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Executive
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Enforcement Policy relating to Landlords, Letting and Estate Agents

Purpose

- 1.1 This report follows the resolution approved on the 26th May 2021 seeking to make constitutional amendments to relevant tenancy legislation enforced by Trading Standards. Relevant tenancy legislation means:
 - Tenant Fees Act 2019 (Prohibiting certain payments in respect of Assured Shorthold Tenancies);
 - Consumer Rights Act 2015, Part 3, Chapter 3 (Duty on letting agents to publish their Fees);
 - Enterprise and Regulatory Reform Act 2013, Section 83(1) and 84(1) (Redress Scheme Membership for Letting Agents); and
 - Housing and Planning Act 2016, Sections 133 – 135 (Client Money Protection Schemes).
- 1.2 Changes in this legislation have resulted in additional powers being granted to the council in relation to Trading Standards, which have been authorised for enforcement purposes following that resolution. In order to undertake this enforcement function, the Council must agree an appropriate enforcement policy for the imposition of financial penalties and the appropriateness of prosecution as an alternative to those penalties.
- 1.3 This report seeks to gain approval for the Enforcement Policy on Financial Penalties relating to Landlords, Letting and Estate Agencies. The Policy details the aforementioned considerations and also incorporates the imposition of financial penalties for the following legislation, which is also enforced by Trading Standards:
 - Estate Agents (Redress Scheme) Order 2008 made under s23A Estate Agents Act 1979 (Redress Scheme Membership for Estate Agents); and
 - The Energy Performance of Buildings (England and Wales) Regulations 2012 (EPC commissioned before sale).

Recommendations

- 2.1 To approve the proposed Enforcement Policy as attached.

Reasons

- 3.1 To ensure decisions regarding enforcement of relevant tenancy, estate agency and energy performance legislation are made in a consistent, proportionate, transparent and robust manner.

Supporting information

- 4.1 The Tenant Fees Act 2019 (TFA 2019) places a duty on the council in respect of prohibitions on certain payments placed upon landlords and letting agents. The Tenant Fees Act 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach.
- 4.2 The Housing and Planning Act 2016, make provisions relating to Client Money Protection. The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 place a duty on the council in respect of compliance. Failure to obtain membership of a Client Money Protection Scheme, financial penalties may be imposed not exceeding £30,000.
- 42.a In respect of failing to publish details of a Client Money Protection Scheme a separate financial penalty not exceeding £5,000 may be imposed.
- 4.3 The Enterprise and Regulatory Reform 2013 make provisions relating to redress scheme membership. The Redress Scheme for letting agency work and property management work (requirement to belong to a redress scheme etc) (England) Order 2014) places a duty on the council (as a unitary authority) in respect of compliance. Financial penalties may be imposed not exceeding £5,000.
- 4.4 In respect of failing to publish details of Redress Scheme membership, enforcers may impose a separate financial penalty not exceeding £5,000.
- 4.5 The Consumer Rights Act 2015, Part 3, Chapter 3, places a duty on the council in respect of publication of fees relating to tenancy and property management activities. Financial penalties may be imposed not exceeding £5,000.
- 4.6 In regard to the abovementioned legislation, prior to issuing a financial penalty, enforcement authorities must issue a Notice of Intent with a suitable timeframe to address any non-compliances. After the deadline has passed, authorities must review any representations made by the recipient and decide whether to issue a Final Notice with a financial penalty at the same level, at a reduced level or to withdraw the notice. Where appropriate, the Notice of Intent may be preceded by a Letter of Warning.

- 4.7 The Estate Agents Act 1979 places a duty on the council in respect of requirements for Estate Agents to be members of an approved redress scheme. Failure to comply means a financial penalty of £1,000 may be imposed under the Estate Agents (Redress Scheme) (Penalty Charge) Regulations 2008 .
- 4.8 The Energy Performance of Buildings (England and Wales) Regulations 2012 places a duty on the council) in respect of a seller or landlord failing to commission an Energy Performance Certificate before the property is put on the market. Failure to comply means a financial penalty of £200 may be imposed.
- 4.9 In respect of Estate Agents and Energy Performance Certificates, an initial letter must be sent prior to the issuing of a Penalty Notice. After the deadline for representations to be made has passed, the authority must review and either confirm or withdraw the notice.

5.0 Statutory Guidance

A duty is placed on enforcement authorities to have regard to any guidance issued by the Secretary of State (“the SoS”) relating to the enforcement of an order under s83(1) of 84(1) as per Section 85 of the Enterprise & Regulatory Reform Act 2013

The Ministry of Housing, Communities & Local Government (“MHCLG”) has published the following document - Tenant Fees Act 2019: Statutory Guidance for enforcement authorities.

This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalties under the TFA 2019. The statutory guidance does not go into any significant level of detail in this regard and further recommends that enforcement authorities develop and document their own Policy. The proposed Policy therefore sets out the factors in the decision making process to determine the appropriate level of financial penalty in a particular case.

Public/stakeholder engagement

- 5.1 There has been significant consultation and publication from central government on these regulations.
- 5.2 The latest stock condition survey in Derby in 2019 indicated that there are 110,261 properties spread across the 17 wards. Overall, 57.1% of homes in Derby are owner occupied, 22.4% are privately rented and 20.5% of homes are social rented. We currently have 73 Letting Agents/Managing agents on our mailing list for the Redress Scheme membership but that doesn't include those who manage their own properties.
- 5.3 The Council has worked with Decent and Safe Homes (DASH) in Derby and invited landlords to events as well as sending out mailshots advising of the upcoming legislative requirements.

Other options

6.1 None.

Financial and value for money issues

7.1 None, this will be managed within current resources

Legal implications

8.1 Ensuring officers have a documented policy to inform consistent enforcement decisions is a cornerstone of proportionate regulatory decision making. It also protects the council against the risk that those decisions may be successfully challenged.

Climate implications

9.1 None

Other significant implications

10.1 None

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu, Head of Legal Services	10/08/2021
Finance	Amanda Fletcher, Head of Finance	13/08/2021
Service Director(s)	Samantha Dennis, Service Director	06/10/2021
Report sponsor	Rachel North, Deputy CEO	08/02/2022
Other(s)	Fakir Osman, Trading Standards Service Manager	06/08/2021

Background papers:	None
List of appendices:	Enforcement Policy relating to Landlords, Letting and Estate Agencies