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Cabinet Member for Culture, Leisure, Sports and Parks

12 November 2015

**Name of Cabinet Member:**

Cabinet Member for Culture, Leisure, Sports and Parks – Councillor A Khan

**Director Approving Submission of the report:**

Executive Director for Place

**Ward(s) affected:**

All

**Title:**

Fines Policy - Letting Agents Requirement to Display Fees

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**Is this a key decision?**

No

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**Executive Summary:**

Part 3, Chapter 3, of the Consumer Rights Act 2015 imposes a duty on letting agents in England and Wales to publicise a list of their relevant fees for the benefit of client landlords and tenants. This requirement came into effect on 27 May 2015.

In England lettings agents are also required to publicise statements regarding their membership of redress and client money protection schemes. In both cases, failure to comply with the requirements can lead to the local authority serving a notice and then issuing a fine.

The fines policy for failing to be a member of a redress scheme has already been approved by Cabinet Member (Policing and Equalities) at his meeting of 22<sup>nd</sup> January 2015. This report is seeking to introduce a similar fines policy for failing to display fees.

**Recommendations**

Cabinet Member is recommended to:

- (1) Agree the level of fines detailed in Para 2.2.
- (2) Agree the criteria set out applicable to each level of fine.

**List of Appendices included:**

Appendix 1. – Letting Agent and Property Manager Display of Fees Enforcement Process.

Appendix 2. - Part 1 of the Equalities and Consultation template.

**Other useful background papers:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## 1. Context (or background)

- 1.1 The private rented sector in England accounts for around 4 million households, with around 1 million of these households moving every year and the majority of these moves include a letting agent. Around 1 in 5 tenants are dissatisfied with their letting agent and most of these complaints are to do with letting agency fees.
- 1.2 As a result, the Consumer Rights Act 2015 now requires letting agents to publicise prominently in their office and on their website: a full list of their fees; whether or not they are a member of a client money protection scheme; and which redress scheme they have joined.
- 1.3 The intended effect of the legislation is to increase transparency of fees, which will allow both tenants and landlords to have a clearer indication of costs at the beginning of the process.
- 1.4 The fines policy for failing to be a member of a redress scheme has already been approved by Cabinet Member (Policing and Equalities) at his meeting of 22<sup>nd</sup> January 2015. This report is seeking to introduce a similar fines policy for failing to display fees.
- 1.5 The duty to enforce these provisions is placed on the local weights and measures authority (Trading Standards).
- 1.6 The enforcement authority can impose a financial penalty up to £5,000 where it is satisfied, on the balance of probability, that someone who is engaged in letting or property management work has failed to display its fees.
- 1.7 Where an enforcement authority intends to impose a penalty they must follow the process set out below.

### Enforcement process:

#### **Step 1: Notice of Intent**

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

- i) the amount of the proposed financial penalty,
- ii) the reasons for proposing to impose the penalty, and
- iii) that there is a 28 day period to make written representations, starting from the day after the date on which the notice of intent was sent.

#### **Step 2: Representations**

The person on whom the notice of intent was served has 28 days to make written representations to the enforcement authority in relation to the proposed fine.

#### **Step 3: Final Notice**

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the enforcement authority must issue a final notice in writing which must set out:

- i) the amount of the financial penalty,
- ii) the reasons for imposing the penalty,
- iii) information about how to pay the penalty,
- iv) the period for payment of the penalty,
- v) information about rights of appeal, and
- vi) the consequences of failure to comply with the notice.

Note: The enforcement authority can amend or withdraw either of the notices at any time.

#### **Step 4: Appeals**

A letting agent can appeal against a final notice to the First-tier Tribunal,

If an appeal is lodged the fine cannot be enforced until the appeal is concluded. Appeals can be made on grounds that include:

- i) the decision to impose a fine was based on an error of fact,
- ii) the decision was wrong in law,
- iii) the amount of the fine is unreasonable,
- iv) the decision was unreasonable for any other reason.

#### **Step 5: Recovery of the penalty**

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

## **2. Options considered and recommended proposal**

- 2.1 The level of the fine / monetary penalty can be up to £5,000. However if the level of the fine is unreasonable then an appeal can be lodged.
- 2.2 In line with the fines policy for failing to belong to a redress scheme approved by Cabinet Member in January 2015, officers suggest the following amounts and criteria are considered to be proportionate and reasonable:
  - Warning letter issued and complied with in 14 days prior to any Notice of Intent being served – No financial penalty
  - Warning letter not complied with, single non-compliance – Notice of Intent served to issue £1000 fine
  - Warning letter not complied with, more than one non-compliance – Notice of intent served to issue £2500 fine
  - Warning letter not complied with, multiple and persistent non-compliance – Notice of Intent served to issue £5000 fine.
- 2.3 The process for issuing a warning letter allowing 14 days to display fees, and any subsequent enforcement action and appeals process, is detailed in the flow diagram attached as Appendix 1.
- 2.4 Cabinet Member is recommended to:
  - (1) Agree the level of fines detailed in Para 2.2.
  - (2) Agree the criteria set out applicable to each level of fine.

### **3. Results of consultation undertaken**

- 3.1 Consideration has been given to the Department of Communities and Local Government 'Best Value Statutory Guidance' dated September 2011. However, as letting agents and property management companies are businesses and the potential consultation would relate to sanctions imposed by legislation, formal consultation is not considered to be necessary.

### **4. Timetable for implementing this decision**

- 4.1 As the legislation came into force in May 2015, recommendations 1 and 2 will be implemented immediately.

### **5. Comments from Executive Director of Resources**

#### **5.1 Financial implications**

No additional resource will be required to implement the proposed enforcement of the display of fees for letting agents and property management, other than for legal representation at an appeal hearing. The risk of an appeal has been reduced by adopting a staged and proportionate level of fine, along with the use of warning letters giving 14 days to achieve compliance. Any additional income generated via fines will support the Council resources required to enforce the legislation.

#### **5.2 Legal implications**

The process to be followed is set out in the Consumer Rights Act 2015. A fines policy relating to redress schemes for lettings agency and property management work has already been approved in a report taken to the Cabinet Member for Policing and Equalities on 22<sup>nd</sup> January 2015. As this report seeks to adopt the same policy for failing to display fees, there are no additional legal implications.

Legal Services were involved in determining the process to be followed to enforce The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

The decision-making process and ultimately defending a decision at tribunal level is no different to many other aspects of regulatory services.

### **6. Other implications**

Similar sanctions are available under estate agency law. However the level of penalty there is £1000. As the level of financial penalty for not displaying fees can be up to £5000 a staged and proportionate level of fine is felt appropriate.

#### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

By helping to provide a fair trading environment and allowing a successful rental property sector grow and succeed. The requirement to display fees helps support a vibrant local economy.

**6.2 How is risk being managed?**

The risk of enforcing the Order is no more onerous than any other piece of legislation and is part of a staged enforcement process.

**6.3 What is the impact on the organisation?**

None

**6.4 Equalities / EIA**

Consideration has been given to the public sector duty under the Equality Act 2010 to reduce inequalities when making decisions of a strategic nature. However, this is a regulatory requirement applicable to businesses and the Cabinet Member decision is sought to offer transparency only to the amount of fine imposed. As these requirements apply to Letting Agents and Property Management companies, the impact on small businesses or individuals is considered to be minimal.

Part 1 of the Equalities and Consultation template has been completed and is attached at Appendix 2. Officers consider there is no need for further consultation in this case.

**6.5 Implications for (or impact on) the environment**

None

**6.6 Implications for partner organisations?**

None

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