

**Decision Session – Executive Member for
Housing, Planning and Safer Communities**

20 September 2023

Report of the Director of Housing Economy and
Regeneration

Justice for Tenants and Private Rented Sector Enforcement

Summary

1. The Council for the City of York (the “**Council**”) operate a House in Multiple Occupation (“**HMO**”) licensing scheme. Mandatory Licensing covers HMOs with 5 or more occupants, and Additional Licensing covers HMOs with 3 or 4 occupants across 8 wards. Additional licensing was introduced on 1 April 2023 to ensure a greater number of residents are supported by the licensing programme. The overall aim of the licensing programme is to ensure high standards of accommodation are provided in the private rented sector such that residents live in good quality and well managed and maintained homes.
2. This report builds on the good work done to-date and presents an opportunity to further support residents who live in a licensable HMO. This opportunity is a partnership with the not-for-profit organisation, Justice for Tenants (“**JFT**”). JFT provide advice and support to private sector tenants across the country and already have positive partnership arrangements with several Local Authorities. By creating a similar partnership in York, we can enable residents to act when the home they live in is non-compliant with housing legislation requirements.

Recommendations

3. The Executive is asked to:
 - i. Support the creation of a partnership with JFT, who can provide support and advice to private residential tenants,

including applying for rent repayment orders, through the signing of a Service Level Agreement and Data Sharing Agreement between the Council and JFT; and

- ii. Delegate authority to the Director of Housing Economy and Regeneration (and their delegated officers), in consultation with the Director of Governance (and their delegated officers), to negotiate the provisions, and conclude the entry into the proposed Service Level Agreement and Data Sharing Agreement with JFT.

Reason: The proposed partnership will assist the Council in bringing private sector properties, and in particular properties which are subject to additional HMO licensing requirements, into compliance with legislation by encouraging tenants to report properties which are non-compliant to the Healthy and Sustainable Homes team to investigate and take appropriate action to resolve.

Background

4. Following Executive approval of the additional HMO licensing scheme in August 2022, the Healthy and Sustainable Homes Team have been progressing the implementation of the scheme. On 1 April 2023 it became a legal requirement for all houses of multiple occupations in eight wards in York to be licensed, where the property has 3 or 4 tenants forming more than one household.
5. The number of properties affected by this additional HMO licensing scheme are thought to be around 2,000 properties. Despite extensive publicity across multiple platforms, to date we have received around 1,200 applications. This means that there are likely to be around 800 properties in the 8 additional HMO licensing wards which are not currently licensed and could, therefore, be operating in breach of legal requirements.
6. One of the main challenges facing the Healthy and Sustainable Homes Team is identifying these 800 properties. The exact details of some of these properties are unknown to the Council and the tenants are often unaware of their rights or the need for the premises in which they reside to be licensed. Therefore, alongside continuing to engage landlords and associated partners we are considering how we can reach out to tenants to ensure as

many properties are licensed as possible. This will help us bring more properties into legal compliance and further improving housing conditions in York.

Identification of HMOs

7. To identify HMOs, several different information sources are currently available and utilised, including planning databases and council tax records. In addition, HMOs are often identified through complaints received by the Healthy and Sustainable Homes team each year. Further to these routes, the Healthy and Sustainable Homes team are also trying to identify the location of these 800 properties by undertaking letter drops and carrying out site visits. These efforts will continue to identify some of the unlicensed HMO's. However, supporting the occupants to be aware of their rights is considered of significant benefit to maximise the identification of licensable HMO's.
8. Under the Housing and Planning Act 2016, there is a process called "rent repayment orders". This enables tenants of properties whose landlords fail to comply with the legal requirements to take action against those landlords to recover any rents paid whilst the property has been operating illegally.
9. This rent repayment order scheme provides tenants with a financial incentive to report landlords for failings, and also incentivises landlords to ensure they comply with legal requirements due to the potential loss of rental income when they operate a property which is not in compliance with legislation.
10. However, the process of applying for a rent repayment order for a occupants can be laborious, and tricky to navigate. This is where JFT can support HMO tenants. JFT assist by co-ordinating and helping tenants to make such applications. There are no up-front costs for tenants, with costs only incurred upon the successful application for a rent repayment order and monies being subtracted from any rent repayment awarded.

What is Justice for Tenants and how does their service work?

11. JFT is a not-for-profit organisation whose core objectives are to improve standards for renters and educate tenants about their rights, so they are empowered. JFT can also provide training and advice services to Council staff to allow for more effective enforcement services to protect tenants.
12. JFT approached the Council about the potential creation of a partnership to provide support to tenants in York, having already established several partnerships with local authorities across the country.
13. JFT has been chosen as the Council's proposed partner due to their existing work with other local authorities and reviewing references from existing partners. Furthermore, an examination was undertaken on the status of the organisation which found JFT to be a robust and financially sound organisation.
14. The proposed partnership process is simple. If a tenant contacts CYC about an unlicensed HMO then an inspection would be undertaken to verify the information. The tenants' details are then shared with JFT in accordance with an agreed Service Level Agreement and Information Sharing Agreement
15. Once information is shared, JFT will provide advice and support for the tenants by assisting with making rent repayment applications or providing an end-to-end representation service if they wish. JFT also provide wrap-around advice regarding housing issues for the tenants they assist.
16. When recovering privately paid rent for tenants, JFT pays the Tribunal fees on behalf of those they represent and the success fee of 30% plus VAT is only recovered at the point of funds being paid by the landlord. This removes financial barriers that can prevent tenants from being able to consider taking their own action.
17. Whilst the Council would have an exclusive partnership with JFT to provide such advice to tenants, JFT would not be the only available option for tenants. Tenants would still be able to

approach any other service provider of their choice to help them making rent payment applications or take action on their own.

The benefits

18. It is anticipated that the proposed partnership arrangement with JFT will encourage a number of tenants to notify the Council when their landlord has failed to licence a property. This will help the Council identify unlicensed premises, will help support occupants in obtaining financial support, and in time will further improve the standard of private rented sector accommodation in the city by increasing the number of licensed HMOs. Use of the scheme will also ensure that landlords do not financially benefit by operating HMOs illegally and by demonstrating that CYC is taking all courses of action available.

Consultation

19. A full public consultation was undertaken prior to the introduction of the additional HMO licensing scheme.
20. Initial discussions with some of our key partners, such as the Universities of York and York St John, have been undertaken regarding the JFT proposal and both universities are keen to ensure that their students have support and advice to help improve their housing and therefore assist them in their studies.
21. Discussions with the York Resident Landlord Association have also been carried out, with the majority of landlords who are part of this association being keen to ensure that enforcement of the additional HMO licence regime is undertaken by the Council, thereby ensuring a level playing field for all landlords.

Council Plan

22. The Council Plan for City of York for 2023 to 2027, 'One City, for all' sets out priorities for the next 4 years focus on helping everyone, wherever they live in the city, have happier and healthier lives.

The themes of the Plan the council will focus on are:

- health and wellbeing: a health generating city, for children and adult.
- education and skills: high quality skills and learning for all.
- economy and good employment: a fair, thriving, green economy for all.
- transport: sustainable accessible transport for all.
- housing: increasing the supply of affordable housing.
- sustainability: cutting carbon, enhancing the environment for our future.

23. The proposed partnership with Justice for Tenants will help to improve the conditions of housing within the city, thus helping to improve the health of residents. It will also help improve the quality of lower or more affordable housing in the city.

Implications

- **Financial**

There are no direct financial implications from the proposal, as the service offered by Justice for Tenants is free of charge to City of York Council. However, ensuring that all HMOs located within the 8 wards where additional HMO licensing is required will generate income to fund the Healthy and Sustainable Homes service.

- **Human Resources (HR / Equalities)**

There are no human resources implications as referring of cases to JFT will form part of the role of existing officers carrying out enforcement within the Healthy and Sustainable Homes team.

- **One Planet Council / Equalities**

The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

At the time of writing there are no equalities implications identified in respect of the matters discussed in this report. However, an Equalities Impact Assessment will be carried out in due course and the process of consulting on the recommendations in this report will identify any equalities implications on a case-by-case basis, and these will be addressed in future reports.

- **Legal**

Housing Law

- a. Section 56 of the Housing Act 2004 states that Council acting in its capacity as a local housing authority may designate either:
 - i. the area of their district; or
 - ii. an area in their district
- b. as subject to additional licensing in relation to a description of HMOs specified in the designation, provided that the Council has considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question, and they consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well).
- c. The designation can only be in place for a maximum of 5-years, and subject to periodic review by the Council.
- d. The Council must consider that a significant proportion of the HMOs of that description in the relevant area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
- e. The Council must ensure that any exercise of the above power is consistent with the Council's overall housing strategy and must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both as regards combining licensing under this Part with other courses of action available to them, and as regards combining such licensing with measures taken by other persons.

- f. Legal Services is satisfied that proposed arrangement with JFT is in line with the legislation and guidance around use of the powers available under Section 56 of the Housing Act 2004.
- g. Further to the above, regarding the Council's statutory duties under Sections 48 and 49 Housing and Planning Act 2016, if the Council becomes aware of any of any landlord in its area being found guilty by the First Tier Tribunal of being in control of or managing an unlicensed HMO, the Council in its capacity as local housing authority must consider applying for a rent repayment order, or may provide help to tenants in order for them to apply for a rent repayment order, either by helping tenants to apply for the order, by conducting proceedings, or by giving advice to the tenant. The Council therefore needs to have a consistent policy on this and as to whether we support any tenant's claim.

Contract & Procurement Law

- a. It has been proposed that a Service Level Agreement will be signed between the Council and JFT, to provide the service and allow the referral of cases.
- b. It is also envisaged that JFT will be responsible for the provision of advice and processing of any rent repayment orders, and any liabilities thereafter.
- c. Both agreements will need to be reviewed and approved by officers within Legal Services before being entered into.
- d. Any contract entered by the Council must be entered into in compliance with our obligations under the Public Contract Regulations 2015 and the Council's Contract Procedure Rules within the constitution.
- e. Arguably, the proposed Service Level Agreement falls outside of the Public Procurement Regime under the Public Contract Regulations 2015. The Regulations only apply to "Public Contracts," which are defined under Regulations 2(1) as contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services. In other words, if a contract has no identifiable, financial consideration being provided by the contracting authority to the economic

operator (i.e., “consideration” in this context can be either where the Council pays the economic operator an agreed rate/fee in exchange for any services they provide, or the Council reimburses the JFT’s expenditure incurred in providing the agreed service) then a contract does not fall within the definition of a contract “for pecuniary interest.” In this instance, the intention is that JFT shall provide services to the Council and individual private sector tenants, and on any successful application to the First Tier Tribunal for a Rent Repayment Order, JFT’s fees shall be paid by the private sector tenant of any fees awarded. The Council are not proposing on using JFT for the recovery of any housing benefits paid by the Council to any private sector housing landlords, but rather as a referral process for private sector tenants to obtain help and support making any applications themselves. At this point, the tenant would be liable for JFT’s costs, something which JFT would make clear at the point at which they provide assistance. As a result, there is not any associated costs to CYC. As such, this is arguably not a contract for “pecuniary interest” under the Public Contract Regulations 2015.

f. That being said, as JFT would be appointed directly by the Council, this will require a waiver of the Council’s Contract Procedure Rule before any agreement is entered into.

- **Crime and Disorder**

There are no implications.

- **Information Technology (IT)**

There are no implications.

- **Property**

There are no implications.

- **Other Information - Governance and data sharing**

The proposed arrangement will involve the sharing of data between the Council and JFT. However, this will be covered by a data sharing agreement, data sharing statements, and consent for private sector tenants involved. Any data sharing arrangements entered into between the Council and JFT will need to be reviewed and approved by Legal Services and the Data Protection Officer/

Information Governance & Feedback Team Manager before being entered into.

- **Other Information - Procurement**

Further to Legal Implications set out above, since the proposed partnership with JFT does not involve the purchase of a service, rather it involves the creation of a referral mechanism for tenants to get external advice on rent repayment orders, there are no procurement implications. This has been confirmed by the Council's procurement team.

Risk Management

The main risk identified associated with the proposals contained in this report are those which concern risks associated with data breaches.

This risk will be minimised through gaining written consent from tenants wanting to use the service provided by JFT, prior to referral to JFT.

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Approved

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Wards Affected:

The proposed partnership with JFT will primarily affect and benefit tenants in the 8 additional HMO licensing wards of

- Clifton
- Fishergate
- Fulford and Heslington
- Guildhall
- Heworth
- Hull Road
- Micklegate
- Osbaldwick and Derwent

However, the service will also potentially affect and benefit tenants in other wards across the district in the future too.

For further information please contact the author of the report

List of Abbreviations Used in this Report.

HMO – House in multiple occupation

JFT – Justice for Tenants

