



Environment and Climate Change Committee 21 November 2022

Title	Letting Agents Enforcement Policy and adoption of associated legislation
Report of	Chair of Environment and Climate Change Committee
Wards	ALL
Status	Public
Urgent	No
Key	No
Enclosures	Appendix A – Draft Letting Agents Enforcement Policy October 2022
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Summary

Since 2014 the Government has introduced various pieces of legislation to regulate the activities of lettings and property management agents. These include the requirement for agents to belong to an approved Redress Scheme and Client Money Protection Scheme, the banning of tenants' fees (with certain prescribed exceptions), and requirements in relation to the publication of fees. Enforcement is largely by means of financial penalties, which can amount to up to £30,000, depending upon the circumstances.

The responsibility for enforcement of the above provisions lies with Trading Standards, which sits within Regulatory Services. The level of penalty to be imposed is subject to the discretion of the Council, up to statutory maximum values.

In order to support the determination of financial penalties for breaches of legislation we are looking to adopt the Model London Lettings Enforcement Policy, which has been prepared by London Trading Standards (LTS). It sets out the decision-making process to be followed when taking enforcement action.

Officers Recommendations

- 1. That the Committee approve and delegate authority to the London Borough of Barnet Trading Standards to impose monetary penalties for offences in relation to breaches of the Tenants Fees Act 2019 and the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019**
- 2. That the Committee agree to the adoption of the Lettings Enforcement Policy.**

1. Why this report is needed

- 1.1 Since 2014, letting agents have been required to be a member of a government approved redress scheme such as the Property Ombudsman scheme. As part of the Consumer Rights Act 2015, the government introduced the requirement for letting agents to publicise landlord and tenant fees. Authorisation for the imposition of financial penalties under these pieces of legislation was agreed by this Committee on 9 June 2022.
- 1.2 To further regulate the private rented sector, the Tenant Fees Act 2019 was passed into legislation; this prohibited the charging of tenants' fees, save for permitted exceptions. Since 2019, letting agents are also required to be members of a government approved Client Money Protection Scheme.
- 1.3 The sanction for breaches of letting agents' requirements is usually by way of a civil financial penalty imposed by the enforcement authority (although certain breaches of the Tenant Fees Act can give rise to criminal proceedings). The penalty imposed can be up to £5,000 in the case of failure to display a certificate of an approved Client Money Protection and certain transparency requirements. The maximum penalty increases to £30,000 for breaches of the permitted payments regime and non-membership of a Client Money Protection scheme. The penalty amount to be imposed is at the discretion of the enforcement authority.
- 1.4 When setting financial penalties, an enforcement authority must have regard to relevant statutory guidance and guidance issued by the lead enforcement authority for England, Bristol City Council. With this in mind, a model enforcement policy has been prepared by London Trading Standards, in consultation with the lead enforcement authority. The proposed policy also takes into account the Regulators' Code and the Code for Crown Prosecutors.
- 1.5 The model enforcement policy aims to ensure consistency of approach across London when setting the level of financial penalty to be imposed. It sets out factors to be considered such as culpability, harm, aggravating and mitigating features and proportionality. It also describes the decision-making process to be used when taking enforcement action for breaches of the letting agents legislation mentioned above.
- 1.6 Therefore, to be able to enforce the whole range of current letting agents legislation, the agreement of this Committee is sought to approve and delegate authority to Trading Standards to carry out enforcement and impose monetary penalties in respect of breaches of:

- 1.6.1 The Tenants Fees Act 2019, and
- 1.6.2 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (made by virtue of Sections 133, 134 and 135 of the Housing and Planning Act 2016)
- 1.7 Furthermore, approval is sought for the adoption of the Lettings Enforcement policy in Appendix A to enable a consistent approach to the determination of fair and proportionate monetary penalties imposed by virtue of relevant letting agents legislation.

2. Reasons for recommendations

- 2.1 The London Borough has a duty to enforce letting agents legislation. The Trading Standards Team aim to bring all relevant traders into compliance. Authorisation under this additional legislation will enable officers to tackle all aspects of non-compliance. The issuing of monetary penalties will be a useful tool to ensure compliance and the adoption of the enforcement policy will ensure a fair and consistent approach. The proposed enforcement policy is complementary to Barnet's Development and Regulatory Services Enforcement Policy which was last amended by the Housing Committee on 23 October 2017.

3. Alternative options considered and not recommended

- 3.1 This legislation imposes a duty on the local authority, so there is no alternative other than to adopt and enforce the legislation. It is important that Officers carry out monitoring and enforcement regarding membership of Client Money Protection schemes and the restriction of tenants' fees, because these aspects are a vital part of the legislative measures that have been put in place to protect tenants and prevent their exploitation.

4. Post decision implementation

- 4.1 All trading standards enforcement officers will be authorised to enforce this legislation and issue penalty notices accordingly. However, before issuing any such notice, clearance must be sought from the senior officer for the team. When considering the level of penalty to impose, the principles of the Enforcement Policy will be applied, and the recommended process followed.

5. Implications of decision

5.1 Corporate Priorities and Performance

- 5.1.1 Implementation of this legislation and imposition of associated penalties aims to raise standards in the Private Rented Sector; raising standards in turn increases sustainability. A sustainable and compliant private rental market will attract and retain economically active individuals and businesses.
- 5.1.2 Promoting compliance and tackling non-compliant behaviour by individuals and businesses contributes positively to creating places where people want to live, work

and socialise therefore supporting the objectives contained within the Corporate Plan.

5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The cost of the additional enforcement will be met through the monetary penalties received where the legislation is breached.

5.3 **Legal and Constitutional References**

5.3.1 The Local Authority has a duty to enforce both the Tenants Fees Act 2019 and the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.

5.3.2 Statutory enforcement guidance states that enforcement authorities are expected to develop and publish their own enforcement policy on determining the appropriate level of financial penalties to impose for a given breach.

5.3.3 There is an appeal process to the First Tier Tribunal if someone wishes to challenge a monetary penalty imposed on them by the authority.

5.3.4 Under Article 7 (Committees, Forums, Working Groups and Partnerships), the Environment and Climate Change Committee has:

(1) Responsibility for all borough-wide or cross-constituency matters relating to the street scene including, parking, road safety, lighting, street cleaning, littering, fly-tipping, fly-posting, graffiti, transport, waste, waterways, refuse, recycling, allotments, parks, trees, crematoria and mortuary, trading standards and environmental health.

5.4 **Insight**

5.4.1 Not relevant to this report.

5.5 **Social Value**

5.5.1 Not relevant to this report.

5.6 **Risk Management**

5.6.1 The Trading Standards team will work closely with the legal team, as well as other local authorities trading standards teams to ensure long term compliance, and, to develop best practice around these penalties to reduce the likelihood of a recipient successfully appealing their penalty.

5.7 **Equalities and Diversity**

5.7.1 Implementation of this legislation aims to protect and support vulnerable groups/families.

5.8 **Corporate Parenting**

5.8.1 Not applicable.

5.9 **Consultation and Engagement**

5.9.1 None required.

5.10 Environmental Impact

5.10.1 There are no direct environmental implications from implementing the recommendations.

6. Background papers

- 6.1 The Tenant Fees Act 2019 [Click here](#)
- 6.2 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 [Click here](#)
- 6.3 The Housing and Planning Act 2016 [Click here](#)
- 6.4 Tenant Fees Act 2019. Statutory Guidance for Enforcement Authorities (updated September 2020) [Click here](#)
- 6.5 The Consumer Rights Act 2015 [Click here](#)
- 6.6 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 [Click here](#)
- 6.7 The Enterprise and Regulatory Reform Act 2013 [Click here](#)