fittings and appliances that the landlord provides under the tenancy must be in a reasonable state of repair and in proper working order
- any furnishings that the landlord provides under the tenancy must be capable of being used safely for the purpose for which they are designed
- the property must have a satisfactory way of detecting fires and for giving warning in the event of a fire or suspected fire
- the property must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

To comply with the Repairing Standard, private landlords must have regard to the guidance issued by Scottish Ministers on:

- Satisfactory provision for detecting and warning of fires
- Electrical installations and appliances in private rented property
- The provision of carbon monoxide alarms in the private rented sector

If, after a landlord has been notified of any problem, it is not attended to satisfactorily or if there is disagreement about whether or not there is a problem, then tenants have the right to refer the matter to the First-tier Tribunal for Scotland Housing and Property Chamber. <https://www.housingandpropertychamber.scot/> which has power to require a landlord to carry out work necessary to meet the standard.

Further guidance and information on the repairing standard -
<https://www.housingandpropertychamber.scot/>

Rights of access to a property

The landlord is entitled to enter the property to inspect any repairs required or to carry out repairs. The tenant is required to give the landlord reasonable access to do this. The landlord should normally arrange a suitable time with the tenant, but can enter the property, at a reasonable time of day, provided they have given the tenant 24 hours' notice in writing. (If an emergency repair is required, the landlord can claim immediate access.)