



**HOUSING, PROPERTY AND REGULATORY
SERVICES CABINET MEMBER MEETING
12 February 2024**

ITEM 05

Report sponsors: Samantha Dennis, Director of
Communities and Cllr S Khan
Report author: Rhia Dilloway, Principal Trading
Standards Officer

Trading Standards Enforcement Penalty Policies

Purpose

- 1.1 This report seeks approval for two Trading Standards Enforcement Policies which set out the processes for determining the amount of financial penalties imposed in relation to relevant letting agency legislation.
- 1.2 The first policy relates to the “relevant letting agent legislation” - Tenant Fees Act 2019 (Prohibited Payments), Consumer Rights Act 2015 (Publication of Fees), Enterprise and Regulatory Reform Act 2013 (Redress Scheme Membership for Letting Agents), Housing and Planning Act 2016 (Client Money Protection Schemes), Estate Agents (Redress Scheme) Order 2008 (Redress Scheme Membership for Estate Agents), Energy Performance of Buildings (England and Wales) Regulations 2012 and Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.
- 1.3 The second policy relates to financial penalties and/or recovery orders under the Leasehold Reform (Ground Rent) Act 2022.

Recommendations

- 2.1 To approve the Landlords, Letting and Estate Agencies Enforcement Policy (attached as Appendix 1)
- 2.2 To approve the Leasehold Reform – Ground Rent Enforcement Policy (attached as Appendix 2)
- 2.3 To authorise that each of the policies approved by virtue of recommendations 2.1 and 2.2 shall take effect within the Council’s administrative with effect from 16th February 2024.
- 2.4 To delegate authority to the Director of Communities to exercise the sanctions, or any of them as appropriate, set out within both policies.

Reason

- 3.1 Enforcement authorities can impose financial penalties not exceeding the maximum amounts specified in each piece of legislation in line with their own enforcement policies. A penalty to be imposed upon a letting agent, landlord or other relevant person must be fair and proportionate and considered on a case-by-case basis. Consideration must be given to aggravating and mitigating factors and the overall fairness and proportionality of the penalty.

Supporting information

- 4.1 The **Tenant Fees Act 2019** introduced a ban on many letting fees and capped tenancy deposits paid by tenants in the private rented sector; reducing the costs paid by tenants in assured shorthold tenancies (*which is the majority of tenancies in the UK*). It prohibits landlords and their representatives from charging fees other than those permitted by the Act:
- Rent
 - Refundable tenancy deposit (which is capped at no more than 5 weeks rent)
 - Refundable holding deposit (capped at no more than 1 weeks rent)
 - Payment to change an agreement
 - Payments associated with early termination
 - Payments for utilities etc
 - Default fees for late payment
- The first breach of the requirements can result in a penalty fee of up to £5,000 with subsequent breaches up to £30,000.
- 4.2 Section 83 of **Consumer Rights Act 2015** requires agents to publish a list of their fees so that prospective tenants can see upfront what the costs to them would be when renting a property. The lists have to be published at relevant premises (e.g., their trading address) and on owned or third-party websites. A breach of this requirement can result in a penalty fee of up to £5,000.
- 4.3 The **Enterprise and Regulatory Reform Act 2013** makes provision for the **Redress Scheme for letting agency work and property management work (requirement to belong to a redress scheme etc) (England) Order 2014**. Any person engaged in letting agency or property management work must be a member of one of two approved redress schemes to assist with disputes between letting agents and their customers. The agent has a duty to display a statement, at their premises and any website used, that indicates that the agent is a member of a redress scheme and which gives the name of that scheme. Failure to belong to an approved scheme can result in a penalty fee of up to £5,000.

- 4.4 The **Housing and Planning Act 2016** makes provision for **Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019**. A property agent who holds client money must be a member of one of six approved Client Money Protection schemes. The scheme may reimburse landlords and tenants should a letting agent misappropriate their rent, deposit or other client funds. The agent has a duty to display a statement, at their premises and any website used, that indicates that the agent is a member of a client money protection scheme and which gives the name of that scheme.
Failure to belong to an approved scheme can result in a penalty fee of up to £30,000. Failure to publish details of the CMP scheme they belong to can result in a penalty fee of up to £5,000.
- 4.5 The **Estate Agents (Redress Scheme) Order 2008** made under the **Estate Agents Act 1979** requires that all persons who engage in estate agency work in relation to residential property must be members of one of two approved Redress Schemes for the purpose of dealing with complaints. Failure to belong to an approved scheme can result in a penalty fee of up to £1,000.
- 4.6 The **Energy Performance of Buildings (England and Wales) Regulations 2012** require that if no valid Energy Performance Certificate (EPC) is already in place then one must be commissioned for it before it is put on the market for sale or rent. A person acting on behalf of the seller or landlord (for example, the estate or letting agent) must be satisfied that an EPC has been commissioned for the building before it is put on the market.
Marketing a property without a valid EPC, subject to certain exemptions, can result in a penalty fine of £200 per breach.
- 4.7 The **Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015** prohibit a landlord (or person acting on their behalf) to let a private rented property (or continuing to let where the tenancy was agreed prior to 1st April 2023) below the minimum energy efficiency requirements, namely properties with an EPC rating below E. Trading Standards are responsible for the enforcement of non-domestic properties rented.
A breach of less than 3 months may result in a penalty fine of up to £5,000 or 10% of the rateable value of the property (whichever is the greater, up to £50,000). A breach of more than three months may result in a penalty fine of up to £10,000 or 20% of the rateable value of the property (whichever is the greater, up to £150,000).
- 4.8 The **Leasehold Reform (Ground Rent) Act 2022** puts an end to ground rents for most new long residential leasehold properties in England and Wales preventing leaseholders being bound to contracts to pay onerous and escalating ground rents, with no clear service in return. Any ground rent charged in excess of the permitted amounts may result in a penalty fee between £500 and £30,000.

Public/stakeholder engagement

- 5.1 The proposed policies are based on model documents developed by the National Estate and Letting Agent Team, run by Powys County Council (Lead Authority for Estate Agents Act enforcement) and Bristol City Council (Lead Authority for Tenant Fees Act).

- 5.2 The policies have been prepared for Trading Standards in consultation with colleagues in Trading Standards and Legal Services.

Other options

- 6.1 An alternative option is to not accept the policies as presented and as a result, Trading Standards would not be in a position to enforce the areas of consumer protection legislation the policies cover.

Financial and value for money issues

- 7.1 Penalty notices will be issued in accordance with the attached policies. Failure to pay any penalty issued will be pursued as a County Court Debt with the assistance of Legal Services.

Legal implications

- 8.1 Ensuring the Trading Standards team have appropriate policies in place will ensure effective and proportionate enforcement and protect the council against the risk of legal challenge.

Legal Services will represent the council in the event of any non-payment of notices or legal challenge.

Climate implications

- 9.1 The **Energy Performance of Buildings (England and Wales) Regulations 2012** allow prospective tenants and buyers to make informed decisions based on the energy efficiency of a property. They also provide recommendations on how improvements can be made to increase their ratings, making them more energy efficient and attractive to tenants and buyers.
- 9.2 The **Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015** seek to raise the minimum energy efficiency levels of rental properties by preventing the lowest rated properties being made available to rent.

Socio-Economic implications

- 10.1 Each of the above pieces of legislation have an impact and look to reduce socio-economic disadvantage. In particular, the Tenant Fees Act and Ground Rent Lease requirements look to reduce fees payable and encourage transparency in fees so tenants are aware of the costs before entering into a tenancy.
- 10.2 In addition, EPC legislation seeks to raise the minimum standard of housing available whilst making it clear the cost of utility bills in those properties. The redress and client money scheme requirements put in place additional protections in case of dispute or misappropriation of funds.

Other significant implications

11.1 N/A

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu, Head of Legal Services	24/11/2023
Finance	Janice Hadfield, Head of Finance	24/11/2023
Service Director(s)	Samantha Dennis, Director of Regulatory Services	14/11/2023
Report sponsor	Cllr Shiraz Khan	03/01/2024
Other(s)	Donna Dowse, Trading Standards Manager	22/11/2023

Background papers:	
List of appendices:	Appendix 1 - Landlords, Letting and Estate Agencies Enforcement Policy Appendix 2 - Leasehold Reform – Ground Rent Enforcement Policy