

Tenant Fees Act 2019 – Policy on prosecution or issue of financial penalty notice and the level of fines to be set

Summary

This policy document lays out the steps the London Borough of Hammersmith and Fulham (LBHF) will take in determining whether to prosecute or issue financial penalty notices to businesses for not complying with the Tenant Fees Act 2019 (TFA). This meets the requirements of the TFA - Statutory Guidance for Enforcement Authorities. This document also lays out the factors to take into consideration when determining the size of monetary penalty under this legislation and other related* legislation.

Regard has been paid to the TFA, the statutory guidance for enforcement authorities to the TFA and the published policy of the lead enforcement authority for the TFA when developing this policy.

The legislation requires that a first breach of the TFA is treated as a civil breach with financial penalties of up to £5,000. However, a further breach within 5 years allows an enforcement authority to either prosecute under section 12 of the Act or issue a monetary penalty for non-compliance with the Act. In conjunction with the LBHF enforcement policy, the code for crown prosecutors and the TFA statutory guidance the factors below should be considered and given weight when a decision is being made.

Factors adding weight to prosecution:

- 1) First penalty was not paid
- 2) The business is being prosecuted for other matters
- 3) There is a history of non-compliance with housing or trading standards legislation
- 4) Severe breach

Factors adding weight to issue of further financial penalty (civil breach):

- 1) The first penalty was paid
- 2) The business is not being prosecuted for other matters.
- 3) There is no history of non-compliance with housing or trading standards legislation
- 4) Not a severe breach

The importance of the above factors will depend on the circumstances of the case and are not listed in order of importance.

Determining the level of monetary penalty for a breach of the Tenant Fees Act or related* legislation

The factors below will be taken into consideration when determining a final monetary penalty to be paid for a civil breach.

Factors likely to Increase monetary penalty:

- 1) History of non-compliance
- 2) Severe breach
- 3) Knowingly or recklessly supplying false or misleading evidence
- 4) Unhelpful/obstructive attitude of landlord/agent towards investigation
- 5) Length of time since legislation came into force
- 6) No attempts to fix issue/continued non-compliance
- 7) Consumer detriment

Factors likely to decrease monetary penalty:

- 1) Compliance since investigation started
- 2) Minor breach
- 3) Co-operative attitude to investigation.
- 4) No consumer detriment
- 5) No history of non-compliance
- 6) Evidence provided by company that fine would cause financial difficulties

The above factors are matters which should be considered when reaching a decision concerning the monetary penalty of a final notice. They are not listed in order of importance. They are not exhaustive and may be given different weight in different circumstances. If different factors are important for an individual case, then this will be recorded. The reasons that a particular financial penalty was arrived at shall be recorded. Where a 'notice of Intent' is required that notice will usually be set at the maximum penalty though it is anticipated that this may be amended in the 'final notice' following an investigation which sheds lights on the factors mentioned above.

*Related Legislation - Any legislation which allows trading standards to impose civil penalties on landlords, letting agents, estate agents, property managers or property agents