

**London Boroughs of Brent and Harrow
Trading Standards Joint Advisory Board
23 November 2017
Report from the Service Manager**

FOR INFORMATION

**ENFORCING LEGISLATION CONCERNING LETTING
AGENT'S FEES**

1.0 Purpose of the Report

- 1.1 The Consumer Rights Act 2015 creates a legal requirement for letting agents to display details of fees they charge on their premises and websites. It is the responsibility of the Trading Standards Service by virtue of our function as the 'Local Weights and Measures Authority' to enforce the provisions of this legislation.
- 1.2 The enforcement sanction for non-compliance is a monetary penalty not exceeding £5k. It is up to the local authority to set the level of penalty they wish to impose.
- 1.3 Paragraph 13(f) of the Consortium Agreement between the London Borough of Brent and the London Borough of Harrow states that the Joint Advisory Board 'should consider and make recommendations on the level of fees and charges to be made to the public in respect of any part of the service, for consideration by whoever is authorised to make fees and charges decisions by each respective council's constitution'. This report seeks any comments and/or recommendations from members as to the level of charge that should be made when issuing any penalty notices.

2.0 Recommendation(s)

- 2.1 That the Joint Advisory Board comments on the following proposal:
- 2.1.1 To the introduction of a penalty charge of £5k for the non-compliance of S83 Consumer Rights Act 2015.
- 2.2 That the Joint Advisory Board notes:
- 2.2.1 The Strategic Director will delegate authority to the Trading Standards Senior Regulatory Service Manager and any manager above this position, to make decisions when to issue any penalty notice and to be so authorised to review the value of any penalty charge imposed subject to any representations made by recipient as prescribed by the Act.

2.2.2 Any monetary penalty received in connection with enforcing this Act will be used to fund the costs of enforcement.

3.0 Detail

- 3.1 Part 3, Chapter 3 of the Consumer Rights Act 2015 imposes a duty on lettings agents to clearly publicise a list of their fees on their website and business premises for the benefit of landlords and tenants. The list must accurately describe all the fees and vague, unclear charges made for services such as 'administration' for example, without any clarification, are prohibited.
- 3.2 The requirement came into effect May 2015. Until now, a light touch approach has been given when noncompliance has been identified. Approximately 150 Brent and 100 Harrow based letting agents have been given advice on the legislation by Trading Standards Officers. Much of this advice has been in writing.
- 3.3 This approach has partly been due to Department for Communities and Local Government (DCLG) guidance¹ which implied local authorities were to take into account letting agent's 'lack of awareness' of the legislation when deciding whether to issue a penalty notice.
- 3.4 A similar report to this, was presented to the Joint Advisory Board on 24 October 2017 which recommended delegating the Council's statutory responsibility to enforce the provisions of the Redress Schemes for Letting Agents and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.
- 3.5 This delegation was approved by Brent's Cabinet on 24 April 2017 but remains pending in Harrow, where Harrow's Housing Team has sole authority for this function.
- 3.6 This legislation subject to this report, differs from the Order previously reported to the Joint Advisory Board in that it specifically makes enforcement of the Consumer Rights Act 2015, a statutory responsibility for the Local Weights and Measures Authority (the Trading Standards Service). The only discretion imposed by the Consumer Rights Act 2015, is the level of penalty to impose.
- 3.7 For this reason, it is not considered necessary to obtain Cabinet's consent to any proposal in this report on the basis the relevant Divisional and Strategic Directors can agree to set the fee using their delegated powers. The London Borough of Brent's constitution permits this delegation, enquiries are being made to check the same applied in the London Borough of Harrow.
- 3.8 The intended effect of the legislation is to increase transparency of fees, which will allow both tenants and landlords to have a clearer indication of costs they will have to pay when renting a property through that agent.

¹ Department for Communities and Local Government Guidance for Local Authorities can be found at the following link:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412921/Improving_private_rented_sector.pdf

- 3.9 A financial penalty up to £5k can be imposed when Trading Standards are satisfied, on the balance of probabilities that someone who is engaged in letting or property management work has failed to correctly display its fees.
- 3.10 The DCLG guidance specifically stipulates 'The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances'.
- 3.11 It is possible to impose further penalties if a lettings agent continues to fail to publicise their fees despite having previously had a penalty issued. There are no limits to the number of penalties that may be imposed on an individual lettings agent if they continue to be in breach of the legislation
- 3.12 It is proposed that the penalty notice fee is set at £5k as per the DCLG guidance. Consideration has been given to applying a discount to encourage early payment. However, as the Act provides a legal requirement for any person receiving a penalty notice to make representations and for these to be considered before sending the final penalty notice. Therefore, a discount for early payment was not considered necessary, unlike the penalty notice for non membership of the redress scheme, which does attract a 50% discount for early payment.
- 3.13 When Trading Standards intend to issue a penalty notice, we must follow a process set out below:

Step 1: Notice of Intent

We must give written notice of our intention to impose a penalty, setting out:

- i) the amount of the proposed financial penalty,
- ii) the reasons for proposing to impose the penalty, and
- iii) that there is a 28 day period to make written representations, starting from the day after the date on which the notice of intent was sent.

Step 2: Representations

The person on whom the notice of intent was served has 28 days to make written representations to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, we must issue a final notice in writing which sets out:

- i) the amount of the financial penalty,
- ii) the reasons for imposing the penalty,
- iii) information about how to pay the penalty,
- iv) the period for payment of the penalty,
- v) information about rights of appeal, and
- vi) the consequences of failure to comply with the notice.

Note: We can amend or withdraw either of the notices at any time.

Step 4: Appeals

A letting agent can appeal against a final notice to the First-tier Tribunal in the General Regulatory Chamber. If an appeal is lodged the fine cannot be enforced until the appeal is concluded. Appeals can be made on grounds that include:

- i) the decision to impose a fine was based on an error of fact,
- ii) the decision was wrong in law,
- iii) the amount of the fine is unreasonable,
- iv) the decision was unreasonable for any other reason.

- 3.14 Penalty Notices are used as a last resort for achieving compliance. For this particular legislation, they are used in place of normal criminal proceedings through the Courts. As such, the usual Trading Standards procedures would be applied with respect to preparing a case file for review by management requiring appropriate authorisation before a penalty notice would be issued.
- 3.15 It is proposed that authority is delegated to the Trading Standards Senior Regulatory Service Manager and any manager above this position with authority to both issue penalty charge notices and to be able to review and reduce the amount to be paid as appropriate, subject to any representations made pursuant to Step 3 described above, as prescribed by the Act.
- 3.16 In our North West London Trading Standards group, the only authority to have issued a penalty notice is the London Borough of Enfield which is currently subject to an appeal. There are few London authorities who have issued any penalty notices to date with the exception of Camden, Islington, Southwark and Westminster who between them have started setting various helpful precedents pioneering this process.
- 3.17 In a recent exercise, seven local letting agents were subject to spot checks to ascertain compliance with the Act. Despite having previously been advised by Trading Standards, all but one of the agents were found to be noncompliant. For this reason, we are now suggesting that this work is given increased priority and a tougher enforcement approach is taken.
- 3.18 The Queens speech in June 2017, announced proposals to ban landlords and agents from requiring tenants to make any payments as a condition of their tenancy with the exception of the rent, a capped refundable holding deposit and tenant default fees. A draft bill was published on 1 November 2017 proposing to cap security deposits at six weeks' rent, cap holding deposits at one week's rent and it sets out the circumstances in which agents and landlords will be required to refund the holding deposit to tenants.
- 3.19 The bill states that Trading Standards will be responsible for enforcing the ban and makes provision for tenants to be able to recover unlawfully charged fees. It creates a civil offence with a fine of £5,000 for an initial breach of the ban and a criminal offence where a person has been fined or convicted of the same offence within the last 5 years.

4.0 Financial Implications

- 4.1 It is proposed that a small number of lettings agents are targeted to achieve compliance with this legislation at any one time. On the assumption that levels of compliance will rise as enforcement increases, it is hoped that there will be marked improvement within local lettings businesses. This should be possible within current staffing resources and existing budgetary provision.
- 4.2 Where it is necessary to take formal action to enforce the requirements of the Act, a greater staffing resource will be needed which may result in staff being taken away from other duties.
- 4.3 If compliance rates remain low, then we shall have to review our budgetary provisions and will make a separate case to seek staffing resource, potentially funded by the penalty notices, to cover these costs.
- 4.4 Any penalty charges received as a result of formal action will be used to offset the overall cost of the enforcement activity. On the basis we charge the maximum penalty of £5k, this would cover the costs up to the point of issuing the penalty charge. It is possible that if businesses do not pay the penalty, steps will need to be taken to enforce the debt which will incur additional costs. These will need assessing on a case by case basis.

5.0 Legal Implications

- 5.1 The Consumer Rights Act 2015 requires prescribed letting agent businesses to clearly display details of any fees they charge for the rental of property, in their business premises and on their websites. The legislation took effect on 27 May 2015. The enforcement of this requirement is a statutory responsibility of Trading Standards' authorities.
- 5.2 This legal requirement means that prospective landlords or tenants can clearly and easily access information setting out any charges for which they may become liable if renting a property via that agent.
- 5.3 The proposals put forward in this report are in line with the assertions contained in the DCLG 2015 guidance document entitled "*Improving the Private Rented Sector and Tackling Bad Practice: A Guide for Local Authorities*".

6.0 Equality Implications

- 6.1 The proposals in this report have been screened to assess their relevance to equality and were found to have no equality implications.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Ward Members do not need to be consulted about this report as it is a statutory requirement that affects all of the wards in both of the boroughs.

7.2 Brent's Lead Member has been consulted on this report at a briefing on 13 October 2017 and was supportive of all the recommendations being suggested.

8.0 Human Resources/Property Implications

8.1 There are no significant staffing implications arising from this report. Written procedures and notices will need drafting to enforce the provisions of this Act. Staff will need training in relation to these procedures but it is expected that this can be accommodated within existing staffing resource.

Any person wishing to obtain more information should contact Simon Legg, Senior Regulatory Service Manager, Brent Civic Centre, Engineers Way, Wembley Middlesex HA9 0FJ. Telephone: (020) 8937 5522, simon.legg@brent.gov.uk

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