

## ANNEX D

### Guidance on

### Consumer Rights Bill 2015: Duty of Letting Agents to Publicise Fees

#### Introduction

The Consumer Rights Bill will make it a legal requirement for all lettings agents in England and Wales to publicise details of their relevant fees, whether or not they are a member of a client money protection scheme and which redress scheme they have joined. Subject to the usual Parliamentary procedure the intention is that the requirement will come into force on 6 April 2015.

Requiring full transparency of fee deters double charging and enables tenants and landlords to shop around, encouraging letting agents to offer competitive fees. Linking fees to level of service provided enables landlords and tenants to make more informed choices.

The requirement will be enforced by local weights and measures authorities (see section 4 for more details) and this note provides guidance for English local authorities and letting agents who advertise or manage properties in England on who the requirement applies to and how it should be enforced. It is designed to cover the most common situations but it cannot cover every scenario and is not a substitute for reading the Consumer Rights Bill which can be found at: <http://www.legislation.gov.uk> Welsh local authorities should refer to any guidance provided by the Welsh Government and any subsequent secondary legislation passed by the Welsh Assembly.

#### SECTION 1: FEES

##### Which fees must be displayed

All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by the agent in connection with an assured tenancy. This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy.

The legislation only applies to letting agents and their chargeable activities; **the legislation does not apply to landlords.**

The only exemptions are listed below. The requirement is therefore for a comprehensive list of everything that a landlord or a tenant would be asked to pay by the letting agent at any time before, during or after a tenancy. As a result of the legislation there should be no surprises, a landlord and tenant will know or be able to calculate exactly what they will be charged and when.

Letting agents should ensure that in addition to publicising fees and service details as required by the Consumer Rights Bill they also adhere to other consumer protection

regulations. This includes the guidance to advertisers published by the Advertising Standards Authority on how to make sure non-optional fees including the rent are stated clearly and upfront.

### **Exemptions to which fees must be displayed**

An agent does not need to publicise the following as part of this legislation:

- rent payable to a landlord;
- a tenancy deposit which is taken as security against damage or violation of the tenancy agreement; and
- any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person.

For example should a letting agent recommend a gardener for a property and arrange to pass the fee from the landlord to the gardener without taking a cut or adding a fee for this service there would be no requirement to publicise the fee charged by the gardener. In this example the agent is simply providing a more convenient way for the landlord to pay the gardener.

### **Where the fees should be publicised**

The agent must display a list of the fees at each of their premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate. The list must also be such that it is likely to be seen by customers.

Ideally someone walking into an agent's office should be able to see the list without having to ask for it and if someone does ask it should be clearly on view and not hidden for example in a drawer.

If an agent has a website the agent must publish a list of fees on their website.

### **How the fees should be displayed**

The list of fees must be comprehensive and clearly defined; there is no scope for surcharges or hidden fees. Ill defined terms such as administration cost must not be used. All costs must include tax.

Examples of this could include individual costs for:

- marketing the property;
- conducting viewings for a landlord;
- conduct tenant checks and credit references;
- drawing up a tenancy agreement; and
- preparing a property inventory.

It should be clear whether a charge relates to each dwelling unit or each tenant.

Where a fee cannot be reasonably determined in advance, the list should describe how a cost is finally calculated.

The intention of the legislation is that both tenants and landlords are able to understand what a service or cost is for and why it is being imposed.

Letting agents often have a range of charges based on the level of service provided; costs must identify charges for the level of service provided. For example:

- fee for a let only service 8.4%;
- fee for a let and rent collection service 12%;
- and fee for a full management service 18%.

There is no legislation on the level of fee set by a letting agent; as this is a commercial decision for each agent to make.

For some services, it is perfectly acceptable to split the charge between tenants and landlords where both receive benefit from the service, for example the cost of drawing up a tenancy agreement. This is not double charging as the cost is split not duplicated.

In addition to the fees letting agents should publicise whether or not they are a member of a client money protection scheme and which redress scheme they have joined. Letting agents who are not members of a client money protection scheme must make this clear, silence on this subject is a breach of the legislation. As with the fees this information should be prominently displayed in every office and on the website.

## **SECTION 2: LETTINGS AGENTS**

### **Definition of letting agents**

Letting agents are defined in the Consumer Rights Bill as a person who engages in letting agency work. The Bill makes it clear that a letting agent doesn't have to exclusively engage in letting agents work but so long as they undertake it they are a letting agent regardless of what else they do.

### **What do we mean by 'lettings agency work'**

'Lettings agency work' is defined in the Consumer Rights Bill as things done by an agent in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988.

In the Bill, lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided; and
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector.

### **What do we mean by 'property management work'**

In the Consumer Rights Bill, property management work means things done by the agent in the course of business, in response to instructions from another person who wants to the agent to: arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

For there to be property management work, the premises must consist of a dwelling-house let under an assured tenancy.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector.

## **SECTION 3: ENFORCEMENT**

For the legislation to be effective there needs to be a process ensuring compliance and for there to be a fair and effective penalty where the requirement is not met.

### **Enforcement authority**

The enforcement authorities for the purposes of this Duty are local weights and measure authorities, also known as trading standards authorities these can be a County Council, a London Borough Council, the Common Council of the City of London in its capacity as a local authority, or the Council of the Isles of Scilly.

Generally, the enforcement authority will be the local authority in whose area the lettings agent who has not complied with the requirement is based. So for a national letting agent who has not published their fees and other details, they can be liable for a fine for each and every office where the information is not published. However, local authorities will need to

agree to enforce fines for a website which covers the whole country, as fines cannot be imposed for the same breach of the requirement. Where several authorities are involved the authorities must agree which authority will issue the notice and subsequently keep the fine. In such cases authorities may need to give consideration, to which local authority has the registered head office or registered website.

### **Penalty for breach of duty publicise fees**

The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting work and is required to publish their fees and other details, but has not done so.

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 during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; alternatively an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. 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.

The enforcement authority can impose further penalties if a lettings agent continues to fail to publicise their fees and other details despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent if they continue to be in breach of the legislation.

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

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

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate).

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

## **Step 2: Representations and Objections**

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections 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 require the penalty to be paid within 28 days, from the day after the day on which the final notice was sent. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

- i) why the fine is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;
- v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

## **Step 4: Appeals**

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

- i) the decision to impose a fine was based on a factual error or was wrong in law;
- ii) the amount of the fine is unreasonable; or
- iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

#### **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.

If the lettings agent does not pay the fine within the 28 day period the authority can recover the fine on the order of the county court, as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the enforcement authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.