

Report to Cabinet

15 February 2023

Subject:	Tenant Fees Act Policy
Cabinet Member:	Cabinet Member for Communities Cllr Millard
Director:	Director of Borough Economy Alice Davey
Key Decision:	Yes New Policy and Charges
Contact Officer:	Nicola Plant Assistant Director Public Protection and Community Safety Liz Nembhard Operations Manager Public Protection and Community Safety

1 Recommendations

- 1.1 That the policy and framework for issuing fixed penalty notices under the Tenant Fees Act 2019 as provided in appendix 1 is adopted.

2 Reasons for Recommendations



- 2.1 The Tenancy Fees Act 2019 places a statutory duty for enforcement on the council as the Local Weights and Measures Authority (Trading Standards).
- 2.2 The Act 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 and Bristol City Council was awarded the contract to deliver the function.

- 2.3 Statutory Guidance states that enforcement authorities are expected to develop their own policies on the Tenant Fees Act 2019, including the level of financial penalties to impose for breaches. It further states that Councils should also consider the guidance issued by the Lead Enforcement Authority under the Act.
- 2.4 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. This model policy and fines framework has been used to develop the proposed Sandwell policy and framework provided in appendix 1.

3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well</p> <p>The Tenant Fees Act 2019 prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted. This will help achieve a fair market where the costs for tenants are clear and not hidden.</p>
	<p>Quality homes in thriving neighbourhoods</p> <p>Contribute to ensuring a fair housing market in the private sector.</p>

4 Context

- 4.1 The Tenancy Fees Act 2019 prohibits the charging of fees in respect of a tenancy in the private rented sector in England other than those which are specifically permitted.
- 4.2 A person who commits an offence under the Act can be prosecuted through the Magistrates' Court, but the Act allows authorities to issue a civil penalty as an alternative to a prosecution.



- 4.3 The Tenancy Fees Act 2019 places a statutory duty for enforcement on the council as the Local Weights and Measures Authority (Trading Standards).
- 4.4 The Act 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 and Bristol City Council was awarded the contract to deliver the function.
- 4.5 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. This model policy and fines framework has been used to develop the proposed Sandwell policy and framework provided in appendix 1.
- 4.6 The proposed policy provides a framework for calculating the amount of the civil penalty using culpability and category of harm measures in relation to each of the offence contained in the Act.
- 4.7 The adoption and application of this framework will ensure that our approach to offences of this nature is consistent. Further, as all authorities in England have a duty to have regard to the policy of the Lead Enforcement Authority, the adoption of this policy will ensure that our approach is consistent with other authorities across the country.
- 4.8 Trading Standards team will be liaising more closely than previously with district council housing colleagues, particularly Environmental Health Housing standards teams.

In fulfilling this statutory duty the Weights and Measures Authority (Trading Standards) will work closely with Housing colleagues, particularly the Private Sector Housing team. Identifying and pursuing landlords that fail to meet their obligations will be part of both areas of business.

- 4.9 A breach of the Tenant Fees Act 2019 can be dealt with in the following manner:
- For the first offence a civil penalty of up to £5,000 can be issued



- For a subsequent offence within a 5 year period, a civil penalty up to £30,000 can be issued or a prosecution in the court system where the fine may be unlimited and in addition, following a successful prosecution, the enforcing authority may apply for a banning order under the Housing and Planning Act 2016.

There are limitations to a civil penalty of £5,000 for certain offences under the Tenant Fees Act 2019. The issuing of a civil penalty or proceeding with prosecution for subsequent offences within 5 years is at the discretion of the enforcing authority.

5 Alternative Options

- 5.1 In order to enforce this legislation and fulfil its statutory duty, the council must have a policy that outlines what fines will be for breaches of the legislation.
- 5.2 The council could decide to construct its own framework for calculating the amount of a civil penalty however, this risks not being aligned with other authorities which could impact our ability to justify in the event of any appeal against a penalty levied. As a result of the requirement for all authorities in England to have regard to the policy of the Lead Enforcement Authority, the adoption of this policy will ensure that our approach is consistent with that of other authorities.

6 Implications

Resources:	There are no HR implications as a result of adopting this policy.
Legal and Governance:	The Tenancy Fees Act 2019 places a statutory duty for enforcement on the council as the Local Weights and Measures Authority (Trading Standards). In order to enforce the Act, the local authority must have a policy that outlines the penalties for breaches.
Risk:	Failure to have an enforcement policy and framework for civil penalties may undermine the Council's ability to comply with its duties under the Tenant Fees Act 2019.
Equality:	An equality impact assessment has been undertaken. There are no equality implications to this report in relation to those with the protected characteristics.



Health and Wellbeing:	The adoption of the policy supports the wellbeing of the residents of Sandwell by contributing to ensuring good practice in the private rented sector.
Social Value	The provision of clear, lawful and transparent fees will provide tenants clarity at the outset and duration of their tenancy.
Climate Change	There are no Climate Change implications as a result of adopting this policy.

7 Appendices

7.1 Appendix 1. Proposed Tenants Fees Act 2019 Policy

8 Background Papers

8.1 There are no background papers for this report

