

CITY OF WOLVERHAMPTON COUNCIL	Cabinet 14 December 2022
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Report title	City of Wolverhampton Council Enforcement Policy in Relation to the Relevant Letting Agency Legislation	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Steve Evans City Environment and Climate Change	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All Wards	
Accountable Director	John Roseblade, Director City Housing and Environment	
Originating service	Commercial Regulation	
Accountable employee	Chris Howell Tel Email	Commercial Regulation Manager 01902 554554 Chris.howell@wolverhampton.gov.uk
Report to be/has been considered by	City Housing and Environment Leadership Team	15 November 2022

Recommendation for decision:

The Cabinet is recommended to:

1. Approve the City of Wolverhampton Council Enforcement Policy in Relation to the Relevant Letting Agency Legislation.

1.0 Purpose

- 1.1 To inform Cabinet of the provisions of the relevant letting agency legislation applicable to landlords and property agents concerning displaying fees, prohibited fees, being members of a redress scheme and belonging to a client money protection scheme.
- 1.2 To seek approval of the City of Wolverhampton Council Enforcement Policy in Relation to the Relevant Letting Agency Legislation.

2.0 Background

- 2.1 The Tenant Fees Act 2019 has been introduced to regulate the fees that letting agents and landlords can charge tenants, any fees that are not specifically permitted are prohibited. The Act allows the enforcement authority to impose a financial penalty, not exceeding £5,000 for breaches in relation to permitted fees and repayment of holding deposits. Should further breaches occur within five years, the enforcement authority may prosecute or impose a financial penalty not exceeding £30,000.
- 2.2 The Consumer Rights Act 2015 has been amended by the Tenant Fees Act 2019, it now contains provisions to ensure that letting agents publicise their fees. The Act allows the enforcement authority to impose a financial penalty not exceeding £5,000 for failure to comply with the requirement to publicise fees.
- 2.3 The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, requires agents to belong to a redress scheme. The schemes can investigate disputes between tenants, agents and landlords and can order agents to reimburse fees or pay compensation for unfair practices. The Order also allows the enforcement authority to require an agent to pay the authority a financial penalty not exceeding £5000 for failing to be a member of a redress scheme.
- 2.4 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, requires that any property agent that holds client money must be a member of a client money protection scheme. The Regulations also allow the enforcement authority to impose a financial penalty, not exceeding £30,000 for failing to be a member of a client money protection scheme, or not exceeding £5,000 for failing to provide the required information in relation to their membership.
- 2.5 The Tenant Fees Act 2019 and other relevant lettings agency legislation are unusual in that they contain provisions in relation to the charging or imposition of financial penalties without the ability of the enforcing authority to prosecute. The only provision to prosecute is that within the Tenant Fees Act 2019 for repeated breaches within five years.
- 2.6 Statutory enforcement guidance has been issued:
 - A. Tenant Fees Act 2019 - Statutory Guidance For Enforcement Authorities.

B. Statutory guidance - Mandatory client money protection: enforcement guidance for local authorities.

- 2.7 The statutory guidance states that enforcing authorities should develop and document their own enforcement policy on issuing financial penalties.
- 2.8 The Tenant Fees Act 2019 requires the appointment of a lead enforcement authority, this is currently Bristol City Council, operating as the National Trading Standards Letting and Estate Agency Team (NTSLEAT).
- 2.9 The statutory guidance further states enforcement authorities should consult with the lead enforcement authority to ensure their policies are in line with the national approach to promote consistency, alongside local priorities.
- 2.10 As the lead enforcement authority, NTSLEAT at Bristol City Council has issued such an enforcement policy document, it is the model which it is anticipated that other authorities will utilise.
- 2.11 City of Wolverhampton Council is committed to the Joint Black Country Regulator Operating Framework 2021 along with Walsall Metropolitan Borough Council, Sandwell Metropolitan Borough Council and Dudley Metropolitan Borough Council. The scope of the framework includes trading standards services who are the enforcement authorities for the relevant letting agency legislation. An important aspect of the framework is consistency across the member authorities. The framework is provided in background papers. Each authority has either adopted the Bristol City Council Enforcement Policy in Relation to the Relevant Letting Agency Legislation policy or are intending to do so.

3.0 Proposal

- 3.1 It is proposed that City of Wolverhampton Council adopt the Bristol City Council Enforcement Policy in Relation to the Relevant Letting Agency Legislation. The policy has been renamed as the City of Wolverhampton Enforcement Policy in Relation to the Relevant Letting Agency Legislation, minor amendments have been made to remove references that apply only to Bristol City Council's role the Lead Enforcement Authority. The policy is at Appendix 1.
- 3.2 There is no statutory requirement to undertake external consultation unless the policy departs from the Bristol model, which the proposed City of Wolverhampton Council policy does not.
- 3.3 Internal consultation has taken place with Trading Standards, Private Sector Housing and Legal Services, in order to develop and agree the preferred route to policy. Further consultation would be meaningless.

4.0 Evaluation of alternative options

- 4.1 One option would be to not adopt an enforcement policy in relation to the relevant letting agency legislation. To enforce the legislation the enforcing authority is required to adopt an enforcement policy. There is a statutory duty to enforce the relevant lettings agency legislation. By not adopting an enforcement policy the City of Wolverhampton Council would be in breach of its statutory duties.
- 4.2 Another option would be to develop a bespoke enforcement policy in relation to the relevant letting agency legislation. This would allow the City of Wolverhampton to comply with its statutory duty to enforce the legislation. However, it would likely lead to enforcement being inconsistent with our closest similar neighbours.

5.0 Reasons for decision

- 5.1 The City of Wolverhampton Council requires an enforcement policy in relation to the relevant letting agency legislation to be able to enforce the legislation, it does not currently have such a policy.
- 5.2 Adopting the Bristol City Council Enforcement Policy in Relation to the Relevant Letting Agency Legislation will allow the City of Wolverhampton Council to enforce the legislation in a consistent manner.

6.0 Financial implications

- 6.1 All costs associated with the delivery of enforcement of the relevant letting agency legislation can be accommodated within Commercial Regulation Services revenue budgets.
- 6.2 Any civil penalties charged or imposed are required to be retained by the enforcement authority and used for the purposes of its enforcement functions in relation to the private rented sector or must be paid to the Secretary of State.
[LD/07112022/V]

7.0 Legal implications

- 7.1 There is a statutory duty to enforce the relevant lettings agency legislation.
- 7.2 To enforce the legislation the enforcing authority is required to adopt an enforcement policy.
[CS/09112022/1]

8.0 Equalities implications

- 8.1 There is no data readily available that would demonstrate for either letting agents, landlords or tenants that the introduction of this policy would have any greater impact on any equalities group.

9.0 All other implications

9.1 There are no other implications arising from this report.

10.0 Schedule of background papers

10.1 Black Country Regulators Operating Framework 2021

<https://www.wolverhampton.gov.uk/sites/default/files/2021-11/Black%20Country%20Regulators%20Operating%20Framework.pdf>

10.2 Tenant Fees Act 2019 - Statutory Guidance For Enforcement Authorities

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922896/Tenancy_Fees_Act_-_Statutory_guidance_for_enforcement_authorities.pdf

10.3 Statutory guidance - Mandatory client money protection: enforcement guidance for local authorities

<https://www.gov.uk/government/publications/mandatory-client-money-protection/mandatory-client-money-protection-enforcement-guidance-for-local-authorities>

11.0 Appendices

11.1 Appendix 1: Draft City of Wolverhampton Council Enforcement Policy in Relation to the Relevant Letting Agency Legislation