

Telford and Wrekin **Council**

Clear Fees and Charges under **Consumer Rights Act 2015**

Procedure and policy for **enforcement of the regulations** **together with a statement of** **principles for determination of a** **financial penalty**

Telford and Wrekin Council

Duty of Letting Agents to Publicise Fees etc under the Consumer Rights Act 2015

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1. Introduction and the legislation

Part 3, Chapter 3 of The Consumer Rights Act 2015 introduced the legal requirement that from the 26th March 2015 all lettings agents in England and Wales must display a list of fees and charges upon the premises they trade in a position where the consumer would be able to see them, these must also be displayed on a website where they have one. The particulars that must be displayed as described in the legislation.

The Order can be found at the link below:-

<http://www.legislation.gov.uk/ukpga/2015/15/part/3/enacted>

All letting agents should be aware of these requires are likely to comply.

Telford & Wrekin Council is the enforcing authority for this legislation, and so is responsible for ensuring that all applicable agents and property managers within the borough have complied with the legislation.

Definitions are provided in the legislation, and the process for enforcement is found in Schedule 9.

2. Enforcement Procedure

2.1 Identify a breach of the Act

During the course of investigating a suspected breach of the Act, an officer of the Council will identify the failure to display and/or publish upon its website and at each of the agent's premises at which the agent deals face-to-face with persons, and at a place in each of those premises at which the list is likely to be seen by such persons, the following particulars prescribed

- (a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed (as the case may be),
- (b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house, and
- (c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.

Officers may also make this discovery during the course of other investigations.

In addition the following provisions apply to a letting agent engaging in letting agency or property management work in relation to dwelling-houses in England:

If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement of whether the agent is a member of a client money protection scheme.

If the agent is required to be a member of a redress scheme for dealing with complaints in connection with that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement—

- (a) that indicates that the agent is a member of a redress scheme, and
- (b) that gives the name of the scheme..

2.2 Enforcement

It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area. The Borough of Telford & Wrekin Council, as the enforcement authority, can impose a financial penalty of up to £5,000 where it is satisfied that the Act has, on the balance of probabilities, been contravened.

If a letting agent breaches the duty in section 83(3) of the Act i.e its duty to publish list of fees etc on agent's website, that breach is taken to have occurred in each area of a local weights and measures authority in England and Wales in which a dwelling-house to which the fees relate is located.

The authority may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority's area (as well as in respect of a breach which occurs within that area) However this may only impose a penalty in respect of a breach which occurs outside its area and in the area of a local weights and measures authority in Wales where it has obtained the consent of the relevant authority.

Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

Schedule 9, sets the procedure for and appeals against financial penalties.

2.3 Procedure for financial penalties.

Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, The Borough of Telford & Wrekin Council, must serve a notice on the agent of its proposal to do so (a "notice of intent").

The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the agent's breach, subject to sub-paragraph (3). That is to say if the agent is in breach of the duty on that day, and the breach continues beyond the end of that day, the notice of intent may be served—

- (a) at any time when the breach is continuing, or
- (b)within the period of 6 months beginning with the last day on which the breach occurs.

The notice of intent must set out—

- (a) the amount of the proposed financial penalty,
- (b) the reasons for proposing to impose the penalty, and
- (c) information about the right to make representations

The letting agent may, within the period of 28 days beginning with the day after that on which the notice of intent was sent, make written representations to The Borough of Telford & Wrekin, about the proposal to impose a financial penalty on the agent

After those 28 days have lapsed the The Borough of Telford & Wrekin Council must

- (a) decide whether to impose a financial penalty on the letting agent, and
- (b) if it decides to do so, decide the amount of the penalty.

If The Borough of Telford & Wrekin Council decides to impose a financial penalty on the agent, it must serve a notice on the agent (a “final notice”) imposing that penalty.

The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was sent.

(4) The final notice must set out—

- (a) the amount of the financial penalty,
- (b) the reasons for imposing the penalty,
- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice.

Details on how The Borough of Telford & Wrekin Council will consider each case is given in the Statement of Principles for Determining the Amount of a Financial Penalty, see Section 3 of this document.

The Borough of Telford & Wrekin Council may at any time (a) withdraw a notice of intent or final notice, or (b) reduce the amount specified in a notice of intent or final notice.

This power is to be exercised by giving notice in writing to the letting agent on whom the notice was served.

2.4 Appeals against financial penalties

An appeal may be made to the First Tier Property Tribunal following issue of the final notice. The contact details for this are;

The contact details for the purpose of appeal are:-
First-Tier Tribunal (Property Chamber - Residential Property)
15th Floor, Centre City Tower,
5 – 7 Hill Street, Birmingham
B5 4UU
Tel: 0121 600 6270 Fax: 01264 785 122
Email: rpmidland@hmcts.gsi.gov.uk

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>

The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to publicise the required information.

2.4 Recovery of the penalty

As detailed in Schedule 9 of the Act, The Borough of Telford & Wrekin Council may recover the financial penalty on the order of a court, as if payable under a court order. In proceedings for the recovery of the amount due, a certificate which is signed by the enforcement authority's chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989(1)); and also states that the amount due has not been received by a date specified in that certificate is conclusive evidence of that fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.

The financial penalties received by Telford & Wrekin Council may be used by the authority for any of its functions.

3. Statement of principles for determination of a financial penalty under the Act

3.1 Statement of Principles

This statement sets out the principles that the Council will apply in exercising its powers to require a relevant agent to pay a financial penalty.

The Council will have regard to satisfying the balance of probabilities that the agent / property manager has failed to clearly display fees and charges etc. as required by the regulations.

This statement sets out the principles which the Council will apply and will have regard to when exercising its powers under the Act.

“It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area”

The Borough of Telford & Wrekin Council, as the enforcement authority, can impose a financial penalty of up to £5,000 where it is satisfied that the Act has, on the balance of probabilities, been contravened”

3.2 Applicable principles

3.2.1 The purpose of imposing a financial penalty

The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public, although they may have a punitive effect.

The primary aims of financial penalties will be to:

- Change the behaviour of the landlord
- Deter future non-compliance, and that of other agents/managers
- Eliminate any financial gain or benefit from non-compliance with the regulations.
- Provide a fairer private rented sector for renters within the borough.

3.2.2 Criteria for the imposition of a financial penalty

By virtue of Section 83, a failure to comply with the requirements of the regulations allows the Council to require payment of a financial penalty.

In considering the imposition of a penalty the Council will have regard to the evidence of a breach of the requirement. To gather this evidence a check will be made on the company website, which then may prompt a visit to the trade premises (if based in the borough) to gather further evidence of non-compliance.

In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration.

3.2.3 Criteria for determining the quantum of a financial penalty

Section 83 allows for a financial penalty which must not exceed £5,000.

The Borough of Telford and Wrekin consider that a charge of £5,000 should be considered the normal level and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.

Telford and Wrekin Council will take into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine.

It has been a requirement to clearly display fees and charges since 2015, so lack of awareness cannot be considered.

The council will consider upon evidence provided to it, based on the turnover/scale of the business, if such a level of fine is disproportionate would lead to an organisation going out of business.

Extenuating circumstances will be taken into account.

Payment will be required within 28 days beginning with the day on which the final charge notice was served. Payment of the financial penalty charge will be accepted by cheque, made payable to Telford and Wrekin Council or by credit or debit card which can be accepted over the telephone or at Darby House, Addenbrooke House or Wellington Civic Centre. The penalty charge notice will be credited against [R9109 DEAF DE60 Z99](#)

3.2.4 Procedural matters

The Order imposes a number of procedural steps which must be taken before the Council can impose a financial penalty and all agents and property managers must familiarise themselves with the contents of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 and / or seek legal advice. The procedure undertaken by the Council is detailed at the start of this document and in the schedule to the legislation <http://www.legislation.gov.uk/ukpga/2015/15/schedule/9/enacted>

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.

The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing