

## **CABINET**

### **9 DECEMBER 2021**

# **POLICY AND PROCESS FOR THE DETERMINATION OF PENALTIES UNDER THE TENANT FEES ACT 2019 AND ASSOCIATED LEGISLATION**

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#### **Relevant Cabinet Member**

Councillor Karen May, Cabinet Member with responsibility for Health and Wellbeing

#### **Relevant Officer**

Dr Kathryn Cobain, Director of Public Health  
Simon Wilkes, Head of Worcestershire Regulatory Services

#### **Recommendation**

- 1. The Cabinet Member with Responsibility for Health and Wellbeing recommends that Cabinet adopt the attached policy and framework for issuing fixed penalty notices under the Tenant Fees Act 2019.**

#### **Background**

2. The Tenant Fees Act 2019 (the Act) places a statutory duty on Worcestershire County Council (the Council), as the local weights and measures authority, to enforce this legislation in its area. It is an addition to the many statutory duties already held by the Council under various consumer and business regulation.
3. The phrase “local weights and measures authority” is used in legislation to demonstrate where the functions being passed down should sit. For example, the Trade Descriptions Act 1968 and its successor, the Consumer Protection from Unfair Trading Regulations 2008 both designate the enforcement authority as the “local weights and measures authority”, although neither is a provision of weights and measures law.
4. Whilst the Council is not a housing authority, it already has a number of duties that impact on the way properties are marketed. As the local weights and measures authority, it is responsible for elements of enforcement in the Estate Agents Act 1977. The Consumer Protection from Unfair Trading Regulations 2008 also provides controls on the descriptions applied to properties that are marketed. Furthermore, under separate legislation, it is responsible for the provisions around the use and content of energy certificates that must accompany every property marketed for sale or rent. Whilst the Council is not responsible for housing standards, it does have legal duties around the way property is marketed. This is the likely reason for tenant fees being added to this broad portfolio.

## Tenant Fees Act 2019

5. In two tier areas, the County Councils have been given the statutory duty to enforce the new provisions, but the Act also empowers district councils to adopt them for use alongside their role as the local housing authority. Whether district councils adopt the provisions or not, the role of regulating the way in which properties are marketed for rental will mean that the Trading Standards team will be liaising more closely than previously with district council housing colleagues, particularly Environmental Health Housing standards teams. Identifying and pursuing landlords that fail to meet their obligations will be part of both areas of business.

6. Those in rented accommodation can be some of the most vulnerable people in society. It has long been noted that the fee structures around renting have been difficult to interpret and on numerous occasions, people have discovered themselves having to pay significantly more than anticipated. Government has enacted the legislation to clarify what fees can be charged and to tackle the myriad ways in which the marketing of properties has led to overcharging of tenants when they enter into contracts.

7. The Act came into force in June 2019 and prohibited the charging of fees in respect of a tenancy other than those which are specifically permitted. It amended a range of other legislation to support the enforcement of these provisions to ensure protections for those renting. The law should now give clarity over what agents can charge prospective tenants for and should make costs much clearer to those entering into rental agreements.

## Enforcement

8. The Act makes use of a fixed penalty regime as part of its enforcement processes, with the assumption that all initial infringements identified are potentially subject to a fine levied by the local authority of up to £5,000. Where the same offending behaviour is repeated, this constitutes a criminal offence which carries an unlimited fine. As an alternative to prosecution, fixed penalties of up to £30,000 can be levied against the offending business.

9. In order to levy fines, the local authority must develop and approve a policy that outlines what the fines will be for particular forms of offending. This policy should sit alongside the Council's enforcement policy required by the Regulators Code. However, there are no means of calculating the new range of fines available within the statute, therefore higher tier authorities are drafting fining provisions, though the majority of councils are yet to adopt a policy.

10. All fees levied in this way by the enforcing local authority are retained by the Council but must be invested in further work around housing law enforcement.

11. The law includes the provision of a body to provide an enforcement backstop role on occasions where local authorities are unable to pursue serious matters of non-compliance, a 'Lead Enforcement Authority'. At the request of the then Ministry for Housing, Communities and Local Government, now the Department for Levelling up, Housing and Communities (DLUHC,) National Trading Standards commissioned this role from one of the English higher tier authorities and Bristol City Council was awarded the contract to deliver the function. In this role Bristol City Council manages

a separate team that sits alongside its Trading Standards service, providing advice and guidance to local authorities, offering training on enforcement activity and, alongside a similar team established in Powys Council to deal with estate agency, advice on the marketing of properties. This is in addition to taking action if another local authority cannot act on a particular matter. This team is fully funded by a grant from DLUHC.

12. In order to ensure consistency between local authorities and fairness for businesses, the Lead Enforcement Authority has produced a model policy and fines framework that local authorities can adopt for use locally.

13. The model policy is based on the principles found in a wide-ranging review process that Bristol City Council undertook into all of its penalty notice provisions, which being a unitary authority, are quite numerous. The review looked at the proportionality of its various regimes, meaning the broad basis should make the proposed model fit for purpose for all local authorities. DLUHC civil servants have reviewed it and are content with the provisions.

14. The policy and framework attached at **Appendix A** outline the process that will be followed in making decisions around the nature of sanctions to be imposed and the level of fines resulting from the decision-making process.

15. From a financial perspective, whilst the fixed penalty process may lead to some income to Trading Standards, Cabinet Members should not see this as a primary mechanism for supporting the framework. The enforcement policy requires that Trading Standards initially takes steps to bring businesses into compliance before resorting to formal action. In the majority of cases, advice will deliver this, therefore further action will only be taken in a limited number of cases. For the second offences, it may be more appropriate to use criminal sanction rather than a further financial penalty, particularly where there is evidence of the offending being a deliberate action rather than mistake or error.

## **Legal, Financial and HR Implications**

16. There are no HR implications.

17. Although the issuing of a fixed penalty notice does not automatically lead to legal proceedings, it seems reasonable to require that the support of the Council's solicitor is sought as a review process before financial penalties are levied.

18. There are no financial implications arising from this report.

## **Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments**

19. The work undertaken under this legislation will be subject to the limitations on powers in the Consumer Rights Act 2015, the protections in the Police and Criminal Evidence Act 1984, and the process controls in the Criminal Procedure and Investigations Act 1996 and the Regulation of Investigatory Powers Act 2000. All evidence gathered will be subject to the normal evidential controls so there will be no privacy impacts.

20. The work should help to deal with letting agents and landlords who charge fees outside of what is allowed by the new regime. Improvements in behaviour by these regulated entities should lead in the longer term to better letting processes and fewer pressures and costs on people renting. If people can rent better quality properties, there are less likely to be health implications from poor renting practices.

### **Risk Implications**

21. All fixed penalty notices are subject to appeal to the first tier tribunal. This is a civil process not subject to the evidential constraints of the criminal courts. This creates some risk in terms of cases being lost. This risk can be limited by close engagement with the Council's Legal Services team. Legal proceedings cannot be instigated by a Council department without the approval of the Head of Legal Services. A review of case files by the Council's solicitor should limit such risks.

### **Equality and Diversity Implications**

22. An Equality Relevance Screening has been completed in respect of these recommendations. The screening did not identify any potential Equality considerations requiring further consideration during implementation.

### **Supporting Information**

Appendix - Policy and framework for the determination of penalties under the Tenant's Fees Act 2019 and associated legislation

### **Contact Points**

#### County Council Contact Points

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### **Background Papers**

In the opinion of the proper officer, in this case the Director of Public Health, there are no background papers relating to the subject matter of this report.