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| Committee(s): Port Health & Environmental Services Committee | Dated: 27/09/2021 |
| Subject: Adoption of Lettings Enforcement Policy | Public |
| Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly? | 5 |
| Does this proposal require extra revenue and/or capital spending? | No |
| If so, how much? | N/A |
| What is the source of Funding? | N/A |
| Has this Funding Source been agreed with the Chamberlain's Department? | N/A |
| Report of: Director of Markets & Consumer Protection | For Decision |
| Report author: Karen Tillet, Trading Standards Officer | |

Summary

Since 2014 the Government has introduced various pieces of legislation to regulate the activities of lettings and property management agents. These include the requirement for agents to belong to an approved Redress Scheme and Client Money Protection Scheme, the banning of tenants' fees (with certain prescribed exceptions), and requirements in relation to the publication of fees. Enforcement is largely by means of financial penalties, which can amount to up to £30,000, depending upon the circumstances.

The responsibility for enforcement of the above provisions lies with Trading Standards. The level of penalty to be imposed is subject to the discretion of the Corporation, up to statutory maximum values.

In order to support the determination of financial penalties for breaches of legislation we are looking to adopt the Model London Lettings Enforcement Policy, which has been prepared by London Trading Standards (LTS). It sets out the decision-making process to be followed when taking enforcement action.

Recommendation(s)

Members are asked to:

- Agree to the adoption of the Lettings Enforcement Policy

Main Report

Background

1. The population of London has grown rapidly over the last decade, as has the proportion of households renting privately, estimated to be 27% in 2019. At the same time, private rents have risen by 43% since 2005.
2. Accordingly, a large letting agent industry has developed, with London accounting for about 40% of all letting agents in England.
3. There is evidence of widespread non-compliance with legal requirements. Enforcement data collected from London boroughs in 2018/19 suggests that only 54% of agents were fully compliant when inspected by Trading Standards Officers.
4. Since 2014, letting agents have been required to be a member of a government approved redress scheme, such as The Property Ombudsman scheme. As part of the Consumer Rights Act 2015, the government introduced the requirement for letting agents to publicise landlord and tenant fees. To further regulate the sector, the Tenant Fees Act 2019 was passed into legislation; this prohibited the charging of tenants' fees, save for permitted exceptions. Since 2019, letting agents are also required to be members of a government approved Client Money Protection Scheme.
5. The sanction for breaches of letting agents' requirements is usually by way of a civil financial penalty imposed by the enforcement authority (although certain breaches of the Tenant Fees Act can give rise to criminal proceedings). The penalty imposed can be up to £5,000 in the case of non-membership of a redress scheme or breaches of the fees publication requirements. The maximum penalty increases to £30,000 for breaches of the permitted payments regime and non-membership of a Client Money Protection scheme. The penalty amount to be imposed is at the discretion of the enforcement authority.

Current Position

6. When setting financial penalties, an enforcement authority must have regard to relevant statutory guidance and guidance issued by the lead enforcement authority for England, Bristol City Council. With this in mind, a model enforcement policy has been prepared by London Trading Standards, in consultation with the lead enforcement authority. The proposed policy also takes into account the Regulators' Code and the Code for Crown Prosecutors.
7. The model enforcement policy aims to ensure consistency of approach across London when setting the level of financial penalty to be imposed. The policy sets out the decision-making process to be used when taking enforcement action for breaches of the letting agent legislation mentioned above.

8. The proposed policy sets out factors to be considered such as culpability, harm, aggravating and mitigating features, and proportionality. The legislation also provides the ability for those committing breaches to make representations to the enforcement authority within a set time period before a Final Notice is served.
9. In order to promote consistency and put in place a framework for decision-making, it is recommended that the model enforcement policy is adopted. The route for formal adoption is by way of Committee decision.
10. An informal poll of London Boroughs and internet searches revealed that so far six boroughs have adopted the LTS Model Lettings Enforcement Policy in whole or part. They are Brent, Bromley, Greenwich, Hammersmith & Fulham, Southwark and Waltham Forest.
11. The draft Lettings Enforcement Policy for the City of London Corporation can be found at Appendix 1. The policy sits alongside and should be read in conjunction with the Port Health & Public Protection Enforcement Policy, which is published on the City of London website
<https://www.cityoflondon.gov.uk/assets/Business/phpp-enforcement-policy-jan-2019.pdf>

Options

12. The Lettings Enforcement Policy is not statutory guidance but provides a consistent framework for setting financial penalties. The adoption and implementation of the policy will provide good evidence in the event of an appeal to the First Tier and Upper Tier Tribunals. It will enable the Corporation to demonstrate that we have taken a fair and proportional approach to breaches, so decreasing the chances of an appeal being successful.
13. There is no cost to the adoption of the policy, and it will assist in appropriate financial penalties being upheld on appeal.

Proposals

14. It is recommended that the proposed Lettings Enforcement Policy is adopted in order to promote a consistent approach across London and ensure that decisions are made using the suggested process, taking the appropriate factors into account.

Corporate & Strategic Implications

15. Strategic implications – The adoption of this policy will help to promote a thriving economy because its purpose is to ensure that financial penalties for businesses that breach the legislation are dealt with fairly and proportionately. The policy also aligns with the work of the National Trading Standards Estate Agency and Letting Agency Team who are responsible for overseeing letting agency regulation in England. They were consulted when the model policy was drawn up.

16. Financial implications – None.

17. Resource implications – None; lettings agency work is already within the remit of Trading Standards.

18. Legal implications – Adoption and application of this policy will act to strengthen and justify the Corporation’s position, should the recipient of a Final Notice wish to appeal to the First Tier Tribunal. Legal Services have been consulted as part of the process and support the proposal to adopt the policy.

19. Risk implications – None

20. Equalities implications – None

21. Climate implications – None

22. Security implications - None

Conclusion

23. Trading Standards are responsible for the enforcement of legislation relating to the activities of letting agents. The legislation covers matters such as membership of approved bodies, prohibited fees, and the publication of fees. The key sanction available for those found in breach of the legislation is the imposition of a financial penalty of up to £30,000.

24. The proposed Lettings Enforcement Policy sets out the process to be used for arriving at the appropriate financial penalty; including what considerations should be taken into account. Adoption of the policy will ensure a fair and consistent approach to determining the level of financial penalty, in line with other London Boroughs and nationally.

Appendices

- Appendix 1 – City of London Corporation Trading Standards Service Lettings Enforcement Policy – Date see policy

Karen Tillett

Trading Standards Officer
Markets & Consumer Protection

T: 020 7332 4963

E: karen.tillett@cityoflondon.gov.uk