

**MUNICIPAL YEAR 2016/2017 REPORT NO.**

**ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY**

**PORTFOLIO DECISION OF:**  
Cabinet Member for Environment

**REPORT OF:**  
Director – Regeneration & Environment

<b>Agenda – Part: 1</b>	<b>KD Num: N/A</b>
Subject: Setting of a Penalty Charge Notice Fee for Letting Agencies (letting and property management) who fail to publish a full tariff of their fees.	
<b>Wards: All</b>	

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**1. EXECUTIVE SUMMARY**

1.1 This report seeks approval of the fee for penalty charge notices against letting agencies engaging in letting and property management work who fail to publish a full tariff of their fees.

1.2 Local Authorities are permitted to determine the level of the penalty fee up to a maximum of £5000. Trading Standards in the London Boroughs are minded to agree a fee of £5000 for consistency across London. The DCLG is also content for the maximum £5000 to be set by Councils as the norm.

**2. RECOMMENDATIONS**

2.1 Agree the enforcement of Chapter 3 of the Consumer Rights Act 2015 by the setting the penalty charge notice fee at the statutory maximum of £5000.

2.2 Delegate to the Head of Regulatory Services the authority to reduce the amount of the penalty charge on receipt of a written representation from a letting agent if there are extenuating or good reasons for doing so.

### **3. BACKGROUND**

- 3.1 In March 2015, the Consumer Rights Act 2015 received Royal Assent. Chapter 3 of the Act (Sections 83 to 88) requires all letting agents and property management companies to publish a full tariff of their fees - both on their websites and prominently in their offices. If they do not comply with this a fine can be levied by the local authority by service of a Penalty Charge Notice (PCN).
- 3.2 The Consumer Rights Act 2015 imposes a duty on the local weights and measures authority (Trading Standards services) to enforce the duty on letting agents to publish their fees. Trading Standards is currently enforcing other legislation against letting agents under the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.
- 3.3 The ability to impose PCNs for letting agents and property management companies up to the statutory maximum of £5,000 under this legislation where appropriate would enhance our enforcement in this area of work as a number of non-compliant agents have been identified.
- 3.4 Before a PCN is served for a breach of the letting agent's duty to publish their fees, the Act requires that the Council must give a 'notice of intent' to the letting agents of our intention to do so within 6 months of the breach.
- 3.5 The 'Notice of Intent' must set out the proposed financial penalty, the reasons for the suspected breach and information about their right to make representations to the local authority.
- 3.6 The letting agent may, within 28 days, make written representations about the proposal to impose a financial penalty on the agent. At the end of the 28-day period, we must make a decision as to whether the penalty will be imposed and if so, the amount, and serve a notice on the agent (a 'final notice') imposing that penalty. The penalty must be paid within 28 days.
- 3.7 We may at any time withdraw a 'notice of intent' or 'final notice', or reduce the amount specified in a 'notice of intent' or 'final notice', and do so in writing to the letting agent.
- 3.8 Once a PCN fine is determined and the 'final notice' served then the agent can either discharge it by paying it, appeal to the first tier tribunal within 28 days of issuing the 'final notice' or following 28 days of inaction then the council can consider recovering the debt through the county court.
- 3.9 The grounds of appeal against a 'final notice' to the first tier tribunal are that:
  - a) the decision to impose a financial penalty was based on an error of fact,
  - b) the decision was wrong in law,
  - c) the amount of the financial penalty is unreasonable, or
  - d) the decision was unreasonable for any other reason

- 3.10 If a letting agent appeals, the 'final notice' is suspended until the appeal is finally determined or withdrawn. The First-tier Tribunal may quash, confirm or vary the final notice.
- 3.11 Annex D of the DCLG guidance 'Improving the Private Rented Sector and Tackling Bad Practice. A Guide for Local Authorities' (March 2015) contains narrative on the Consumer Rights Bill 2015 (before it became an Act) in relation to setting the PCN penalty. It states that "*The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent makes early during the 28-day period following the authority's notice of intention to issue a fine..... Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.*"
- 3.12 It is therefore recommended that the Penalty Charge Notice be set at £5,000 and that the Head of Regulatory Services or a deputy be delegated the power to reduce the amount of the penalty charge on receipt of a written representation from a letting agent if there are extenuating or good reasons for doing so.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

We have a statutory duty to enforce this legislation and there are no alternative options to consider on the new provisions. The only optional element is the whether to serve penalty charge notices and the penalty charge amount.

#### **5. REASONS FOR RECOMMENDATIONS**

To ensure that Trading Standards have the facility to enforce the legislation enacted to reduce the tenant and landlord detriment suffered by Enfield residents as required by the Act.

#### **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS**

##### **6.1 Financial Implications**

- 6.1.1 The Regulations place additional duties powers and powers on Local Housing Authorities. However, these will be delivered within existing resources.
- 6.1.2 The costs associated to dealing with breaches of the Regulations and Enforcement activity will be recovered through the financial penalty charges. It is considered that the proposed level of penalty charges will cover the costs incurred by the Council.

- 6.1.3 It isn't possible to estimate the expected PCN receipt as a result of the proposed fines. But any receipt will be monitored and reported in the monthly financial monitoring returns.

## **6.2 Legal Implications**

Section 83 of the Consumer Rights Act 2015 imposes a duty on letting agents to publicise details of relevant fees. Relevant fees are defined as, fees, charges and penalties payable by the landlord or tenant to the letting agent for work associated with property management work and work in connection with the assured tenancy of a dwelling house. The duty on Trading Standards departments to enforce Section 83 of the Consumer Rights Act 2015 is in Section 87 and Schedule 9 of the Act. Trading Standards must have regard to any guidance issued by the Secretary of State regarding Section 83 Section 87 and Schedule 9.

## **6.3 Property Implications**

None.

## **7. KEY RISKS**

- 7.1 No significant risks have been identified. The appeal provisions within the Regulations place the Council at no greater risk than the appeal provisions of other types of notices regularly served by the Council.
- 7.2 Letting agents can ask for a review to be undertaken of the 'Notice of Intent' to issue the penalty charge notice. DCLG guidance is that they expect authorities to set the penalty charge at the maximum as a norm.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The DCLG found significant consumer detriment was experienced by tenants and landlords who did not have access to letting agents' full tariff of their fees. The requirement to publish a full tariff of fees creates an open and transparent market, allowing prospective clients to make informed choices.

### **8.2 Growth and Sustainability**

By encouraging legitimate compliant business to trade within the borough it fosters a fair trading environment.

### **8.3 Strong Communities**

If residents live in good housing conditions, it is likely to encourage community cohesion and have a positive impact on their day to day lives.

## **9. EQUALITY IMPACT IMPLICATIONS**

- 9.1 No implications specifically for the protected groups. However, implementation and enforcement of this new legislation will impact positively on all tenants and landlords, and leaseholders and freeholders dealing with residential property managers who provide a full tariff of their fees.
- 9.2 Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

None identified

## **11. HEALTH AND SAFETY IMPLICATIONS**

None identified

## **12. PUBLIC HEALTH IMPLICATIONS**

It is anticipated that if tenants have access to the full costs of renting, they will be able to make informed choices and budget their finances. It is important that the Council has the provision for taking enforcement action against those agents who do not provide a full tariff of their fees.

### **Background Papers**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/412921/Improving\\_private\\_rented\\_sector.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412921/Improving_private_rented_sector.pdf)

