

Letting Agent

Tenant Fees and

Client Money Protection

Enforcement Policy



London Borough of Brent Policy under the Tenant Fees Act 2019 and Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

Tenant Fees Act 2019

From 1 June 2019, the Tenant Fees Act 2019 (TFA), came into force, prohibiting landlords and agents from charging any fees to tenants, other than those 'permitted' by the Act. Any tenancy that was signed on or after this date, must adhere to the new legislation.

The TFA applies to assured shorthold tenancies, student accommodation tenancies and licences to occupy housing in the private rented sector. The TFA only applies to landlords, agents and tenants in England.

Trading Standards has a duty to enforce the TFA, and where there has been a breach of the Act and/or associated legislation, to determine the appropriate enforcement action. This policy has been issued pursuant to this duty and should be read in conjunction with the council's published Enforcement Policy.

In creating this policy, regard has been given to the Tenant Fees Act 2019 Statutory Guidance for enforcement authorities¹.

The TFA provides that enforcement authorities may impose financial penalties depending on the breach as follows:

- In respect of prohibited payments under sections 1 & 2 of the TFA a financial penalty not exceeding £5,000 for a first breach.
- Under section 12 of the TFA a second or subsequent breach within 5 years of the previous breach, will be a criminal offence of which an unlimited fine may be imposed upon conviction.
- As an alternative to prosecution the Act allows enforcement authorities to impose a financial penalty of up to £30,000.

¹ Tenant Fees Act 2019 – Statutory Guidance for Enforcement Authorities
<https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

The Trading Standards Service will determine what is the most appropriate and effective sanction, whether it is applicable to impose a financial penalty or prosecute in any relevant case.

This policy sets out factors that will be used to determine whether to prosecute for an offence under section 12 or issue a monetary penalty for a breach of sections 1 or 2. The policy also lists factors to help determine the level of the financial penalty, where one is issued. The factors are not weighted or listed in any order of priority. If there is a deviation from this policy, the reasons will be documented in writing.

Decision to prosecute for an offence under section 12

The decision to prosecute a business under the TFA will take into consideration the TFA statutory guidance and our enforcement policy as well as the factors below;

- Whether a monetary penalty has been issued previously and if it has, was it paid?
- There is little or no cooperation with Trading Standards following being made aware of an alleged breach
- The business is being prosecuted for other offences

Decision to issue a monetary penalty for a breach of sections 1 or 2

The decision to issue a monetary penalty under the TFA will take into consideration the TFA statutory guidance and our enforcement policy as well as the factors below:

- Whether a monetary penalty has been issued previously and if it has, was it paid
- There is some evidence that compliance has improved since being made aware of the alleged breach
- The business is not being investigated or facing formal action for other matters
- There is no reason to believe at present that the business or its officers are unfit to practice as letting agents

Decision to determine the value of any monetary penalty for a breach of sections 1 or 2

- The considerations are set out on the following pages for both the TFA and CMPR

Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

Trading Standards has a duty to enforce the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (CMPR), and where there has been a breach of the Regulations and/or associated legislation, to determine the appropriate enforcement action.

In creating this policy, regard has been given to the CMPR Statutory Guidance for enforcement authorities².

In respect of a failure by a property agent who holds client money to belong to an approved or designated scheme as required by regulation 3 of the CMPR, a financial penalty not exceeding £30,000, may be imposed.

In respect of a failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website or produce a copy of the certificate free of charge as required by regulation 4(1) of the CMPR a financial penalty not exceeding £5,000 may be imposed.

In respect of a failure by a property agent to notify any client within 14 days of a change in the details of an underwriter of a scheme or that the membership of the scheme has been revoked as required by regulation 4(2) of the CMPR a financial penalty not exceeding £5,000 may be imposed.

² Mandatory client money protection for property agents-Enforcement guidance for local authorities
<https://www.gov.uk/government/publications/mandatory-client-money-protection>

Determining the level of the monetary penalty for a breaches under TFA and CMPR

If a monetary penalty is to be imposed, the Service will have regard to the factors expressed in paragraphs 6.3 and 6.2 of the relevant statutory guidance.

This guidance includes the following factors to help ensure that the financial penalty is set at an appropriate level:

- a) Severity of the breach
- b) Punishment of the landlord or agent
- c) Aggravating and mitigating factors
- d) Fairness and proportionality

The Service recognises the need for each case to be considered on its own merits when determining the appropriate level of financial penalty.

In order to achieve the aims of the guidance in regards to being fair, proportionate, independent and objective we shall use the following table to assist us in determining the starting point for the level of penalty.

			Starting point for first breach (subject to representations)	Starting Point for second or further breaches (subject to representations)
Low Harm	1		£1,000	£5,000
	2		£2,000	£10,000
	3		£3,000	£15,000
	4		£4,000	£20,000
High Harm	5		£5,000	£30,000

In accordance with the legislation, we will consider any representations made by the business within the statutory timescales permitted and apply reductions from the starting point figure accordingly.

In addition, we shall take into consideration, the value of the overall penalty imposed, if the situation should arise whereby a businesses is due to be issued additional penalty notices under alternative legalisation.

Head of Regulatory Services

Dated March 2020