

Cabinet – 22 March 2023

Lettings Agent Enforcement Policy

Portfolio: Councillor Perry – Deputy Leader & Resilient Communities

Related portfolios: Councillor Ali - Customer

Service: Resilient Communities

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

- 1.1 The Enforcement Policy sets out the council's approach to the enforcement and determination of financial penalties where persons engaged in letting agency and property management work fail to comply with legislative requirements.

2. Summary

- 2.1 Walsall Council, in its capacity as the enforcement authority and the local weights and measures authority, has a statutory responsibility to regulate specific aspects of the letting agency and property management market. This responsibility includes ensuring that tenants are only charged permitted fees, that letting agents are members of a redress scheme and a client money protection scheme and that letting agents' fees and charges are transparent and displayed/publicised appropriately.
- 2.2 Authorities are expected to develop and document a policy on the enforcement of letting agency and property management legislation and this report sets out a draft enforcement policy for approval.

3. Recommendations

- 3.1 That the adoption of the enforcement policy in relation to relevant letting agency legislation as set out in **Appendix A** of the report be approved.
- 3.2 That the Executive Director Economy Environment and Communities is authorised to make amendments to the financial penalty charge matrices to reflect any changes necessary as a result of amendments to legislation, legal decisions, statutory and best practice guidance.

4. Report detail - know

Context

- 4.1 The Tenant Fees Act 2019 was introduced to make renting fairer and more affordable for tenants by introducing a ban on certain fees payable by the tenant and also creating a 'permitted payment' regime.
- 4.2 Any fees not specifically permitted by the act are prohibited. The act allows the enforcement authority to impose a financial penalty not exceeding £5,000 for breaches in relation to permitted fees and repayment of holding deposits. Should further breaches occur within five years, the enforcement authority may prosecute or impose a financial penalty not exceeding £30,000.
- 4.3 The Consumer Rights Act 2015 has been amended by the Tenant Fees Act 2019 to ensure that letting agents publicise their fees. An enforcement authority may impose a financial penalty not exceeding £5,000 for failure to comply with the requirement to publicise fees.
- 4.4 The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, requires agents to belong to a redress scheme. The schemes can investigate disputes between tenants, agents and landlords and can order agents to reimburse fees or pay compensation for unfair practices. The order allows the enforcement authority to impose a financial penalty not exceeding £5,000 for failure to comply with the requirement to belong to a redress scheme.
- 4.5 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, requires that any property agent holding client's money must be a member of a client money protection scheme. The regulations allow the enforcement authority to impose a financial penalty, not exceeding £30,000 for failing to be a member of a client money protection scheme, or not exceeding £5,000 for failing to provide the required information in relation to their membership.
- 4.6 Where the council wishes to utilise financial penalties for breaches for any of these infringements, statutory guidance accompanying the legislative controls clearly states that the Council is expected to develop, document and publish a policy, which sets out how it will determine the appropriate level of any financial penalty.

Statutory enforcement guidance:

[Tenant Fees Act 2019 - Statutory Guidance For Enforcement Authorities.](#)

[Statutory guidance - Mandatory client money protection: enforcement guidance for local authorities](#)

- 4.7 The lead enforcement authority, Bristol City Council, operating as the National Trading Standards Estate and Letting Agency Team (NTSELAT) has issued an exemplar enforcement policy document. It is proposed that this document is

adopted by Walsall Council and as such a draft policy setting out the council's approach to enforcement and the determination of any financial penalty has been produced and is set out in **Appendix A**.

Council Plan priorities

4.8 Housing is a key determinant of health and wellbeing, and this policy should ensure tenants are not subjected to unnecessary financial burdens such as overtly high deposit costs or front-loading rent. This should make it more affordable for tenants to rent or move between rental properties should circumstances change. This could be especially important for low-income vulnerable groups, such as young people, single parent families and people with disabilities, who already face challenges in finding affordable homes and have limited alternative housing available to them. Effective enforcement of the above legislation and adoption of the proposed enforcement policy will enable the trading standards team to support the corporate priorities, ensuring that:

- children are safe from harm and healthy. Vulnerable families at risk of exploitation from rogue letting agents will be deterred from engaging in detrimental practices.
- greater local economic opportunities for all people, communities and businesses. There will be a positive impact on legitimate compliant letting agents and also the wider community from a reduction in financial exploitation.
- communities are empowered so they feel they are well connected and belong in Walsall, creating safe and healthy places that build a strong sense of community. Consistency of enforcement with neighbouring authorities is vital so that Walsall tenants are not seen as an easy target for exploitation by rogue agents.

Risk management

4.9. The key risk relates to the possibility that failure to adopt an enforcement policy will prevent effective and consistent enforcement of letting agency legislation. The recommended adoption of the enforcement policy outlined in **Appendix A** will remediate this risk.

4.10 A further risk is the potential difficulty of recovering the financial penalties. The authority may recover the penalty or part on the order of the county court as if it were payable under an order of that court. Some recipients may be limited liability companies and/or have no financial assets from which monies can be recovered. However, the council will use appropriate legal processes in order to recover as much debt as possible.

Financial implications

- 4.11 The policy will be applied with existing staffing resources. The legislation provides that enforcement authorities are able to retain monies raised through financial penalties with the proceeds reserved for carrying out enforcement functions in relation to the private rented sector. The level of the financial penalties which can be imposed by the council varies depending on the infringement, however, they can be up to £30,000. It's for the council to determine the level of each penalty up to the maximums set in law. To ensure the penalties are used fairly and are set at an appropriate level, the policy sets out the factors that will be considered and the methods that will be used before a financial penalty is imposed. Factors are based on government statutory guidance, and the policy follows best practice, which has been set by England's lead enforcement authority (National Trading Standards Estate and Letting Agency Team - NTSELAT). Most other Black Country and Central England Trading Standards Authorities have also followed the NTSELAT guidelines ensuring consistency of enforcement and fine levels.

Legal implications

- 4.12 The adoption of an enforcement policy is crucial to allow the trading standards team to take formal legal action against letting agent and property management companies. The policy is in accordance with the NTSLEAT nationally agreed policy.

Procurement Implications/Social Value

- 4.13 There are no procurement implications to this report.

Property implications

- 4.14 There are no property implications to this report.

Health and wellbeing implications

- 4.15 By using the enforcement policy appropriately, services are able to investigate criminal offences. This ensures that the Marmot objectives are met by protecting people at all life stages and promoting a fair and safe environment in which business can thrive.

Reducing Inequalities

- 4.16 Protecting the most vulnerable members of our communities is a priority for the council. Individuals and families may rely on the private rented sector for their accommodation and where unlawful practices are used by landlords this can exacerbate inequalities.

Staffing implications

- 4.17 The policy will be applied with existing staffing resources.

Climate Impact

4.18 There are no climate impact implications to this report.

Consultation

4.19 No public consultation is necessary. Statutory guidance states that enforcement authorities should consult with the lead enforcement authority to ensure policies on Tenant Fees Act penalties are in line with the national approach to promote consistency, alongside local priorities. In pursuance of this the lead authority has made their enforcement policy available for wider adoption. The policy in **Appendix A** adheres to this. Discussions have taken place with the housing standards and Improvement team to ensure the proposed policy does not conflict with the existing housing standards enforcement policy.

5. Decide

5.1 This report is to enable members of cabinet to formally adopt the policy thereby enabling Trading Standards to take part in the national lettings agency project and continue to carry out this work in future for the benefit of Walsall communities.

6. Respond

6.1 If cabinet accept the recommendations the Trading Standards service will implement the Lettings Agents project and use the policy to inform any enforcement action undertaken.

7. Review

7.1 The enforcement policy will be reviewed annually to ensure fees, charges and decision matrices adhere to current statute, guidance and best practice. It is proposed that the Executive Director Economy Environment and Communities is authorised to make appropriate amendments to reflect any changes.

Appendices

Appendix A - Enforcement Policy in Relation to Relevant Letting Agency Legislation

Background papers

There are no background papers for this report.

Author

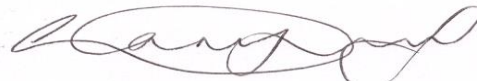
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10 March 2023



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10 March 2023