

**London Boroughs of Brent & Harrow
Trading Standards Joint Advisory Board
18 March 2020
Report from the Senior Service Manager**

FOR INFORMATION

**Tenants Fees Act and Client Money Protection policy on
determining the appropriate level of financial penalties**

1.0 Purpose of the Report

- 1.1 The Ministry of Housing, Communities & Local Government has produced statutory guidance under both the Tenants Fees Act 2019 (TFA) and the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations (CMPR). The guidance requires Trading Standards to develop and publish their own policy on determining the appropriate level of financial penalties to impose with regards to breaches in the legislation.
- 1.2 This report seeks members comments on the draft policy.
- 1.3 The policy will apply to the activities of the Trading Standards consortium.

2.0 Recommendations

- 2.1 That Joint Advisory Board Members:
 - 2.1.1 Consider the contents of the policy (see Appendix 1) and make appropriate comments.
 - 2.1.2 Note the responsibility of the Head of Regulatory Services to agree and implement the policy.

3.0 Details

- 3.1 The Tenant Fees Act 2019 (TFA) came into force on the 1 June 2019. The Act amended the Housing and Planning Act 2016 section 135 making the enforcement of client money protection scheme regulations a responsibility for weights and measures authorities, otherwise known as Trading Standards.
- 3.2 The TFA imposes a ban on a range of letting fees charged to the tenants. Under the Act, a landlord or agent is able to impose certain specified charges in respect of new tenancies commenced after 31 May 2019, such as rent payments and refundable deposits but any charge which is not permitted will be a 'prohibited payment' under the Act. Each request that a landlord or letting agent makes for a

prohibited payment is a breach of the Act for which a financial penalty of up to £5,000 may be imposed by the Council.

- 3.3 However, if a further breach is committed within five years of the imposition of a financial penalty or conviction for a previous breach, this will be a criminal offence for which an enforcement authority may impose a financial penalty of up to £30,000 as an alternative to prosecution. Upon conviction, the penalty is an unlimited fine and a banning order offence under the Housing and Planning Act 2016. Enforcement authorities are expected to develop and publish their own policy on determining the appropriate level of financial penalties to impose.
- 3.4 From the 1 April 2019 it is a legal requirement for all property agents who hold client's money to be a member of an approved or designated client money protection scheme. In respect of a failure by a letting or property agent who holds client money to belong to an approved or designated scheme as required by Regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (CMPR), a financial penalty not exceeding £30,000 can be imposed.
- 3.5 Agents must obtain a certificate of membership of the approved client money protection scheme, display the certificate at their premises, publish the certificate on the agents' website and produce a copy of the certificate to anyone who reasonably requires it. Agents that fail one of these requirements, risk receiving a £5,000 fine.
- 3.6 Under the Act, landlords or agents are no longer able to require tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make certain payments in connection with a tenancy. In essence this covers any fee or charge related to a tenancy except for those expressly permitted in the Act. Any such payment will be a 'prohibited payment' under the Act. 'Permitted payments' include:
 - a) Rent payments [which must be paid at regular and specified intervals, generally split equally across the period of the tenancy];
 - b) A refundable tenancy deposit [capped at 5 or 6 weeks rent depending on whether annual rent income is below or above £50,000];
 - c) A refundable holding deposit (to reserve a property) capped at no more than one week's rent;
 - d) Payments in event of a default of the tenant such as the cost of replacing a lost key;
 - e) Payments on assignment, novation or variation of a tenancy when requested by the tenant capped at £50, or reasonable costs incurred if higher;
 - f) Payments associated with early termination of the tenancy, when requested by the tenant;
 - g) Payments in respect of utilities, communication services and council tax;

- 3.7 Each request for a prohibited payment is a breach.
- 3.8 A breach of the legislation will usually be a civil breach with a financial penalty of up to £5,000. However, if a further breach is committed within five years of the imposition of a financial penalty or conviction for a previous breach, this is a criminal offence under Section 12 of the Act. Upon conviction, the penalty is an unlimited fine and a banning order offence under the Housing and Planning Act 2016.
- 3.9 Where an offence under Section 12 is committed, enforcement authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, enforcement authorities will have discretion over whether to prosecute or impose a financial penalty. Where a financial penalty is imposed this does not amount to a criminal conviction. A breach of the requirement to repay the holding deposit is a civil breach only and will be subject to a financial penalty of up to £5,000.
- 3.10 Enforcement authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty of up to £30,000 and should decide which option they wish to pursue, on a case-by-case basis, in line with that policy. Enforcement authorities are expected to develop and publish their own policy on determining the appropriate level of financial penalties to impose.
- 3.11 In doing so the Council must have regard to the relevant statutory guidance which, at present, is 'Tenant Fees Act 2019 – Statutory Guidance for Enforcement Authorities' and the Client Money Protection- Mandatory client money protection for property agents -Enforcement guidance for local authorities. The statutory guidance includes guidance to local authorities as to the matters which might be taken into account when deciding whether to pursue a prosecution or, in the alternative, impose a civil penalty.
- 3.12 A copy of the proposed policy is attached as an Appendix to this report.

4.0 Financial Implications

- 4.1 Enforcement authorities will be able to retain the money raised through financial penalties. The penalties will be fair, proportionate, independent and objective. None-the-less, there is a potential for the penalties to have an inadvertent financial benefit for the service.
- 4.2 It is proposed that first breaches receive penalties of £1,000 (low harm) to £5,000 (high harm) and second or further breaches receive penalties of £5,000 (low harm) to £30,000 (high harm).
- 4.3 There will be additional costs in processing the civil penalty paperwork, responding to any representations and then defending appeals. It is anticipated that any additional costs will be met through the additional income generated through levying civil penalties.

4.4 The decisions of whether to levy civil penalties or to have prosecution proceedings will each have a financial implication for the Council.

5.0 Legal Implications

5.1 Enforcement authorities are expected to develop and document their own policy on when to issue a financial penalty of up to £30,000 and when to prosecute (Paragraph 6.3, Tenant Fees Act 2019: Statutory Guidance for Enforcement Authorities and Paragraph 6.2, Mandatory client money protection for property agents -Enforcement guidance for local authorities). Local authorities that carry out enforcement activity must have regard to the guidance.

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 There is no requirement to specifically consult Ward Members about this report as it affects all wards across both Boroughs.

8.0 Human Resources Implications

8.1 There are no specific staffing implications arising from this report as the work detailed will be carried out by existing employees and will form part of their usual duties as per job descriptions.

Contact Officer

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