

Report to: **West Devon Hub Committee**
Date: **13th December 2022**
Title: **Housing Crisis – Changes to Financial Assistance and Enforcement Policies.**
Portfolio Area: **Housing – Cllr Ratcliffe**
Wards Affected: **All**
Urgent Decision: **N** Approval and clearance obtained: **N**

Date next steps can be taken: Council meeting to be held on 21 February 2023.

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RECOMMENDATIONS:

That the Hub Committee RECOMMEND to Council:

- 1. That the existing 2019-2022 Homes Assistance Policy is updated with the revised Better Care Fund Financial Assistance Policy 2022**
- 2. To approve and implement the electrical safety standards Civil (Financial) Penalty Policy, to allow officers to impose fines where necessary to landlords and improve Private Rented Properties.**
- 3. To approve and implement the energy efficiency standards Civil (Financial) Penalty Policy, to allow officers to impose fines where necessary to landlords and improve Private Rented Properties.**

1. Executive summary

1.1 The purpose of this report is to consider updating two policies.

1.1.1 The existing Homes Assistance Policy with a new Better Care Fund Financial Assistance policy.

- 1.1.2 Updating the council's enforcement policy to include civil penalty fines for breaches of Electrical Safety and Energy Performance Certificate Regulations.
- 1.2 Central Government provides funding to Local Authorities through the Better Care Fund (BCF) so that Local Authorities can provide disabled facilities grants and other grants to eligible residents within their area. The aim of the grants are to enable vulnerable individuals to remain safe and healthy in their own home. The way in which Local Authorities in Devon allocate this funding to residents is determined by the jointly agreed Devon Housing Assistance Policy. Each District Council produces their own version of the Devon Housing Assistance policy, to enable them flexibility to issue the funding most effectively in their areas.
- 1.3 This report provides an outline of proposals to change elements of the existing policy in West Devon to better utilise this budget. It is proposed to update the current policy, adopted in 2019, with a more flexible Financial Assistance Policy that will help a greater number of vulnerable residents remain safe and healthy in their own homes.
- 1.4 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, relate to the Government's response to tackling rogue landlords and improving the private rental sector. This report is proposing to update the council's enforcement with the new civil penalty provisions.
- 1.5 They require Landlords to ensure that the fixed electrical installations in their properties are inspected and tested at least every 5 years by a competent electrician. The initial inspections need to be carried out before any new tenancy is granted from 1 July 2020, and by 1 April 2021 for existing tenancies. The Regulations introduce measures that are intended to be implemented by landlords from 1 July 2020:
 - a) Landlords are required to provide their tenants with electrical safety reports: in the case of new tenants, before they move in; to existing tenants within 28 days of receiving it; and to any prospective tenant within 28 days of their request to view the report;
 - b) The Council has the power to demand sight of the report and the landlord must provide this within 7 days of the request. Failure to do so could result in a penalty charge;
 - c) If the Council has reasonable grounds to believe that the landlord is in breach of the Regulations, it also has the power to serve a remedial notice on the landlord to compel them to comply with the Regulations;
 - d) Landlords have 28 days to remedy the breach, and if the work is not carried out in time then the Council has the power to carry out the required works themselves (on providing prior written notice to the landlord) and recover their costs from the landlord;

- e) Landlords failing to provide tenants with an electrical safety report at the start of their tenancies will be in breach of the regulations and may face a civil penalty of up to a maximum of £30,000, with the potential for multiple penalties to be imposed for a continuing failure.
- 1.6 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended in 2016 and 2019), are designed to tackle the least energy-efficient properties, those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard of EPC band E for domestic private rented properties, affecting new tenancies and renewals since 1 April 2018. The Regulations now applies to all properties in scope from 1 April 2020.
- 1.7 To enable the Council to enforce this Statutory duty, there is a requirement to publish a Civil Penalty Policy. Therefore, utilising best practice from other Local Authorities, including guidance from the Department for Business, Energy and Industrial Strategy (BEIS), a Civil (Financial) Penalty Policy and Enforcement Protocol has been developed – Minimum Energy Efficiency Standards. This report is seeking approval for the new proposed Policy.
- 1.8 The Council has recently responded to a letter from the Secretary of State regarding his questions arounds the Council’s approach to dealing with damp and mould following the tragic death of Awaab Ishak as a direct result of mould in his family home in Rochdale.
- 1.9 The letter set out the Council’s work to ensure that damp and mould in properties where we have an enforcement activity are dealt with quickly and effectively.

Our approach will be two-fold, firstly ensuring that we are responding to complaints from tenants in private sector housing in an effective manner and engaging fully with partner organisations and Registered Providers we have already started to receive letters from our local RPs about action they are taking in their own stock.

Secondly, we will continue to improve the fabric of all housing in the Council’s area by applying for and effectively using Government Retro-fit Grant schemes, such as Green Homes Grants and Home Upgrade grants.

Better Care Fund Financial Assistance policy.

2. Background

- 2.1 In 2015 the Government introduced the Better Care Fund (BCF) to bring health and social care together in an integrated way. The Fund is a combination of government funding from the Department of Health and the Department for Communities and Local Government. The BCF includes the grant allocation for disabled

facilities grants (DFG). The Integration and Better Care Fund policy (2017-19) framework document lists the conditions that the Better Care Fund must be used to address and this includes Local Authorities working together on a jointly agreed plan.

- 2.2 The development of the Devon Housing Assistance policy is in response to the condition to work together on a jointly agreed plan. The policy allows the Council to fully utilise the Better Care Fund allocation to meet specific needs in its area, including those that may fall outside of the scope of the statutory Disabled Facilities Grant (DFG).
- 2.3 The Better Care Fund provides more funding to the Devon Local Authorities than is currently required to meet the demand for mandatory DFGs. A wider Devon policy was developed to allow the Devon councils to spend the BCF on grant assistance that helps a wider range of households and meets more of the BCF objectives.
- 2.4 The current assistance packages are:
 - Mandatory Disabled Facilities Grant (DFG)
 - Accessible Homes Grant (including house move)
 - Home Improvement Loan
 - Healthy Homes grant
 - ECO flex top up
- 2.5 These assistance packages are described in more detail in Appendix 1.

3. Outcomes/outputs

- 3.1 The revised policy aims to provide a consistent approach to the delivery of the Better Care Fund across Devon that satisfies the terms of the funding agreement.
- 3.2 The policy will provide the flexibility and discretion for the councils to provide appropriate assistance to meet the following objectives:
 - Objective 1** - Assist disabled residents to remain in their own homes through supporting the provision of adaptations (so far as this is necessary, appropriate and reasonably practicable) to prevent admissions to care and to assist with delayed transfers where possible.
 - Objective 2** – Safeguard the health and well-being of vulnerable residents by removing unnecessary hazards to health and safety in the home to reduce avoidable emergency admissions
 - Objective 3** – Provide adaptations that are suitable for the future by ensuring the scheme of works is dementia aware.
 - Objective 4** – assist vulnerable people to afford to heat their homes through appropriate energy efficiency and heating measures.

- 3.3 These objectives meet the priorities detailed by the Better Care Fund and the Devon Local Authorities.
- 3.4 The measure of success will be the number of DFG's provided and the total spend of the Better Care Fund allocation.

4. Options available and consideration of risk

- 4.1 Council could decide not to adopt the new policy and carry on only providing grants under the previous policy. This would be difficult to justify as the Government have made extra funds available based on assessment of local need and this would be a missed opportunity to assist more of our vulnerable residents. If funding reduces in the future, the council will be able to reintroduce means testing.
- 4.2 The proposed policy will give more flexibility from the previous policy, to how grants are administered. It is not anticipated that there will be big increase in applications as there will still need to be an occupational therapist (OT) referral and there is a finite OT resource. Where applications are made for particular bathrooms, we will be able to process them faster as we are removing an administrative step. There is a risk that more affluent residents will access the grants, however previous experience of removing the means testing from stair lifts, has not supported this. This will also speed up the transfer of care from hospitals, where an adaptation is required.

5. Proposed Way Forward

The total grant that residents are eligible for will be increased to allow for increasing costs associated with labour and materials due to the current financial climate. This will allow for works to remain in scope for the budget and reduce where appropriate residents' contributions.

Specific changes to each are of the grants in the Policy are detailed below;

5.1 Changes to Accessible Homes Grant

- 5.1.1 To include non-means testing for through floor lifts, bathrooms and applications for children. This will allow quicker processing of grants for residents. Most applications for children are big adaptations, for example extensions for extra care rooms.
- 5.1.2 Total Grant that residents are eligible for will be increased to £30000 from £20000 to reflect increase in labour and material costs.

5.2 Changes to Healthy Home Grant

5.2.1 Amount increased to £10000 from £5000 to reflect increase in labour and material costs.

5.3 Changes to ECO flex top ups

5.3.1 Grant name changed to Energy Efficiency top up grant

5.3.2 Amount increased to £3000 from £2000 to reflect increase in labour and material costs.

6 Recommendation

6.1 The recommendation from this section of the report is that the existing 2019-2022 Homes Assistance Policy is updated with the revised Better Care Fund Financial Assistance Policy 2022

Changes to the Council's Enforcement Policy Electrical Safety Regulations

7 Background

7.1 The council has a statutory duty to enforce The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, which came into force on 1 June 2020. The regulations place mandatory duties on private landlords to maintain electrical safety standards in all privately rented homes from 1 April 2021.

7.2 Persons from vulnerable groups can have limited housing choices, therefore the introduction of these regulations can enhance the property conditions for these groups. The legislation has been introduced to protect tenants from suffering harm as a consequence of being exposed to unsafe electrical installations.

7.3 Local housing authorities have been empowered to impose financial penalties of up to £30,000 on private landlords who breach their duties under the regulations. However, before the council can impose such penalties it must first adopt a policy to determine the level of penalty that should be imposed for breaches that have been identified.

7.4 The criminal standard of proof is required before issuing a financial penalty under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. This means that the Council must be able to demonstrate beyond all reasonable doubt that a breach of the regulations has occurred.

8. Outcomes/outputs

8.1 Non-compliance with Housing Act notices, regulations and licensing requirements can result in the local housing authority prosecuting

the offender. Section 126 and Schedule 9 of the Housing and Planning Act 2016 allows a civil penalty to be imposed by the local housing authority for offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

- 8.2 The amount of the penalty is to be determined by the local housing authority with a maximum amount of £30,000. The Council must have regard to Guidance given by the Secretary of State about the exercise of its functions in relation to the issuing of civil penalties and local housing authorities are expected to develop and document their own policy on determining the appropriate level of civil penalty. The Council's charging scheme is set out in Appendix A.
- 8.3 Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.
- 8.4 A civil penalty should not be seen as a lesser option compared to prosecution and to help ensure that the civil penalty is set at the appropriate level The Statutory Guidance requires a local housing authority to have regard to the following factors when deciding the appropriate level of penalty
 - a) Severity of the offence
 - b) Culpability and track record of the offender
 - c) The harm caused to the tenant
 - d) Punishment of the offender and to deter the offender from repeating the offence
 - e) Deter others from committing similar offences
 - f) Remove any financial benefit the offender may have obtained as a result of committing the offence.
 - g) The Landlord/Letting agents assets and income.
- 8.5 A civil penalty is an alternative to prosecution so a local housing authority is not permitted to impose a civil penalty and prosecute for the same offence. A civil penalty requires the same burden of proof as a prosecution, the evidence must meet the criminal standard of proof "beyond reasonable doubt". In considering the decision to prosecute or not, the Council must also consider is there is sufficient evidence for there to be a realistic prospect of conviction were it to go to court and if the prosecution is in the public interest.
- 8.6 Local authorities are also expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and decide on which option on a case by case basis. The Private Sector Housing Enforcement Policy has been updated to include these details and is attached as Appendix B.
- 8.7 There is a prescribed process for levying civil penalties which must be followed precisely which is laid out in the Statutory Guidance.

Recipients of a civil penalty have the right to appeal to the First-tier Tribunal where the soundness of the decision to impose a civil penalty, the decision relating to the amount and any deviations from the prescribed process can be rigorously reviewed. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued.

8.8 The recommendation from this section of the report is to approve and implement the electrical safety standards Civil (Financial) Penalty Policy, to allow officers to impose fines where necessary to landlords and improve Private Rented Properties.

Minimum Energy Efficiency Standards, Energy Performance Certificates

9. Background

9.1 Councils have a statutory duty to enforce the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (amended in 2016 and 2019). (See 'background papers' for access to a copy of the Regulations). Subject to relevant exemptions these regulations set a minimum level of energy efficiency that:

- a) Since 1 April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property);
- b) From 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property). Where a property is sub-standard, landlords must normally make energy efficiency improvements which raise the EPC rate to minimum E before they let the property. In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting a sub-standard property.

Where a valid exemption applies, landlords must register the exemption on the National PRS Exemptions Register.

Council Officers are authorised to check for different forms of noncompliance with the Regulations and issue penalties for non-compliance. The Council's Environmental Health Department undertakes housing enforcement in the private rented sector and would be the team that would enforce these regulations.

9.2 To undertake this enforcement action, the Council must publish a Civil Penalty Policy, which sets out the protocol for how the Council will undertake the enforcement duties and arrive at decisions, ensuring they are fair and accountable.

- 9.3 The aim of adopting the policy is to increase the range of measures open to the Council, in tackling non-compliant landlords and to increase the Council's capacity to undertake enforcement, where there is clear evidence that offences have been committed.
- 9.4 There are four breaches under the regulations for which a private landlord may be imposed with a financial penalty. Regulation 40 sets out the breaches and the statutory maximum amounts that may be imposed in respect of each type of breach. These are:
- a) Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than three months: Statutory maximum financial penalty **£2,000** ;
 - b) Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for three or more months: Statutory maximum financial penalty **£4,000** ;
 - c) Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2): Statutory maximum financial penalty **£1,000**;
 - d) Failing to provide information to the council demanded by a Compliance Notice, in contravention of Regulation 37(4)(a): Statutory maximum financial penalty **£2,000**.

In respect of any one tenancy, a private landlord cannot, owing to Regulation 40(6), be subject to multiple financial penalties that exceed a total of more than £5,000.

10 Outcomes/outputs

- 10.1 Using government funding the council, has worked with Tamar Energy Communities to develop an online tool to help identify non compliant properties. Using the national Energy Performance Certificate Database, landlords of F and G certificates identified as rental are being contacted. This has given us the platform to implement this enforcement tool.
- 10.2 Landlords will be given an appropriate time, to respond, either showing evidence that they now have a compliant EPC, or to set out a plan to achieve the required energy efficiency level. They will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered, both under the Regulations and the Housing Act 2004. A compliance notice will be served first.
- 10.3 For the purposes of this policy, the "first breach" means the first breach by the private landlord of any duty under the regulations, and does not refer to the first breach under each specific type of breach. For example, a private landlord may first fail to comply with a Compliance Notice, and be subject to a (first breach) financial penalty of £1,000. If it is later found that the private landlord has, for more than three months, been in breach of the prohibition on

letting substandard property, this breach will not be a first breach, and so a further financial penalty of £4,000 will be payable.

10.4 Proposed Penalties

Renting out a non-compliant property (in breach less than 3 months), up to max £2000	
1st Offence	
EPC Rating F	£1,250
EPC Rating G	£1,500
Subsequent Offence(s)	
EPC Rating F	£1,750
EPC Rating G	£2,000
Renting out a non-compliant property (in breach for 3 months or more), up to max £4000	
1st Offence	
EPC Rating F	£2,500
EPC Rating G	£3,000
Subsequent Offence(s)	
EPC Rating F	£3,500
EPC Rating G	£4,000
Providing false, or misleading, information, Up to max £1000	
1st Offence	£750
Subsequent Offence(s)	£1,000

10.5 The recommendation from this section of the report is to approve and implement the energy efficiency standards Civil (Financial) Penalty Policy, to allow officers to impose fines where necessary to landlords and improve Private Rented Properties.

11. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The council has a statutory duty to provide DFG's</p> <p>Article 3 of the Regulatory Reform (Housing assistance) (England and Wales) Order 2002 gives a local housing authority power to provide financial assistance for the purpose of improving living conditions in their area. Such assistance may not be given unless the local housing authority has adopted a policy for the provision of such assistance, and they have given the public notice of such adoption.</p> <p>The legislative provisions governing disabled facilities grants (DFGs) are contained in the Housing Grants, Construction and Regeneration Act 1996 (as amended) (HGCRA 1996).</p> <p>The proposed amendments to the Council's Private Sector Housing Enforcement Policy and the new proposed policy on financial penalties are compliant with the relevant legislative changes and statutory guidance to which the Council must have regard.</p>
Financial	Y	<p>Currently the BCF is administered through Devon County Council and funds are allocated to the eight Devon Council Districts in line with a Devon Allocation Formula. In previous years there had been an underspend in the total Devon allocation, so the District Councils and Devon County Council have agreed a policy of allocating funding depending on the demand in the Local Authority area. If some Councils spend their initial allocation, they can be topped up with underspend from other Councils. The revised policy will give flexibility and ability to spend the better care fund allocation. There is currently no direct capital contribution made into the budget by the councils.</p> <p>Although highly unlikely there is a risk that the funding from the better care fund will stop and thus stopping DFG function.</p> <p>These new penalties will help generate additional income for the enforcement service. It is difficult to estimate how many charges would be made and from this how many would be fully paid.</p>

		It is likely that by introducing the new charges there will be a high level of compliance so a reduction in the number of fines issued.
Risk	Y	<p>There is a risk that with reduced performance that applications are not processed in the require timescale, failing to process applications quickly may result in a backlog of applications Councils are permitted to claim a percentage of the BCF capital that can be put into the revenue budget to cover staff costs. This means that the Council will have the capacity to deal with an increased demand without an increase in the staffing budget.</p> <p>There is a likelihood that some landlords may challenge remedial notices or civil penalties imposed. Landlords have a legal route to request the Local Authority to review any civil penalty notice and can further appeal the notice to a First-tier Tribunal. Such challenges can be time consuming for the officers involved, however Specialists have experience of handling such reviews in a time efficient manner. To limit the number of appeals as far as possible and ensure high quality of evidence in all cases, the Specialists undertake a rigorous case review. The same safeguards will be implemented for any Civil Penalty Offences. To defend an appeal in a First-tier Tribunal is not more time consuming than taking cases to court.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		<p>The grant funding will become more accessible and benefit more households.</p> <p>Residents from vulnerable groups can sometimes have limited housing choices. Families with young children, older persons and those with a disability can find themselves in poor quality accommodation. The existing policy may restrict funding and services available and there may be some households on low income who do not meet the qualification criteria and therefore are unable to</p>

		<p>access the funding despite still being in need. The option of a Home Improvement Loan is available to such households. This is a necessary restriction due to the amount of funding available which must be targeted on a priority basis and the funding criteria imposed by the BCF.</p> <p>Residents from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poor quality accommodation. The policy aims to safeguard the health, safety and welfare of the following characteristics; Age and Disability.</p> <p>Poor housing conditions can negatively affect the health, safety and well-being of all residents, irrespective of age. However, certain housing deficiencies can have a more serious and harmful impact on individuals of particular ages. For example, older persons will suffer more in cold homes.</p> <p>Enforcement through civil penalties is more efficient and provides better value for money than traditional enforcement through prosecution</p>
Safeguarding		<p>The policy identifies resident in rental properties as a beneficiary of assistance. The policy also aims to safeguard residents by making their homes safer for them to live in.</p> <p>The policy specifically identifies disabled residents as a beneficiary of assistance. The policy also aims to safeguard disabled residents by making their homes safer for them to live in.</p>
Community Safety, Crime and Disorder		<p>Is there any potential positive or negative impact on crime and disorder reduction? No</p>
Health, Safety and Wellbeing		<p>The policy will have a direct impact on the health and wellbeing of residents. Increased allocation of grant funding to allow residents to live longer and more safely in their own homes will</p> <p>The change in policy will provide a more efficient way of enforcing housing standards and thus improve the health, safety and wellbeing of tenants.</p>

		<p>have a direct impact upon numbers of GP appointments, social care, numbers of hospital admissions etc.</p> <p>For example, removing the means testing requirement for eligibility for an adapted bathroom means that more vulnerable residents can access the help. Having a level access shower can drastically reduce the risk to falling in the bathroom and consequently reduce the number of admissions to hospital</p>
Other implications		<p>The proposal will enable an increased number of adaptations and number of people that will benefit from the service.</p> <p>Reputation – This proposal demonstrates the Council’s commitment to improve the DFG service by making it more accessible to residents.</p> <p>This proposal is changing working practices for staff, but not affecting the overall job role or number of posts</p> <p>Political – The proposal will enable an increased number of adaptations and number of people that will benefit from the service.</p> <p>Reputation – This proposal demonstrates the Council’s commitment to improve the private rental sector.</p>

Supporting Information

Attached Documents

Civil Penalty Policy
 Electrical Safety Standard in the Private Rental Sector Financial Penalty Policy
 Minimum Energy Standard and Energy Performance Certificate Enforcement Policy

Background Papers:

Council Enforcement Policy

Appendix 1 BCF Policy

1.0The **Disabled Facilities Grant** programme is mandatory and a statutory function of the local housing authority. The delivery of this function is governed by the Housing Grants, Construction and Regeneration Act 1996. Referrals can only be made from Devon County occupational therapists after the resident has had a social care assessment.

2.0The **Accessible Homes Grant** enables the Council to provide additional grant funding in addition to the mandatory Disabled Facilities Grant subject to the conditions in 3.0.

3.0This grant is currently available in the following circumstances:

- Where a mandatory grant has been approved but the cost of the work exceeds £30,000
- Where there are works that may not be covered by the DFG in relation to adapting the home and making it safe.
- Where the means test identifies that a contribution is required.
- Where moving house more appropriate than adapting the existing property.

4.0The **Healthy Homes grant** is a flexible grant to provide urgent/essential repairs to the home to ensure the health, safety and welfare of the occupier.

5.0Lendology (formerly known as Wessex Loans) currently administers loans on behalf of the council within the requirements of this policy. The **Home Improvement Loan** is a flexible product that can be used for the following purposes:

Home repairs and improvements
Adaptation works where grant is not available
To cover a client contribution to a grant
To cover the cost of the work over the grant maximum.
To bring empty homes back into use
For landlords to carry out repairs or improvement to rented accommodation
For energy efficiency improvements

6.0**ECO top up grant** is to provide top up funding for energy efficiency measures where Energy Company Obligation (ECO) Flex funding and the HHCRO scheme ("Home Heating Cost Reduction Obligation", also known as the "the Affordable Warmth Obligation") have been provided by energy providers (via installers) but the available funding does not cover the full cost of the work.

7.0The eligibility for ECO Flex funding itself is subject to a separate Statement of Intent issued by each Local Authority setting the local criteria. ECO funding is not provided by the Local Authority. It is

accessed through the national Energy Company Obligation scheme and normally through installers.