

Trading Standards Financial Penalty Policy for Letting Agents and Landlords

Equality Analysis

January 2021

Appendix 2

Section 1: Equality analysis details

Proposed policy/decision/business plan to which this equality analysis relates	Trading Standards Financial Penalty Policy for Letting Agents and Landlords
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Department	Environment & Leisure	Division	Regulatory Services
Period analysis undertaken	January 2021		
Date of review (if applicable)			
Sign-off		Position	
			Date

Section 2: Brief description of policy/decision/business plan

Brief description of policy/decision/business plan
<p>The council seeks to implement a policy that sets out how the amount of each particular financial penalty is determined for breaches of relevant trading standards legislation applicable to landlords and letting agents.</p> <p>The Lead Member / Decision Maker is Councillor Evelyn Akoto, Cabinet Member for Public Health & Community Safety</p> <p>Due to the close synergies that exist this analysis utilises information from the Equality Analysis carried out by the Private Sector Housing Enforcement Team for their policy “Implementing Civil Penalties in the Private Rented Sector” in December 2018.</p> <p>Note that references to tenants in this analysis includes prospective tenants too.</p>

Section 3: Overview of service users and key stakeholders consulted

Service users and stakeholders	
Key users of the department or service	<p>Service users and stakeholders consist of tenants landlords, letting agents and property managers</p> <p>1. Tenants</p> <p>The types of tenants who occupy properties in the private rented sector (PRS) can range from the poorest and most vulnerable in our society to students, young professionals, families and to the other extreme of affluence.</p> <p>Tenants are likely to provide the main source of information and complaints that could lead to enforcement action in the form of a financial penalty to a letting agent or landlord. However the impact of implementing this policy on tenants is largely neutral as the policy exists to serve as part of a back-office process to determine the amount of a financial penalty rather than whether to issue a penalty or not. However it is important that all tenants are able to raise complaints or pass on information to enable effective enforcement in the PRS.</p> <p>There is no regular source of data on the size of the PRS in Southwark as stock can change from owner occupied to private rented and vice versa without having to notify the council. However, it is believed the PRS constitutes approximately a third of the housing stock in Southwark. It therefore plays a crucial role in meeting the housing requirements of residents.</p> <p>2011 census data shows growth in the PRS in Southwark has been significant; in 2001 it represented almost 9% of the stock and by 2011 had grown to over 23% (28,493).</p> <p>According to the Private Sector Housing Enforcement Team (PSET) estimates based on data held by the Council in 2019 shows the sector has grown to just over 29% (42,964).</p> <p>2. Landlords, letting agents and property managers</p> <p>These may all be classed as economic operators within the PRS.</p> <p>It is estimated that there are over 5,000 private sector landlords operating in Southwark and in the region of 200 estate and letting agency businesses. It is not known how many property management businesses operate in the borough.</p> <p>Letting agents were involved in either arranging or managing tenancies in almost half (47 per cent) of the open private rented market in England according to surveys.</p> <p>Such operators may seek regulatory advice and guidance from Regulatory Services and may also be subject to enforcement action by them. They may also be sources of information and complaints.</p> <p>There is a willingness on the parts of most legitimate business to comply with legal requirements. However inevitably there will always be a small proportion that do not comply. This maybe by choice, negligence or through a simple lack of awareness and basic professionalism.</p>

	<p>Unfortunately evidence does not necessarily indicate that tenants are more satisfied with management practices when they deal with a letting agent rather than with their landlords directly.</p> <p>For these reasons a range of enforcement action options are necessary ranging from informal warnings through to the imposition of a fixed penalty notice or in some cases prosecution. This is necessary to punish wrongdoing and act as a deterrent to others from doing the same. Legitimate compliant retailers also expect the rules to be enforced to ensure a fair and competitive market.</p>
<p>Key stakeholders were/are involved in this policy/decision/business plan</p>	<p>The legislation that empowers the Council to issue financial penalties does not contain any requirement to consult with the above mentioned stakeholders.</p>

Section 4: Pre-implementation equality analysis

This section considers the potential needs/impacts (positive and negative) on groups with ‘protected characteristics’, the equality information on which this analysis is based and any mitigating actions to be taken.

The first column on the left is for societal and economic issues (discrimination, higher poverty levels) and the second column on the right for health issues, physical and mental. As the two aspects are heavily interrelated it may not be practical to fill out both columns on all protected characteristics. The aim is, however, to ensure that health is given special consideration, as it is the council’s declared intention to reduce health inequalities in the borough. The Public Health Team can assist with research and data. *(Second column has been omitted)*

<p>Age - Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).</p>
<p>Potential needs/ impacts (positive and negative) of proposed policy/decision/business plan</p>
<p>1. Tenants</p> <p>As stated earlier the implementation of this policy is largely neutral with regard to this group of service users and stakeholders because it relates only to how a penalty is determined. However there are connections between the group and enforcement action which does give rise to relevant needs.</p> <p>The PRS houses the full range of age groups in terms of tenants and residents. Census data indicates 17.2% of PRS households exist with dependent children.</p> <p>Whilst the PRS profile in Southwark features many high end properties families with small children and older people can often have very low incomes and other disadvantages, for example education and language barriers. Their ability to mitigate problems may therefore be more limited.</p> <p>A common theme underlying many issues relating to problems in the PRS is that tenants may not be sufficiently aware of their rights and responsibilities and legislative provisions that seek to protect them.</p> <p>The Council provides front line PRS housing advice through the Tenancy Relations Service and it is likely that clients of this service will be the main source of information and complaints that would ultimately lead to the enforcement action that is reliant on the policy.</p> <p>2. Landlords, letting agents and property managers.</p> <p>No specific impacts have been identified or raised in relation to this as regards age.</p>
<p>Equality information on which above analysis is based</p>
<p>2011 Census data, MHCLG Reports, British Housing Condition Survey Data, Housing Act 2004 HHSRS data, Southwark Key Housing Data 2015/16</p>

Mitigating actions to be taken

With regard to tenants the Tenancy Relations Service provided by the Council is the key access point for complainants and they already have service provisions that mitigate language and education barriers.

They take referrals from local community agencies (for example Citizens Advice, Southwark Law Centre and Shelter) as well as social prescribers. Appointments through translators are made available and they are able to identify further support agencies to help clients as part of a personalised housing plan.

Disability - A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

Potential impacts (positive and negative) of proposed policy/decision/business plan**1. Tenants**

The implementation of this policy is largely neutral with regard to potential impacts because it relates only to how a penalty is determined.

The prevalence of disability rises with age. Around 6% of children are disabled, compared to 16% of working age adults and 45% of adults over State Pension age. 1 in 3 households with a disabled person still live in non-decent accommodation. Accordingly effective enforcement that raises standards will have a positive impact.

2. Landlords, letting agents and property managers

No specific impacts have been identified or raised in relation to this as regards disability.

Equality information on which above analysis is based

GOV.UK Disability facts and figures - published 16 January 2014

Mitigating actions to be taken

Council offices must be Disability Discrimination Act (DDA) compliant to facilitate access by clients with physical disabilities and the website pages for Tenancy Relations and PSET are written in accordance with the Council's accessibility standards

Gender reassignment - The process of transitioning from one gender to another.

Potential impacts (positive and negative) of proposed policy/decision/business plan	
No specific impacts have been identified or raised in relation to this in relation to tenants or economic operators.	
Equality information on which above analysis is based.	
N/A	
Mitigating actions to be taken	
None	

<p>Marriage and civil partnership – In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples and must be treated the same as married couples on a wide range of legal matters. (Only to be considered in respect to the need to eliminate discrimination.)</p>	
Potential impacts (positive and negative) of proposed policy/decision/business plan	
No specific impacts have been identified or raised in relation to this in relation to tenants or economic operators.	
Equality information on which above analysis is based	
N/A	
Mitigating actions to be taken	
None	

Pregnancy and maternity - Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Potential impacts (positive and negative) of proposed policy/decision/business plan	
<p>In general more people are raising their families in the PRS as the supply of social housing is restricted and property ownership becomes less affordable. The growth has principally been amongst younger families containing babies or infants under the age of five: Nationally 20 per cent of PRS households have this characteristic, compared with 12 per cent of households overall. Therefore more children are being affected by issues in the PRS.</p> <p>The implementation of this policy is largely neutral with regard to potential impacts because it relates only to how a penalty is determined.</p> <p>No specific impacts have been identified or raised in relation to pregnancy and maternity with regard to economic operators.</p>	
Equality information on which above analysis is based	
2011 Census Data, MHCLG data, Anecdotal evidence	
Mitigating actions to be taken	
The Council Provides a Tenancy Relations Service which can advise clients who may suffer maternity discrimination	

<p>Race - Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins. N.B. Gypsy, Roma and Traveller are recognised racial groups and their needs should be considered alongside all others</p>
Potential impacts (positive and negative) of proposed policy/decision/business plan
<p>1. Tenants</p> <p>There are reported problems with ethnicity and access to lettings in the PRS. It is also the case that new communities form in Southwark over time. These communities are often exposed to the poorest accommodation as they seek to gain a foothold in the wider community.</p> <p>80% of recent migrants to the UK from overseas live in the PRS, and this proportion is higher in London; lower-income migrants are often disadvantaged in the PRS as a consequence of housing rights and responsibilities and language difficulties.</p> <p>Data from the Tenancy Relations Service on PRS client ethnicity shows the following in summary:</p> <p>52% Black/Asian/Mixed 30% White 18% Other / declined to say</p>

Whilst the implementation of this policy is largely neutral with regard to potential impacts because it relates only to how a penalty is determined it is notable that the level of take-up by BAME communities for Tenancy Relations Services is clearly a key factor when considering the potential impact of effective enforcement.

2. Landlords , letting agents and property managers

Statistics available for the financial and real estate sector indicate a vast majority of both employing small and medium-sized enterprises (SMEs) and non-employing SME's in England are led by white ethnic groups

- Financial and real estate

Percentage of SME employers that are majority led by those from an ethnic minority, White ethnic group, or unknown, by sector

86.6% white
6.6% other than white
6.8% unknown

Percentage of SME non-employers that are majority led by those from an ethnic minority, White ethnic group, or unknown, by sector

92.2% white
3.1% non white
4.7% unknown

Major UK Trade Association websites* were checked for any data on ethnicity but none was available.

Equality information on which above analysis is based

2011 Census Data, MHCLG data, Anecdotal evidence,
Tenancy Relations PRS Homelessness Case Level Information Collection data 2019-20

Longitudinal Small Business Survey 2019 published by
Department for Business, Energy & Industrial Strategy (BEIS)

*UK Association of Letting Agents
ARLA - Association of Residential Letting Agents
National Approved Letting Scheme (NALS)
The Guild of Letting & Management (GLM)
Residential Landlords Association (RLA)

Mitigating actions to be taken

Effective enforcement of regulatory requirements is a positive that helps to ensure all tenants benefit from the improved transparency and consumer protection that the requirements were implemented to achieve

A common theme underlying many issues relating to problems in the PRS is that BAME tenants and those whose first language is not English may not be sufficiently aware of their rights and responsibilities and legislative provisions that seek to protect them.

As stated earlier the Tenancy Relations Service provided by the Council is the key access point for complainants and they already have service provisions that mitigate language and access barriers.

They take referrals from local community agencies (for example Citizens Advice, Southwark Law Centre and Shelter) as well as social prescribers. Appointments through translators are made available and they are able to identify further support agencies to help clients as part of a personalised housing plan.

With regard to economic operators it is proposed that ethnicity data collection should be attempted to monitor any impact or trends in relation to BAME economic operators. This can be set up as an option added to the Council's online payment page to be completed when financial penalties are paid by that method.

Religion and belief - Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

Potential impacts (positive and negative) of proposed policy/decision/business plan

There is no available evidence of disadvantage arising from religion and belief for the PRS.
No specific impacts have been identified or raised in relation to this in relation to economic operators.

Equality information on which above analysis is based

N/A

Mitigating actions to be taken

None

Sex - A man or a woman.

Potential impacts (positive and negative) of proposed policy/decision/business plan

There is no available evidence of disadvantage arising from a person's sex in the PRS and no specific impacts have been identified or raised in relation to economic operators.

Equality information on which above analysis is based

PSET analysis
Monitoring data collected
Organisations' equality & diversity policies
Monitoring information from other programmes e.g. Community Capacity programme
Feedback from stakeholders
Analysis of impacts of Welfare Reform (Southwark Council, Corporate Strategy Unit)

Mitigating actions to be taken	
None	

Sexual orientation - Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes	
Potential impacts (positive and negative) of proposed policy/decision/business plan	
<p>Tenancy Relations Service data for PRS clients shows the following</p> <p>77% Heterosexual / straight 18% Preferred not to say 3% Other 1% Gay</p> <p>There is no available evidence of disadvantage arising from sexual orientation in the PRS and no specific impacts have been identified or raised in relation to economic operators.</p>	
Equality information on which above analysis is based	
Tenancy Relations PRS Homelessness Case Level Information Collection data 2019-20	
Mitigating actions to be taken	
None	
<p>Socio-economic disadvantage – although the Equality Act 2010 does not include socio-economic status as one of the protected characteristics, Southwark Council recognises that this continues to be a major cause of inequality in the borough.</p> <p>Socio economic status is the measure of an area's, an individual's or family's economic and social position in relation to others, based on income, education, health, living conditions and occupation.</p>	
Potential impacts (positive and negative) of proposed policy/decision/business plan	
<p>38% of the whole PRS comprises low income households. Living in the PRS means that households already struggling have to struggle even harder. Households on the lowest incomes have less disposable income.</p> <p>A common theme underlying many issues relating to problems in the PRS is that tenants may not be sufficiently aware of their rights and responsibilities and legislative provisions that seek to protect them.</p> <p>The introduction of the regulation of letting agent fees reflected widespread concern that the fees charged to tenants were not transparent, could be extortionate, and at times replicated the fees charged to landlords. Similarly mandatory client money protection is a response to malpractice within the sector.</p>	

Whilst the implementation of this policy is largely neutral with regard to potential impacts because it relates only to how a penalty is determined it is part of the process enabling effective enforcement. That ultimately is a benefit in that it enables the more effective regulation of letting agents in the borough.

Equality information on which above analysis is based

Vulnerability amongst Low-Income Households in the Private Rented Sector in England
University of York, Centre for Housing Policy 2018

Mitigating actions to be taken

The Council provides a Tenancy Relations Service that can take referrals from local community agencies (for example Citizens Advice, Southwark Law Centre and Shelter) as well as social prescribers. They are also able to identify further support agencies to help clients as part of a personalised housing plan

Human Rights

There are 16 rights in the Human Rights Act. Each one is called an Article. They are all taken from the European Convention on Human Rights. The Articles are The right to life, Freedom from torture, inhuman and degrading treatment, Freedom from forced labour, Right to liberty, Fair trial, Retrospective penalties, Privacy, Freedom of conscience, Freedom of expression, Freedom of assembly, Marriage and family, Freedom from discrimination and the First protocol

Potential impacts (positive and negative) of proposed policy/decision/business plan

Effective enforcement of legislation implemented to strengthen consumer protection for tenants and drive up professional standards has a positive impact.

Failure to abide by the legal requirements applicable in this sector has a detrimental impact on tenants, as well as diligent professional operators.

The legislation has safeguards and appeal provisions to ensure the right to fair trial is upheld.

Information on which above analysis is based

The Human Rights Act, relevant lettings legislation as detailed in the policy.

Mitigating actions to be taken

None

Section 5: Further actions and objectives

5. Further actions			
Based on the initial analysis above, please detail the key mitigating actions or the areas identified as requiring more detailed analysis.			
Number	Description of issue	Action	Time frame
1			
2			
3			

5. Equality objectives (for business plans)				
Based on the initial analysis above, please detail any equality objectives that you will set for your division/department/service. Under the objective and measure column please state whether this objective is an existing objective or a suggested addition to the Council Plan.				
Objective and measure	Lead officer	Current performance (baseline)	Targets	
			Year 1	Year 2

5. Health objectives (for business plans)				
Based on the initial analysis above, please detail any health objectives that you will set for your division/department/service. Under the objective and measure column please state whether this objective is an existing objective or a suggested addition to the Council Plan.				
Objective and measure	Lead officer	Current performance (baseline)	Targets	
			Year 1	Year 2