RESULTS OF CONSULTATION ON SKDC’S DRAFT PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

September 2018
Purpose
1. The purpose of this report is to update the cabinet member for Housing- Councillor Nick Neilson and the Environment Overview and Scrutiny Committee with the results of the consultation that has been undertaken with private sector landlords and other stakeholders on proposed changes to the Private Sector Housing Enforcement Policy.
2. These updates have been proposed to ensure that recent changes in legislation, introduced by central government to improve regulation of the private rented sector, are included and reflected in the policy.

Objectives
3. The objectives of the consultation to ascertain the degree of support for this proposal were identified as follows:
   - To communicate the changes that will happen if the policy is adopted and the potential impact of these changes
   - To ascertain what private sector landlords think of the specific changes to the draft policy
   - To establish what statutory agencies think of the specific changes to the draft policy
   - To find out what other stakeholders (the wider population in each of the towns and across the district) think of the specific changes to the draft policy

Methodology
4. A survey was prepared that was structured around these objectives. Around 70 landlords were contacted by email and asked to complete the survey.
5. The consultation was promoted to local residents via social media channels and also in the local media. Stakeholders were directed to a dedicated page on the council’s website where they could respond via a web link or alternatively were directed to the communications team if they required a printed version.
6. The consultation ran for six weeks from 1 August 2018 to 14 September 2018. 49 responses were received in total.

Detail
7. To help the council understand the degree of support or otherwise for proposed updates to the private sector housing enforcement policy, so that it incorporates new powers available to the council as a result of legislative changes, the consultation officer was asked to draw up plans to consult with private sector landlords and other stakeholders.
8. The survey was structured around the main premise of the consultation – a proposal to update the council’s private sector housing enforcement policy to reflect recent legislative changes. It included questions designed to capture and/ or measure:
   - The degree of support for each of the changes proposed
   - Whether they were a landlord, letting or property agent, a tenant or a homeowner
   - If they own, manage or live in a privately rented property
   - Where they live
   - If they had any queries
9. It focused on three main areas. These were:
   - Recovering the full costs of enforcement. This would mean that for privately rented properties where formal notices have been served, the council would recover all costs associated with it from the landlord or person responsible.
   - The decision to prosecute or to use civil penalties. This would mean that the council would have a choice to use civil penalties as an alternative to prosecution for certain offences.
   - The setting of a civil penalties charging structure. This would enable the council to create a charging structure for civil penalties which is open and transparent.

10. Respondents were asked to quantify the extent to which they agreed or disagreed with each of these, and were given space to comment on the proposals.
11. The consultation closed on 14 September 2018. 49 responses were received – 15 of which were from landlords or letting agents.

The results

Changes to the Private Sector Housing Enforcement Policy

12. The first question private sector landlords and other stakeholders were asked was the extent to which they agreed or disagreed with the following statement:

   We are proposing that in situations where formal enforcement has been undertaken, the council will seek to recover all costs associated with taking the action from the landlord or person responsible. To what extent do you agree or disagree with this approach?

Seven out of ten respondents (70.8%) agreed with this proposal, as shown below:

<table>
<thead>
<tr>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly agree</td>
<td>16</td>
</tr>
<tr>
<td>Agree</td>
<td>18</td>
</tr>
<tr>
<td>Neither agree nor disagree</td>
<td>6</td>
</tr>
<tr>
<td>Disagree</td>
<td>2</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>48</td>
</tr>
</tbody>
</table>

13. Cross tabulating these responses against stakeholder type (Landlord, letting or property agent, tenant or homeowner) revealed that all tenants and homeowners agreed with this proposal.

Three quarters of landlords and letting agents (73.3%) supported this change with 11 out of 15 choosing to answer either agree or strongly agree.

The proposal was fully supported by tenants and homeowners, and by around three quarters of landlords.
14. Respondents were then asked to detail why they supported or objected to the proposal. An analysis of responses to this question revealed the following themes:
   - Support for the proposal – one respondent said: “Excellent idea - we need to shame, name and prosecute rogue landlords and charging them may encourage them to improve or leave our industry.”
   - Action should be determined on a case by case basis – another respondent said: “Each case should be assessed individually as to how the breach occurred”.

15. The next question wanted to know if respondents agreed or disagreed with the proposal to impose civil penalties of up to £30,000 as an alternative to prosecution, for certain offences. They were given the following information as context to help them make an informed decision.

   The Housing and Planning Act 2016 has given local authorities the powers to impose civil penalties of up to £30,000 against the individual, landlord or person responsible as an alternative to prosecution, for certain offences. The offences where civil penalties may apply include: offences in relation to licensing, contravening overcrowding notices; failing to comply with an improvement notice or breaching a banning order amongst others. For a full list of the offences where civil penalties may apply, please go to our website to view our draft policy www.southkesteven.gov.uk/privatesectorhousingenforcementpolicy

   65% of respondents agreed with this proposal, as illustrated below:

<table>
<thead>
<tr>
<th>To what extent do you agree or disagree with this proposal?</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly agree</td>
<td>14</td>
<td>35.0</td>
</tr>
<tr>
<td>Agree</td>
<td>12</td>
<td>30.0</td>
</tr>
<tr>
<td>Neither agree nor disagree</td>
<td>9</td>
<td>22.5</td>
</tr>
<tr>
<td>Disagree</td>
<td>1</td>
<td>2.5</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>4</td>
<td>10.0</td>
</tr>
<tr>
<td>Total</td>
<td>40</td>
<td>100.0</td>
</tr>
</tbody>
</table>

16. Further analysis of this result revealed all homeowners agreed with this change as well as the majority of tenants (85.7%). The proportion of landlords and letting agents in favour was lower – just over half (57.2%) were in agreement.

17. When asked to comment on this approach, respondents’ feedback was varied, ranging from objections, observations about the process and who makes the decision, through to supporting the proposal.

18. Respondents were then asked if they agreed or disagreed with the way in which the Council is proposing that the penalties be determined. They were given the following information:

   If the council adopts this policy and decides to impose civil penalties against a landlord or other person, rather than prosecute, it is required to detail how the penalties will be determined. Various
factors will be used to determine the level of financial penalty that is incurred. These include the harm caused to the tenant, the severity of the offence or to act as a deterrent.

To find out more about these will be determined, please go to our website to view our draft policy: www.southkesteven.gov.uk/privatesectorhousenforcementpolicy

Two thirds of respondents agreed with this proposal, as illustrated below:

<table>
<thead>
<tr>
<th>To what extent do you agree or disagree with this proposal?</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly agree</td>
<td>11</td>
<td>30.6</td>
</tr>
<tr>
<td>Agree</td>
<td>13</td>
<td>36.0</td>
</tr>
<tr>
<td>Neither agree nor disagree</td>
<td>6</td>
<td>16.7</td>
</tr>
<tr>
<td>Disagree</td>
<td>2</td>
<td>5.6</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>4</td>
<td>11.1</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
<td>100.0</td>
</tr>
</tbody>
</table>

19. Further analysis of these responses revealed all tenants and homeowners supported this proposal. Just over half of landlords and letting agents (53.4%) agreed with the proposed change with a third (33.3%) choosing to disagree.

The comments made about this proposal were varied and included the importance of being transparent in the decisions that are taken.

20. Respondents were then asked if there were any other comments they would like to make on the council’s draft private sector housing policy. These are replicated at Appendix 1.

Stakeholder Information

21. To help ensure that the views collected are representative of the population they are from, respondents were asked to state their gender, age, disability status, ethnic group and postcode. They were also asked if they were a landlord, letting or property agent, a tenant or a homeowner and if they owned or managed a privately rented property or live in a privately rented property.

22. Just under half of respondents were male (43.8%) and half were female (50.0%). Responses were received from people aged between 25 and 65. 12.5% of the respondents stated that they had a disability and the majority of respondents were White or White British (90%). Responses were received from across the district, with each of the urban areas represented.

23. The table below shows the number of responses received from landlords, letting or property agents, tenants or homeowners. Perhaps not surprisingly, landlords were the biggest group, followed by tenants:

<table>
<thead>
<tr>
<th>Are you responding as a ......?</th>
<th>Number</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord</td>
<td>13</td>
<td>43.3</td>
</tr>
<tr>
<td>Letting Agent</td>
<td>2</td>
<td>6.7</td>
</tr>
<tr>
<td>Property Agent</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tenant</td>
<td>7</td>
<td>23.3</td>
</tr>
<tr>
<td>Homeowner</td>
<td>6</td>
<td>20.0</td>
</tr>
<tr>
<td>Prefer not to say</td>
<td>2</td>
<td>6.7</td>
</tr>
<tr>
<td>------------------</td>
<td>----</td>
<td>-----</td>
</tr>
<tr>
<td>Total</td>
<td>30</td>
<td>100.0</td>
</tr>
</tbody>
</table>

24. This composition is reflected in the responses to the final question which asked respondents if they own, manage or live in a privately rented property in South Kesteven. Just under two thirds of respondents (62.1%) stated that they own or manage a privately rented property, with a fifth (20%) stating that they live in a privately rented property.

Conclusion

25. The purpose of this consultation was to establish the degree of support there was for each of the proposals outlined in the re-drafted Private Sector Housing Enforcement Policy. To this end, private sector landlords and the general public were asked for their views.

26. Seven out of ten respondents agreed with the proposal that in situations where formal enforcement action has been undertaken, the council will seek to recover all costs associated with taking the action from the landlord or person responsible. When asked if they agreed or disagreed with the proposal to impose civil penalties of up to £30,000 as an alternative to prosecution, for certain offences, 65% of respondents agreed. The proportion of respondents who agreed with the way in which the council is proposing that the penalties be determined was the same. Two thirds were in agreement.

27. Although the number of respondents is quite low, responses were received from across the district and from respondents of all ages and from the populations most likely to be affected by the changes.

Prepared by Deb Wyles
Communication and consultation
25 September 2018
Appendix 1

Free text comments from survey respondents

Question 1

We are proposing that in situations where formal enforcement has been undertaken, the council will seek to recover all costs associated with taking the action from the landlord or person responsible. To what extent do you agree or disagree with this approach?

- Excellent idea – we need to shame, name and prosecute rogue landlords and charging them may encourage them to improve or leave the industry
- This is already the case in that skdc enforce legal processing the costs are recovered from the party at fault
- Any changes you pass on to the landlords will be reflected in rent increases to cover the cost
- Landlords cannot afford this extra cost – or will have to be passed on to the tenant. This is going to result in landlords selling up and the council having more homeless people. You should think hard
- Yes, if they have done wrong full costs should be recovered
- Depends on the circumstances, and nature of the offence
- Each case should be assessed individually as to how the breach occurred
- They just won’t pay! They should be licensed beforehand. Make them pay a deposit on each home just like their tenants
- Landlords should take responsibility for all the cost of offering accommodation – it is a business
- Fully agree with this approach given that to get to this stage presumably the landlord has been given plenty of notice to complete works themselves and failed to do so. The private sector should be more heavily regulated
- Where someone has fallen foul of the guidelines and law, and a cost has been incurred to the council, this should be recovered in full from that person
- The first part of the process should be an informal notice so that action can be taken to remedy any issue prior to the issue of a formal notice of enforcement
- If the council have consulted with the landlord correctly and given every opportunity for the landlord to comply and enforcement action is the only way forward then charge. But make sure what you are asking for is reasonable and cost effective. Also take a realistic approach, is some or all of the issue created by tenants. Mould and mildew are often caused by the tenant’s failure to heat and ventilate correctly. It doesn’t matter what form of heating is provided, some tenants will not use it at all. There is no point upgrading heating for a tenant that refuses to buy gas
- Presumably if these are so bad that enforcement action is taken then why not! I presume this does not include the initial visit, which is often based on unfounded claim due to the tenant really wanting to be rehoused into a council property
- Costs should be recovered from the most appropriate person
- Remember that often repairs fall behind as tenants often fail to pay their rent so the landlord may not have the funds to do the repairs. In such cases the tenant should have to pay the rent over to say SKDC to allow offset
• Because there is no way to realistically say how much the actual cost is – for instance – a salaried worker will be paid whether or not they carry out enforcement work. Enforcement should have a set find which the council should be entitled to keep
• See no problem in recovering full cost for landlords in default

Question 2

The Housing and Planning Act 2016 has given local authorities the powers to impose civil penalties of up to £30,000 against the individual landlord or person responsible as an alternative to prosecution, for certain offences. The offences where civil penalties may apply include: offences in relation to licensing; contravening overcrowding notices; failing to comply with an improvement notice or breaching a banning order amongst others. Various factors will be used to determine the level of financial penalty that is incurred. These include the harm caused to the tenant, the severity of the offence or to act as a deterrent. To what extent do you agree or disagree with this approach?

• Instant fines would not give the landlords chance to disappear – although we should always prosecute though the court if there is any doubt about what has transpired to reach a breach situation
• This is an issue that should be evaluated by legal professionals not civil servants. Civil servants are often untrained and unskilled
• What proposal. You haven’t explained an explicit proposal
• Who can afford that? The country relies on private landlords – there are no incentives to be a private landlord anymore and this will be the final nail for many
• As an honest landlord I never feel I am above the law and I always take my obligations seriously
• Clear and large breaches should be fined to free up courts
• Concerned about trying to recover these costs! Bad landlords don’t give a damn and will just set up another company to rent from
• There is no reason why reasonable standards of housing which conform to the current legislation should not be offered in the “free market” environment
• This seems like a sensible approach to take and hopefully the threat of fines will force landlords to comply with the councils requests
• Judgement should not be allowed to be made by the benefiting authority, it should be independent
• The rules are there for a reason. However, the tenant must also be able to have enforcement action levied against them, if they are in the wrong, as well as the landlord
• The council already have powers of enforcement. I am opposed to a scheme like Nottingham, they have created a complete department funded by private landlords. Nottingham charge nearly £800 per property for a licence, many landlords are selling up as it’s a cost too far
• If a landlord is not complying to this extent then I agree, most landlords are decent landlords, if this targets the bad ones this can only be a good thing for the rest of us.
• You should send out landlord licensing details with every council tax bill – often landlords or unaware of legislation
• As long as there is a recourse to a tribunal any penalty issues and its use is very much a last resort
Question 3

If the Council adopts this policy and decides to impose civil penalties against a landlord or another person, rather than prosecute, it is required to detail how the penalties will be determined. To what extent do you agree or disagree with this approach?

- Great as long as actions are transparent, considered and evidenced
- This should be decided by legal professionals not untrained unskilled civil servants
- Any cost put on the landlord will subsequently be passed to the tenant or force landlords to sell their properties
- There are ways of dealing without fines especially excessive fines
- Sounds like another outsourced contract to get the levy’s! we already outsource too much
- The principle that it is cheaper to conform to standards rather than not is fair
- As long as the fine structure is transparent and consistent
- It will be too easy for the council to use this as a source of revenue. A court can be independent, but the council is not
- Please also consider the stress to landlords by tenants causing damage to property and not paying rent – landlord not always to blame
- No enough information to respond accordingly

General comments

- Skdc should compile a mandatory list of landlords, both large and small enterprises, so that we can all contribute to the SKDC polices and forums. Not everyone knows about or attends the forum meetings and therefore are possibly not keep abreast of the changes in law or policy. Ignorance is no excuse in our business but I think there may be quite a few landlords who are operating illegally below the radar
- Landlords have absorbed a 50% reduction in the tax relief of buy to let interest only mortgages, the new deposit protection scheme and now face considerable extra charges from this new levy. Unscrupulous landlords are already operating outside of the law and will equally ignore this new tax, the more caring landlords will be the ones who pay, so this proposal has failed already. Government are failing miserably in terms of providing houses and should be incentivising private landlords not penalising them. This will make investment much less attractive and will reduce the amount of private landlords. I presume skdc will also pay the new levy as they are the biggest landlord in the area, or will they be exempt
- I totally disagree with the new policy of charging landlords a huge amount to check the houses. Firstly the majority of houses are good and you are punishing those of us who have good properties because of a few rogue properties. In fact my properties are in better condition than council rented properties. Will the council be paying to have their houses put through the same tests? This has now forced me into thinking about selling my four immaculate family houses and making four families homeless for the council to find properties for. I am not the only landlord thinking like this, good luck with your house shortage
• It needs scrapping – all of it. Ask the agents in town what will happen when you start charging this excessive charge – landlords will sell up – me included and I have four immaculate tenanted houses. So there’s four more families for you to home. Look at the big picture skdc. Landlords have nothing left in the pot any more
• Why have an individual policy for skdc. Surely it is more cost effective to adopt an already created policy
• I think it is great that these issues in the private sector are being addressed and welcome the opportunity for rogue landlords to be dealt with in the correct way. This will improve the standard of accommodation on offer across the district and have a positive impact on those tenants hopefully
• Good policy and long overdue
• Please do not use this as an opportunity to steal money from landlords. Perhaps you could forget the money making aspects and just require landlords to register with DASH and upgrade standards that way
• No problems with these proposed changes. I would ask that more help is given to good landlords when tenants complain over quite trivial issues. Must say I always have very good service from environmental health when tenants are complaining about damp which is actually condensation
• Always two sides to an argument. Also recent government changes to tax on rented properties means less funds available for upkeep unless we increase rents.