

Birmingham City Council

Report to Cabinet

7 September 2021



Subject: **TENANTS FEES ACT 2019 PROVISIONS AND ENFORCEMENT POLICY IN RELATION TO LANDLORDS AND LETTING AGENTS**

Report of: Robert James, Managing Director – City Operations

Relevant Cabinet Member: Councillor Ian Ward - The Leader

Relevant O &S Chair(s): Councillor Mohammed Aikhlaq, Resources Overview and Scrutiny Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 009212/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 The report informs cabinet of the provisions of the Tenants Fees Act 2019 applicable to landlords and property agents concerning displaying fees, prohibited fees, being members of a redress scheme and belonging to designated Client Protection Schemes.

- 1.2 The Act and Statutory guidance also require the local authority to have in place an enforcement policy in respect of issuing penalty fees. The National Trading Standards Estate and Letting Agency Team (NTSLEAT) have implemented such a policy through the lead authority at Bristol Council. This report recommends committee adopt this policy.

2 Recommendations

- 2.1 That Cabinet agrees to adopt the enforcement policy on deciding financial penalty amounts as instigated by the NTSLEAT.

3 Background

- 3.1 The numbers of households in the private rented sector in the UK increased from 2.8 million in 2007 to 4.5 million in 2017. Many families including those with children have no other option but to rent but can fall victim to rogue landlords and letting agents setting unregulated and unfair or hidden fees.
- 3.2 The Tenant Fees Act 2019 (TFA) was introduced to prevent unscrupulous landlords and letting agents from grossly overcharging tenants and holding them to account for this and other unfair practices.
- 3.3 The TFA was set up to prevent 'hidden fees' being charged to tenants and outlining what is now prohibited and what fees are permissible. It should go some way towards improving transparency around the costs of entering into a rental agreement.
- 3.4 The Act applies to Assured Short-hold Tenancies and would include Student Lettings.
- 3.5 Mandatory Letting Agent Redress Schemes were introduced to resolve disputes between tenants, letting agents and landlords. The schemes can investigate complaints and order a letting agent to reimburse or pay compensation for unfair practices. The TFA sets out sanctions for landlords/agents failing to be a member of such a scheme.
- 3.6 Compulsory Client Money Protection Schemes were also introduced to ensure money paid by tenants such as rent and deposits are protected if the agent for example goes 'into administration. The Housing and Planning Act 2016 (HFA), as amended by the TFA again sets out sanctions for landlords/agents failing to use such a scheme for client's monies.
- 3.7 The TFA sets out what fees letting agents can lawfully charge and what fees are prohibited. It also amends section 83 of the Consumer Rights Act and implements further provisions with regards to the duty of letting agents to publicise their fees.

- 3.8 The Letting Agency Work and Property Management Work Order 2014, Article 8, provides that a financial penalty may be imposed for any person engaged in a letting agency or property management failing to be a member of a Redress Scheme, as required by the Letting Agency Work and Property Management Work Order 2014.
- 3.9 The Client Money Protection Scheme for Property Agents Regulations 2019, Article 6, provides that a financial penalty may be imposed for property agents who hold client monies and do not belong to a designated Client Money Protection Scheme, as required by Regulation 3 of the Client Money Protection Scheme for Property Agents Regulations 2019.
- 3.10 Further details on the actual provisions can be found in the governments statutory guidance documents which can be found at:
<https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>
- 3.11. The provisions in the TFA include issuing financial penalty charges of up to £5000 for breaching either sections 1, 2 or Schedule 2 of that same act, and up to £30,000 for a breach of section 12 (multiple breaches).
- 3.12 However the statutory guidance stipulates the enforcing local authority should develop and document its own enforcement policy on issuing financial penalties under the Act.
- 3.13 The Act also requires the appointment of a lead enforcement authority and currently, Bristol City Council have been given this designation, operating as the National Trading Standards Letting and Estate Agency Team (NTSLEAT).
- 3.14 As the lead enforcement authority the NTSLEAT at Bristol City Council has issues such an enforcement policy document with regards to the statutory guidance.

4 Options considered and Recommended Proposal

- 4.1 It is recommended that Birmingham adopts the same enforcement policy as set out by the lead authority. This can be found at:
<https://www.bristol.gov.uk/documents/3368713/3492947/Tenant+Fees+Act+Penalty+Notice+Policy.pdf/789145a2-0b15-5542-2851-63d3bc47d57b>
- 4.2 An extract of the policy is at Appendix 1.

5 Consultation

- 5.1 No external consultation has taken place, the policy will be in adherence with statutory guidance.

6 Risk Management

- 6.1 Whilst Regulations and Enforcement has a general Enforcement Policy Failure under the Regulators code, failure to adopt and publicly document an enforcement policy specifically for provisions under the Tennant Fees Act could result in legal challenge.
- 6.2 The policy as set out in Appendix 1 has been formulated with regards to the statutory guidance and sets out approach for determining the offence category and determining the level of penalty to set.
- 6.3 Adoption of the enforcement policy as set out would demonstrate a fair, proportionate approach reflecting on the severity of the breach as well as previous history of the landlord or property agent.
- 6.4 The policy would also demonstrate the Councils compliance with statutory guidance.

7 Compliance Issues:

- 7.1 The issues addressed in this report underpin the City Council Vision, Birmingham is an entrepreneurial city to learn, work and invest in, Birmingham is an aspirational city to grow up in, Birmingham is a great city to live, Birmingham is a fulfilling city to age well in.
- 7.2 Further Regulation and Enforcement will be a key service in ensuring Birmingham residents gain the maximum benefit from hosting the Commonwealth Games by supporting legitimate business and tackling rogue traders looking to take advantage of opportunities that arise within the ghost market.
- 7.3 They also support the Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all – achieving a safe, clean, green and fair-trading city for residents, business and visitors.

8 Legal Implications

- 8.1 By Adopting and documenting this enforcement policy the City Council is meeting its obligations under the Tenants Fees Act and associated statutory guidance.

9 Financial Implications

- 9.1 The policy will be administered by the Regulation and Enforcement Division within existing resources and budgets.
- 9.2 Income received from payment of a penalty can be retained by the local authority and used to further statutory enforcement functions.

10 Procurement Implications (if required)

10.1 None identified.

11 Human Resources Implications (if required)

11.1 The work attributable to enforcing the above provisions under the Tenants Fees Act would be carried out with existing resources.

12 Public Sector Equality Duty

12.1 The proposed policy applies to all landlords and property letting agents and will not have a significant impact on any with different protected characteristics.

12.2 One of the benefits of an enforcement policy is to ensure consistency and fairness of enforcement throughout all communities and the commercial sector in Birmingham. The purpose of this Policy is to ensure that decisions are made transparently and to eliminate unfair or inequitable decisions. By its nature it should not have an adverse impact on anyone with protected characteristics.

13 Background Documents

13.1 Tenants Fees Act 2019 – Statutory Guidance for Enforcement Authorities.

13.2 Mandatory Client Money Protection for Property Agents, Enforcement Guidance for Local Authorities.

List of appendices accompanying this report:

Appendix 1 Extract from National Trading Standards Estate and Letting Agency Team Lead Enforcement Authority / Bristol City Council Policy under Tenants Fees Act 2019.