

ABERDEEN CITY COUNCIL

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| COMMITTEE | Finance, Policy & Resources |
| DATE | 01 December 2017 |
| REPORT TITLE | Enforcement of the Private Rented Housing Sector |
| REPORT NUMBER | CHI/17/236 |
| DIRECTOR | Bernadette Marjoram |
| REPORT AUTHOR | Ally Thain |

1. PURPOSE OF REPORT:-

- 1.1 This report responds to instruction by Committee on 9th March 2017, “to bring a report to a future meeting of the Finance, Policy and Resources Committee outlining the options for enhancing the resources available for enforcement within the private rented housing sector and to draft a business case on how this could be done on a revenue-neutral basis.”

2. RECOMMENDATION(S)

- 2.1 The Committee is requested to:
- (i) Note the contents of the report, and
 - (ii) Agree in principle to the creation of a post of Administration Assistant (Enforcement) on a 1-year fixed-term contract and instruct Officers to take forward a detailed business case to implement the instruction.

3. BACKGROUND

- 3.1 The Finance, Policy & Resources Committee at its meeting on 9th March 2017, instructed the Director of Communities, Housing and Infrastructure to “bring a report to a future meeting of the Finance, Policy and Resources Committee outlining the options for enhancing the resources available for enforcement within the private rented housing sector and to draft a business case on how this could be done on a revenue-neutral basis.”

3.2 LEGISLATION

- **Registration of Private Landlords**

3.2.1 Legislation to require licensing and registration of landlords was introduced to improve the standards of privately rented properties in Scotland; to improve the rights of those who rent the properties, and to ensure their safety. The relevant legislation is outlined below.

- The Anti-social Behaviour etc. (Scotland) Act 2004 as amended, Part 8

3.2.2 With very few exceptions, all private landlords in Scotland must register with their local authority. Offences include:

- Failure to register is an offence
- Failure to supply certain information when applying to register is an offence
- Supplying false information when applying to register is an offence
- Failure to keep registration details up-to-date is an offence

3.2.4 Local authorities may report the above offences to the Procurator Fiscal, but there is also a limited range of other sanctions available as follows:

- When an existing Registration expires with no attempt to renew it, a £110 Late Application Fee is automatically applied to the Registration account, which must be paid by the landlord in addition to the usual registration fees. The LAF can only be applied if 2 written reminders have been issued by the local authority prior to expiry. Landlords may appeal the application of the LAF via the Council's Complaints team.
- When a previously-registered landlord fails to renew the Registration, or an unregistered landlord fails to register, the local authority may serve a Rent Penalty Notice which is designed to stop rent being collected until the landlord has registered.
- Where a landlord is deemed not to be a 'fit & proper' person, the local authority may either refuse to approve a Registration application, or revoke an existing Registration.

- The Housing (Scotland) Act 2006 as amended, Part 4.

3.2.5 Private landlords in Scotland must ensure that their rental properties comply with the following Repairing Standard:

- The property must be wind and watertight
- The property must be fit to live in, and meet the 'tolerable standard'
- The structure and exterior of the property must be in a reasonable condition
- The installations for the supply of water, gas, 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 or appliances provided by the landlord (such as carpets, light fittings, white goods and household equipment) must be in a reasonable state of repair and in proper working order
- Any furnishings provided by the landlord must be capable of being used safely for the purpose for which they are designed
- The property must be fitted with suitable fire detection devices - there should be at least one smoke alarm in every room which is used by the

tenants, one smoke alarm in every circulation space (hallways or landings), and a heat alarm in every kitchen. The alarms should be interlinked and if installed after September 2007, they should be mains powered.

- The property must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3.2.6 If the property doesn't reach the Repairing Standard and the landlord refuses to carry out the necessary work, then a private tenant can report their landlord to the Housing & Property Chamber First-tier Tribunal for Scotland. A recent change to the legislation introduced '3rd party reporting' whereby a local authority can report a private landlord to the First-tier Tribunal. The Tribunal has the power to issue a Repairing Standard Enforcement Order (RSEO) which instructs the landlord to carry out certain repairs by a deadline.

- It is an offence to fail to comply with an RSEO
- It is an offence to relet a rental property whilst an RSEO is in force

3.2.7 Both these offences bring the landlord's suitability as a 'fit & proper' person into question and the local authority may decide to refuse an HMO licence application or Landlord Registration application, or revoke a current HMO licence or Registration.

- **The Housing (Scotland) Act 2006 as amended, Part 5.**

3.2.8 This introduced the licensing of Houses in Multiple Occupation (HMO). Landlords in Scotland who are accommodating 3 or more unrelated persons as their 'only or main' residence, and where they share kitchen and/or bathroom facilities, must hold a valid HMO licence issued by the local authority. Offences under this legislation include:

- Operating an unlicensed HMO
- Acting as an agent for an unlicensed HMO
- Breaching an HMO licence condition

3.2.9 Local authorities may report the above offences to the Procurator Fiscal, but there is also a limited range of other sanctions available as follows:

- Where a landlord is found to be operating an unlicensed HMO, or found to be breaching a condition of the HMO licence, a Rent Suspension Order (RSO) may be served which is designed to stop the tenants from paying rent until the landlord either obtains an HMO licence or rectifies the breach of the licence condition.
- Where a landlord or agent is deemed not to be a 'fit & proper' person, or a premises is deemed unsuitable for occupation as an HMO, the local authority may either refuse to approve an HMO licence application or revoke an existing HMO licence.

- **Other Legislation**

3.2.10 In addition to the above, private landlords in Scotland have a duty to comply with various other pieces of legislation relating to private renting including Tenancy Deposit Regulations, Energy Performance Certificates, and Tenancy Agreements.

3.3 EXTENT OF THE PRIVATE RENTED SECTOR IN ABERDEEN CITY

3.3.1 The online Registration system shows that in Aberdeen City, there are currently:

- 34,315 registered landlords
- 27,947 registered rental properties

3.3.2 The HMO licensing database currently shows that in Aberdeen city there are:

- 1,276 HMO-licensed properties, with another 195 pending applications

3.3.3 It is not possible to identify the total number of unregistered landlords and unlicensed HMOs in Aberdeen City. However, as a guide, the Private Sector Housing team received 590 complaints between 2014 – 2017 related to unregistered / unlicensed activities.

3.3.4 It is also worth noting that the Council is currently investigating the introduction of a policy on 'HMO Overprovision'. If introduced this could potentially restrict the amount of HMOs in a given locality, and impact the role of any officer employed by the Council through this report.

3.4 PRIVATE SECTOR HOUSING UNIT

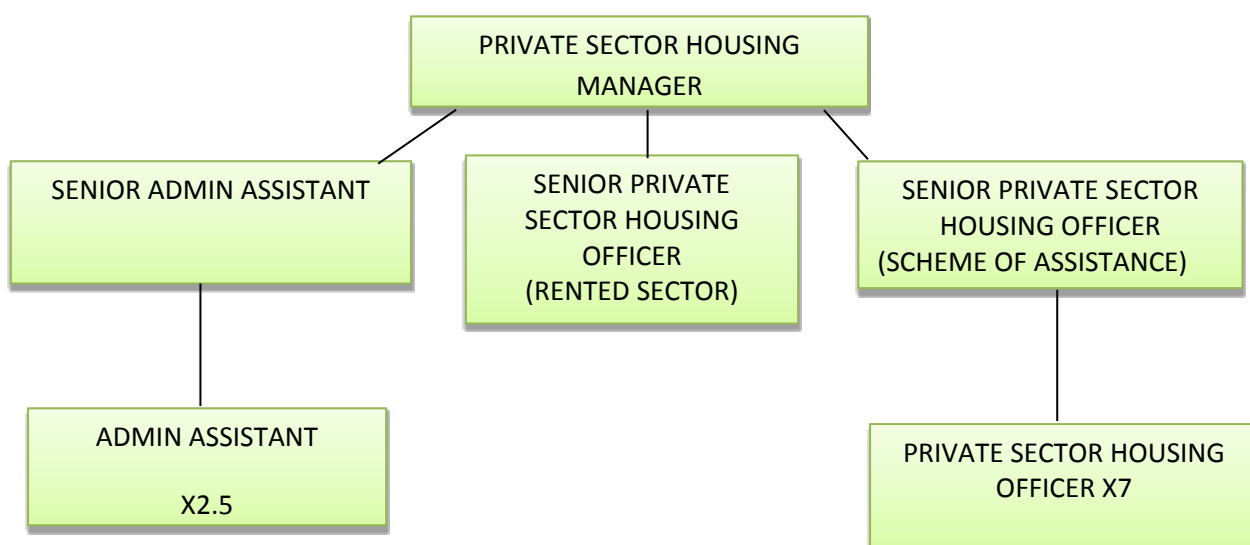
3.4.1 Activities

The Private Sector Housing Unit (PSHU) is responsible for:

- Landlord Registration
- HMO licensing
- Scheme of Assistance (Disabled Adaptation Grants and repair & maintenance of private property).

3.4.2 Staffing Complement

The PSHU staff complement is as follows:



3.4.3 Private Rented Sector Activities

- The Senior Administration Assistant and their team of Administration Assistants handle the Landlord Registration applications submitted online and by paper, and the paper HMO licence applications. The HMO licence applications are then allocated to the Private Sector Housing Officers who handle the inspection duties liaising with the Scottish Fire & Rescue Service as appropriate.

3.4.4 Existing Enforcement Activities

PSHU staff currently:

- Handle and investigate claims/complaints by members of the public of unregistered landlords and unlicensed HMOs, to determine whether the persons are actually operating as landlords and actually operating unlicensed HMOs, then take appropriate action.
- Pursue previously registered landlords whose Registrations have expired, to determine whether they are still operating as landlords, and if so then apply the £110 Late Application Fees and serve Rent Penalty Notices.
- Pro-actively attempt to identify unregistered landlords via Council Tax records, then confirm whether or not the persons are actually operating as landlords, then take appropriate action.
- Report to the Licensing Committee any objections or concerns in respect of HMO licence applications and Landlord Registration applications.

3.4.5 Complaints received

- Complaints received about unlicensed / unregistered properties over the last three years are detailed below, as are conversion rates. The current Registration fee paid online by a landlord who owns one rental property is £59.40 every 3 years. HMO fees are on a sliding scale dependent upon the amount of tenants to be accommodated. The

majority of HMOs in Aberdeen are houses and flats where 3 – 5 tenants are resident, and the relevant HMO fee is £495 every 3 years.

| Year | Unlicensed HMOs | Unregistered landlords | Additional income if all converted |
|---------------------|-----------------|------------------------|------------------------------------|
| 2015 | 41 | 157 | £29,620.80 |
| 2016 | 154 | 146 | £84,902.40 |
| 2017 | 19 | 73 | £13,741.20 |
| 3 year total | 214 | 376 | £128,264.40 |

| Period | Complaints | Converted to licenced / registered | Additional fees generated |
|---------|--------------------|------------------------------------|---------------------------|
| 2015-17 | HMO – 214 | 41 (19%) | £20,295 |
| | PRS – 376 | 253 (67%) | £15,028.20 |
| | Total – 590 | Total – 294 (50%) | £35,323.20 |

- The average return per year in this period is therefore £11,774.40.

3.5 OPTIONS FOR ENHANCING ENFORCEMENT ON A REVENUE-NEUTRAL BASIS

- Landlord registration

3.5.1 The cost of the Council's Landlord Registration activities is met fully from the Registration fees paid by landlords. The Scottish Government sets the Registration fee and it has remained unchanged since Registration was introduced in 2006. Registration fees are not, by law, ring-fenced although the Scottish Government's intention is that the Registration fees first and foremost will fund the Registration activities, with any fee surplus being retained for other private sector housing activities. Thus, all Registration fees are fully committed by this Council on private sector housing issues.

3.5.2 The table below indicates the potential fee generation accruing from enforcement activity resulting in additional registration applications being submitted, based upon a fee of £59.40 per application.

| Number of additional landlord applications | Fee generation |
|--|----------------|
| 100 | £5,940 |
| 200 | £11,880 |
| 300 | £17,820 |
| 400 | £23,760 |
| 500 | £29,700 |

- HMO registration

3.5.3 The cost of the Council's HMO licensing activities is met fully from the HMO fees paid by licence-applicants, although HMO fees are ring-fenced. In this regard, the Council sets the level of HMO fees to reflect the cost of the HMO licensing service, and the fees are reviewed each year and increased or

decreased as necessary to reflect the costs of providing the service. Any surplus of HMO fees cannot be diverted for any other use. It should be noted that HMO fees only reflect the costs of the licensing process. The HMO fees cannot fund any HMO enforcement activity.

3.5.4 The table below indicates the potential fee generation accruing from enforcement activity resulting in additional HMO licence applications being submitted, based upon a fee of £495 per application.

| Number of additional HMO applications | Fee generation |
|---------------------------------------|----------------|
| 10 | £4,950 |
| 20 | £9,900 |
| 30 | £14,850 |
| 40 | £19,800 |
| 50 | £24,750 |

- Enforcement options

3.5.5 The Committee remit is to consider options for enhancing enforcement on a revenue-neutral basis, and as stated above the Landlord Registration & HMO Licensing revenues are fully committed, which means that any option involving additional resources must be funded by the generation of additional applications and therefore fees.

- Option 1

3.5.6 To continue enforcement activities using existing PSHU staff, at no extra cost. As mentioned above, the service has received, over the last 3 years, 376 complaints about unregistered landlords and 214 about unlicensed HMO landlords. These complaints are followed up and converted where required into registered / licensed properties.

- Option 2

3.5.7 The recruitment of an additional office-based Administration Assistant on a 1 - year fixed-term contract specifically to identify unregistered landlords and unlicensed HMOs by interrogation of various Council databases, principally Council Tax, and thereafter to contact the individuals to establish whether they are operating as landlords and take appropriate action as necessary. Any subsequent visiting of properties would need to be done by existing PSHU inspecting Officers. Existing PSHU Administration Assistants are paid at Grade 8 (£17,624 - £18,913 + corporate costs). At the first point of Grade 8, the total cost for an officer per year is £23,474.54. In order to cover this cost, the equivalent of 300 unregistered landlords would need to be converted, alongside 20 – 30 unlicensed HMO properties each year.

- Option 3

3.5.8 The creation of a post of 'Enforcement Officer' on a 1-year fixed-term contract specifically to work alongside the existing Administration Assistants and the Senior Private Sector Housing Officer (Rented Sector). The post would identify unregistered landlords and unlicensed HMOs by interrogation of various Council databases, principally Council Tax, and thereafter would contact the individuals to establish whether they are operating as landlords and take appropriate action as necessary. This will involve an element of

visiting properties, talking to residents etc to establish the facts to pursue appropriate action. As a new post the grade will need to be assessed though the Council's job evaluation scheme. However, a comparison with current similar roles shows that the post could potentially attract a salary on G12/13 grades. This equates to a range of £27,302 - £35,575 + corporate costs. To achieve this on a revenue-neutral basis the equivalent of 300 unregistered properties and 50 unlicensed HMO properties would need to be discovered and converted each year.

- Recommendation

3.5.9 Option 2 above is considered to be the most viable method of increasing discovery and enforcement activity while minimising financial exposure. This option is considered the lowest risk of the enhanced options, as while it requires additional fee income to be revenue-neutral, this is generated through a lower number of properties than Option 3. The role will be designed to identify and then tackle potential offenders as an enhancement to current service delivery. As noted above, the average return per year since 2015 is £11,774.40. This would require the postholder to identify a similar number of unregistered / unlicensed properties and convert them accordingly.

3.5.10 Alongside this, it is proposed that a communication plan is created to advise of the work being done in this sector, and also to publicise successes. It is hoped that this will encourage unregistered landlords to apply for registration / licensing and ultimately improve the compliance rate in the sector. If agreed by Committee, Officers will take forward a detailed business case to implement the instruction.

3.5.11 A business case to establish this fixed term post was considered by the Council's Establishment Control Board on the 19th October 2017, with permission to recruit to the post agreed.

4. FINANCIAL IMPLICATIONS

4.1 The recommendations would see increased costs incurred over the 1-year life of the additional discovery and enforcement activity.

4.2 Additional costs incurred will be funded by increased income from Landlord Registration applications which are likely to be generated by the activities.

4.3 A financial risk exists if costs are incurred with the increased activity if the additional landlord registration applications expected do not materialise.

4.5 As a new post the grade will need to be assessed though the Council's job evaluation scheme.

5. LEGAL IMPLICATIONS

5.1 As the proposal is to enhance the existing enforcement activities, there are no direct legal implications arising from the recommendations of this report.

6. MANAGEMENT OF RISK

6.1 Financial and Technological

- 6.1.1 If additional resources are to be deployed the costs of the landlord registration element will have to be funded from the income generated by fees. There is a significant risk that the additional fee income will not be sufficient to cover the costs of the extra post – High risk
No technological risks are identified - Low Risk

6.2 Employee

- 6.2.1 If the 'Enforcement Officer' option is agreed, an element of lone-working will be involved.
Medium Risk

6.3 Customer / citizen

- 6.3.1 Landlords who are unregistered or are operating unlicensed HMOs are committing an offence, and their tenants are at risk.
High Risk

6.4 Environmental

- 6.4.1 Not Applicable

6.5 Legal

- 6.5.1 Landlords who are unregistered or are operating unlicensed HMOs are committing an offence, and their tenants are at risk. Enforcement which brings about Registration or licensed HMOs results in compliance with the relevant legislation
Low Risk

6.6 Reputational

- 6.6.1 The Council could be criticised by 'complying' landlords for not doing enough to enforce against 'rogue' landlords.
High Risk

7. IMPACT SECTION

- 7.1 This section demonstrates how the proposals within this report impact on the strategic themes of Aberdeen City Council and Community Planning Aberdeen, as set out in the [Aberdeen City Local Outcome Improvement Plan 2016-26](#) and the [Aberdeen City Council Strategic Business Plan](#).

7.2 Economy

- 7.2.1 The private rented sector is a key element of the housing market. It provides housing for particular sectors of the economy and in particular students and workers taking up job opportunities in the city. A vibrant private rented sector is therefore very important in supporting the local economy.

7.3 People

7.3.1 The Council is committed to improving the key life outcomes for all people in Aberdeen. Private tenants are at risk if their landlords are not registered or HMO-licensed, therefore enforcement to achieve compliance with the legislation and the various standards should result in a safer living environment for private sector tenants.

7.4 Place

7.4.1 The Council is committed to ensuring that Aberdeen is a welcoming place to invest, live and visit and operating to the highest environmental standards. Ensuring that landlords comply with their registration and licencing obligations will make it easier to identify owners of property and thereafter to ensure that they meet their property maintenance and repairing obligations.

7.5 Technology

7.5.1 No direct implications.

8. BACKGROUND PAPERS

8.1 Scottish Government Statutory Guidance on the HMO legislation
Scottish Government Guidance on Landlord Registration

9. APPENDICES

9.1 None.

10. REPORT AUTHOR DETAILS

Ally Thain
Private Sector Housing Manager
allyt@aberdeencity.gov.uk
01224 522870

HEAD OF SERVICE DETAILS

Derek McGowan
Head of Communities & Housing
demcgowan@aberdeencity.gov.uk
01224 522226