

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 14 September 2021

TITLE	Bristol City Council Enforcement Policy in relation to Relevant Letting Agency Legislation	
Ward(s)	City-wide. The Enforcement Policy is applicable City-wide.	
Author: Jonathan Martin & Jonathan Mallinson	Job title: Trading Standards Manager & Private Housing Manager	
Cabinet lead: Cllr Nicola Beech – Climate Ecology, Energy and Waste Cllr Tom Renhard - Housing Delivery and Homes	Executive Director lead: Stephen Peacock, Executive Director Growth and Regeneration	
Proposal origin: BCC Staff		
Decision maker: Cabinet Member Decision forum: Cabinet		
Purpose of Report:		
<ol style="list-style-type: none"> To recommend adoption of the refreshed & updated Bristol City Council (BCC) & Lead Enforcement Authority Penalty Notice Policy in respect of Lettings Legislation. Seek delegation for future amendments to be made by Executive Director Growth and Regeneration in consultation with relevant cabinet member. Information item – Update cabinet to make them aware of The Private Housing - Electrical Safety Standards - Civil Penalty Policy Addendum – June 2021. To highlight to Cabinet the Council’s continuing commitment to put in place policies which protect and enforce the rights of Private Rented Sector Tenants in Bristol. 		
Evidence Base:		
<ol style="list-style-type: none"> On 18th April 2019 BCC was appointed to act as the Lead Enforcement Authority (LEA) for the purposes of the Tenants Fees Act 2019 (TFA) which came into force on the 1st June 2019. The work of the LEA is being jointly delivered with Powys County Council who already hosted the established Estate Agency Team. All the necessary legal agreements and authorisations are now in place and the team is functioning well. The team operates under the acronym NTSELAT (National Trading Standards Estate and Lettings Agency Team). To take enforcement action under the Tenants Fees Act 2019 and associated relevant lettings legislation, local authorities must adopt an enforcement policy detailing how it will deal with decisions under the policy, including financial penalties and/or decisions to prosecute. The Policy applies equally to BCC in its capacity as an enforcement authority which is enforced by the Private Housing Team and in its role as the Lead Enforcement Authority across England which is managed via the Trading Standards Service. The Private Rented Sector in Bristol is significant. It is estimated there are over 60, 000 rented properties which make up approximately 30% of the 202,000 properties in the city. The national average is 19%. 		

6. The original Penalty Notice Policy was adopted by cabinet in September 2019. Since then minor changes have been dealt with under the 'slip' rule. We are now at Version 4.
7. Two years on, a more thorough refresh and review has been undertaken with content streamlined and clarified in places, and correction of minor typographical errors.
8. Some key points of change:
 - a. Previous version Section 1 "legal reference" removed and Section 3 "consequential amendments" simplified and now follows on from new Section 1 "sanctions".
 - b. Previous version Section 5, now Section 3, has been amended to reflect the statutory guidance when considering a financial penalty. Although similar and still relevant, the previous version was referring to considerations from the statutory guidance to decide whether to issue a higher penalty of prosecute for second / subsequent breaches.
 - c. Inclusion of Client Money Protection (CMP) statutory guidance.
 - d. Clarifying ability to undertake financial assessment of subject, previous version referred to officers using Sch 5, Consumer Rights Act powers, this has been removed and replaced with "use powers to, as far as possible, make an assessment on means" as Sch 5 is not available under all pieces of lettings legislation for Local Authorities, only the LEA.
 - e. Appendix 9 and 10, which separated penalty amounts for Reg 4 CMP breaches have been condensed into a single Appendix (9).
9. The policy is also widely used as the foundation for enforcement policies adopted by other local authorities. It is important therefore the policy is regularly reviewed and this is part of the diligence and oversight to ensure the policy remains fit for purpose.
10. Local Context as Enforcement Authority. The Tenant Fees Act came into force on 1st June 2019 for new tenancies falling within its implementation period up until the 1st of June 2020. After this date, all relevant tenancies are covered by the Act irrespective of when they were signed. From June 2020, Bristol City Council received a high number of Tenant Fees Act enquiries but also sought out breaches by approaching the tenants of landlords we had reason to suspect were non-compliant.
11. In accordance with our enforcement policy, most landlords and agents were given the opportunity to repay banned fees and were then audited to ensure compliance with other Trading Standards legislation. Out of a total of 24 breaches, only 3 were dealt with by way of enforcement action against the same persistent landlord. In total £24,153 was recovered for tenants in Bristol during the last financial year.

For information only.

12. New regulations in relation to electrical safety in rented properties will protect most renters by requiring landlords to have regular safety checks on the wiring in their homes by competent electricians. Any unsafe works must be attended to by landlords, otherwise they face potentially significant financial penalties. Tenants can now by law also expect to be provided with a current electrical safety certificate before they start a new tenancy. Landlords are also under a duty to advise the Council when unsafe installations have been made safe. See [link](#) to .gov for further information.
13. On the 10th July 2021, Private Housing Electrical Safety Standards Civil Penalty Policy Addendum

(Appendix M) was approved by the Executive Director - Growth & Regeneration in consultation with the Cabinet Member for Housing. Approval of the addendum was made in accordance with the Council's Decision Pathway using the powers delegated to the Executive Director under the Council's constitution. The decision was published on the Council's website see [link](#). The Addendum was necessary to allow the Council to impose financial penalties under the new Electrical Safety Standards Regulations in the Private Rented Sector (England) 2020 (ESSR 2020).

14. These regulations apply in England to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021. The regulations require landlords in the private rented sector to ensure that minimum electrical safety standards are met in their properties and ensure the electrical installations are inspected and tested by a competent person at regular intervals of no more than five years. If the Council finds that landlords are in breach of their duties under the ESSR 2020 allow for a financial penalty to be imposed, up to £30,000, and may apply the proceeds to meet the costs and expenses in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector
15. The addendum policy was approved under executive officer powers to the current Civil Penalty as an alternative to Prosecution under the Housing Act 2004. This policy was approved by Cabinet 3rd October 2017. (Appendix N).

Cabinet Member / Officer Recommendations:

1. Approve the updated Bristol City Council (BCC) & Lead Enforcement Authority Penalty Notice Policy in respect of Lettings Legislation.
2. Authorise the Executive Director Growth & Regeneration in consultation with the relevant Cabinet members Climate, Ecology, Waste and Energy and/or Housing Delivery and Homes to make future minor changes to the Bristol City Council (BCC) & Lead Enforcement Authority Penalty Notice Policy in respect of Lettings Legislation subject to periodic review by cabinet.
3. Note the Private Housing Electrical Safety Standards Civil Penalty Policy Addendum.

Corporate Strategy alignment:

1. Fair and Inclusive: Housing is a key priority, including resolving affordability, insecurity, and poor conditions in the private rented sector.

City Benefits: Homes & Communities is a priority area. It follows the ability of the authority to take robust and timely action against rogue landlords and letting agents is imperative to help protect consumers and tenants.

Consultation Details:

1. **Private Housing Colleagues-** throughout the review colleagues in Private Housing have been consulted and have actively contributed to the proposed changes.
2. **Legal Services-** The LEA funds a 0.5 FTE Regulatory Lawyer who has contributed to the refresh and drafting of the revised policy.

Background Documents:

[Tenancy Fees Act - Statutory guidance for enforcement authorities.pdf \(publishing.service.gov.uk\)](#)

[Mandatory client money protection: enforcement guidance for local authorities - GOV.UK](#)

www.gov.uk

Revenue Cost	£	Source of Revenue Funding	
Capital Cost	£	Source of Capital Funding	
One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice: The report seeks approval to adopt a refreshed Penalty notice policy. The policy outlines how penalties are determined and outlines the range of fines that could be issued to Letting agents in breach of policy. There are no direct financial implications expected as a direct consequence of approving the refreshed Policy, other than any costs of publishing and communicating the details of the new policy, which will be met from existing Service budgets. Any increase in operational costs from enforcing this policy is expected to be met from the penalty notice revenue.

Finance Business Partner: Kayode Olagundoye, Interim Finance Business Partner, Growth and Regeneration, 30/07/2021. Reviewed and reconfirmed 26/8/21.

2. Legal Advice: This policy was adopted by Bristol City Council in September 2019. This is an update of the policy, bringing it into line with statutory guidance; ‘Tenant Fees Act 2019 Statutory Guidance’ and ‘Mandatory Client Money Protection for Property Agents Enforcement guidance for Local Authorities’, correcting minor typographical errors and streamlining the document.

The substantive content of the policy remains the same with no substantive changes to the financial penalty process or factors to be considered.

The Legislative and Regulatory Reform Act 2006 provides that anyone exercising an authority’s regulatory functions must have regard to the following principles:-

- regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- regulatory activities should be targeted only at cases in which action is needed.

The Act also provides that the decision maker must have regard to the Regulators Code of Practice when determining an enforcement policy. The above statutory principles, the Regulators Code and the Code for Crown Prosecutors are incorporated within the enforcement policy that is the subject of this report.

The Public Sector Equality duty requires the decision maker to consider the need to promote equality for persons with “protected characteristics” and to have due regard to the need to

1. eliminate discrimination, harassment, and victimisation;
2. advance equality of opportunity; and
3. foster good relations between persons who share a relevant protected characteristic and those who do not share it.

The Equalities Impact /Assessment is designed to assess whether there are any barriers in place that may prevent people with a protected characteristic using a service or benefiting from a policy. The decision maker must take into consideration the information in the check/assessment before taking the decision to approve the policy

Appendix M - Private Housing - Electrical Safety Standards - Civil Penalty Policy Addendum – June 2021 was previously approved under the executive powers of the Council’s constitution and for the purposes of this report is for information only

Legal Team Leader: Anne Nugent in consultation with Kate Burnham-Davies (TFA lead lawyer) 30th July 2021.

3. Implications on IT: No anticipated impact on IT/Digital Services

IT Team Leader: Simon Oliver - Director - Digital Transformation 24th August 2021

4. HR Advice: There are no HR implications evident.

HR Partner: Celia Williams 2nd August 2021

EDM Sign-off	Stephen Peacock, Executive Director	13 th July 2021
Cabinet Member sign-off	Cllr Nicola Beech, Cabinet Member for Climate Ecology, Energy and Waste	19 th July 2021
For Key Decisions - Mayor’s Office sign-off	Mayor’s Office	16 th August 2021

Appendix A – Further essential background / detail on the proposal Current V4 Enforcement Policy.	YES
Appendix B – N/A	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	NO
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	No
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO
Appendix M - Private Housing - Electrical Safety Standards - Civil Penalty Policy Addendum – June 2021	NO
Appendix N - Civil penalty as an alternative to prosecution under the Housing Act 2004	NO