

**From:** Barbara Cooper, Corporate Director Growth Environment and Transport

**To:** Mike Hill, Cabinet Member for Community and Regulatory Services

**Subject:** Financial Penalties – Letting Agents

**Decision:** 18/00014 (Non-key)

**Classification:** Unrestricted

**Past Pathway of Paper:** None

**Future Pathway of Paper:** For decision by the Cabinet Member for Community and Regulatory Services

**Electoral Division:** All

**Summary:** The Consumer Rights Act 2015, makes it a requirement for letting agents to display their fees at their premises and on their website. If the agent holds money for clients and tenants, they are required to state whether they are members of a client money protection scheme. In addition, if the agent is required to be a member of a redress scheme they must also state they are a member and give the name of the scheme.

It is the responsibility of the Local Weights and Measures Authority to enforce the provisions of letting agents displaying the required information. Kent County Council is this Authority in the Council's Area, the statutory duties of which are exercised by Kent County Council Trading Standards. Where the Local Weights and Measures Authority is satisfied that a letting agent has breached a duty it may impose a financial penalty up to a maximum of £5,000.

**Recommendation(s):**

The Cabinet Member for Community and Regulatory Services is asked to agree:

- to the use of financial penalties for letting agents who fail to comply with the requirements of the Consumer Rights Act 2015;
- to set the financial penalty level at the Statutory Maximum of £5,000 for letting agents who fail to comply with the requirements of the Consumer Rights Act 2015 (to be reviewed annually);
- to delegate authority to the Head of Trading Standards to determine any reduction in the financial penalty if they are satisfied that there are extenuating circumstances (each case to be considered on its own merits and in accordance with the Enforcement Policy); and
- to delegate authority to the Head of Trading Standards to review and decide the level of future financial penalties attributable to the Consumer Rights Act 2015 (as amended) in consultation with the Cabinet Member as required. The monetary level

of financial penalties attributable to the Consumer Rights Act 2015 (as amended) will be reviewed annually as shown at Appendix A.

## 1. Introduction

- 1.1 The Consumer Rights Act 2015 requires letting agents to display their fees at their premises and on their website. Letting agents engaging in letting agency or property management work are also required to display along with the list of fees whether they are a member of a client money protection scheme (if they hold clients' money) and that they are a member of a redress scheme and the name of that scheme.
- 1.2 The intended effect of the provisions is to increase transparency of fees which will allow both renters and landlords to have a clearer indication of costs at the beginning of the process, thereby allowing them to make a more informed decision before selecting an agent or property. The provisions create more effective competition between letting agencies and make it easier for agents to demonstrate a level of service proportionate to the fees charged. It is intended to improve the tenant and landlord experience by requiring agents in England to publish which redress scheme they are a member of and whether they offer client money protection. This ensures renters and landlords have all the required information up-front.
- 1.3 It is the responsibility of the Local Weights and Measures Authority to enforce the provisions of letting agents displaying the required information. Where the Local Weights and Measures Authority is satisfied that a letting agent has breached a duty, it may impose a financial penalty up to a maximum of £5,000.

## 2. Setting and Enforcing Penalties for Letting Agents

- 2.1 The Head of Trading Standards (who discharges the role of Chief Inspector of Weights and Measures) is authorised (decision **16/00040**) to administer, and enforce where, necessary, the legislation set out in Appendix B, list of legislation enforced by Trading Standards titled 'Appendix A' because it is part of another document, and to amend the schedule to reflect current statutory obligations.
- 2.2 The Consumer Rights Act 2015, was specifically referenced in decision **16/00040** citing the new requirements imposed on letting agents. It is for individual Local Authorities to set the level of the financial penalty, up to a maximum of £5,000. Where the financial penalty is agreed, the monetary level is also to be agreed.
- 2.3 The legislation states when setting the fee authorities should consider the relevant Government guidance (See **Annex D** of *Improving the Private Rented Sector and Tackling Bad Practice - A Guide for Local Authorities*, attached to this report). This guidance indicates 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.
- 2.4 Before imposing a financial penalty on a letting agent for a breach of a duty, the Local Weights and Measures Authority must serve a notice of intent setting out

the amount of the proposed financial penalty, the reasons for proposing to impose the penalty, and information about the letting agent's right to make representations.

- 2.5 If a final notice is served by the council, the agent must pay the penalty decided within 28 days. The final notice will contain information including why the notice has been served and rights of appeal.
- 2.6 The legislation does allow a letting agent to appeal the issue of such a notice. A financial penalty can be withdrawn or reduced at any time but not increased.
- 2.7 It is recommended that KCC set the penalty at the recommended £5,000 as per Government guidance, as this is deemed to be a suitable deterrent for non-compliance. Obviously, discretion can be used in which will consider extenuating circumstances, and KCC would have the discretion to reduce the amount specified in a notice of intent or final notice.
- 2.8 It is also recommended that the authority to determine any reduction in the financial penalty be delegated to the Head of Trading Standards. Regarding extenuating circumstances, it is up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the relevant period. It is requested that this authority be delegated to the Head of Trading Standards to determine any reduction in the financial penalty where the Head of Trading Standards is satisfied that there are extenuating circumstances with each case to be considered on its own merits and in accordance with the Enforcement Policy.
- 2.9 Finally, it is also recommended that authority is delegated to the Head of Trading Standards to review and decide the level of future financial penalties attributable to the Consumer Rights Act 2015 (as amended) in consultation with the Cabinet Member. The monetary level of financial penalties attributable to the Consumer Rights Act 2015 (as amended) will be reviewed annually.

### **3. Financial Implications**

- 3.1 As there is a responsibility for this Legislation to be exercised through Trading Standards, there will be additional resource implications, with staffing levels and costs, in its enforcement.
- 3.2 However, the legislation allows for the Local Weights and Measures Authority, Trading Standards, to use the proceeds of a financial penalty for the purposes of any of its functions.

### **4. Legal implications**

- 4.1 It is a statutory responsibility for KCC as a Local Weights and Measures Authority to set and enforce this penalty

### **5. Equalities implications**

5.1 There are no equalities implications associated with the setting of financial penalty under the Consumer Rights Act 2015. Equalities implications are considered at the time that authorities are used.

## **6. Other corporate implications**

6.1 Trading Standards will update its Enforcement Policy to include financial penalty. The Enforcement Policy sets out the general principles and approach which are expected to be followed when decisions about formal actions are being considered and made by the service.

## **7. Governance**

7.1 In addition to being asked to agree the use of financial penalties and the level of financial penalty, the Cabinet Member for Community and Regulatory Services is asked to delegate authority to the Head of Trading Standards to determine any reduction in the financial penalty where the Head of Trading Standards is satisfied that there are extenuating circumstances (each case to be considered on its own merits and in accordance with the Enforcement Policy) and to delegate authority to the Head of Trading Standards to review and decide the level of future financial penalties attributable to the Consumer Rights Act 2015 (as amended) in consultation with the Cabinet Member as required. The monetary level of financial penalties attributable to the Consumer Rights Act 2015 (as amended) will be reviewed annually.

## **8. Conclusions**

8.1 The provisions require letting agents to publicise prominently in their premises 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.

8.2 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.

8.3 It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent makes during the 28- day period following the authority's notice of intention to issue a fine.

8.4 It is requested the Head of Trading Standards be delegated the authority to determine any reduction in the financial penalty where the Head of Trading Standards is satisfied that there are extenuating circumstances (each case to be considered on its own merits and in accordance with the Enforcement Policy).

## **9. Recommendation(s):**

9.1 The Cabinet Member for Community and Regulatory Services is asked to agree:

- to the use of financial penalties for letting agents who fail to comply with the requirements of the Consumer Rights Act 2015;
- to set the financial penalty level at the Statutory Maximum of £5,000 for letting agents who fail to comply with the requirements of the Consumer Rights Act 2015 (to be reviewed annually);
- to delegate authority to the Head of Trading Standards to determine any reduction in the financial penalty if they are satisfied that there are extenuating circumstances (each case to be considered on its own merits and in accordance with the Enforcement Policy); and
- to delegate authority to the Head of Trading Standards to review and decide the level of future financial penalties attributable to the Consumer Rights Act 2015 (as amended) in consultation with the Cabinet Member as required. The monetary level of financial penalties attributable to the Consumer Rights Act 2015 (as amended) will be reviewed annually as shown at Appendix A

## 10. Background Documents

### 10.1 Attached:

- Appendix A Proposed Record of Decision
- Appendix B (list of legislation enforced by Trading Standards)
- Enforcement Policy – particularly 5.12 financial penalty under the Consumer Rights Act 2015
- Consumer Rights Act 2015 – Part III, Chapter III
- Consumer Rights Act 2015 – Schedule 9
- Annex D of Improving the Private Rented Sector and Tackling Bad Practice - A Guide for Local Authorities (Government guidance – Department for Communities and Local Government document)

## 11. Contact details

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