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Mandatory client money protection for property agents

Enforcement guidance for local authorities

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Section 1 – Introduction

This document has been prepared as a guide for enforcement authorities to help them understand how to use their new powers to enforce mandatory client money protection and how this should be used with the existing powers relating to disclosure requirements in the Consumer Rights Act 2015.

The Government has made it a requirement that property agents in the private rented sector holding client money obtain membership from a Government approved or designated client money protection scheme from 1 April 2019.

Mandatory client money protection is intended to give landlords and tenants confidence that their money is safe when it is being handled by an agent. Where an agent is a member of a Government approved client money protection scheme, it enables a tenant, landlord or both to be compensated if all or part of their money is not repaid.

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 as amended by the Tenant Fees Act 2019 should be considered alongside other legislation that gives local authorities the power to protect tenants and landlords and to tackle poor practice by property agents. Other relevant legislation includes the Housing Act 2004, the Enterprise and Regulatory Reform Act 2013, the Consumer Rights Act 2015 and the Housing and Planning Act 2016, which gives the Secretary of State for Housing, Communities and Local Government the powers to make client money protection a mandatory requirement.

Section 2 – Purpose and Scope

2.1. What is the status of guidance?

Local authorities that carry out enforcement activities under the powers of the Housing and Planning Act 2016 in relation to client money protection must have reference to this guidance as this is statutory guidance. This guidance should be read alongside the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (as amended by the Tenant Fees Act 2019).

Where the words “must” or “shall” are used, this means the guidance reflects a statutory requirement. Where the words “may” or “should” are used, this means that a course of action is recommended or advised, but it is not mandatory.

2.2. What does the guidance cover?

This guidance covers the Client Money Protection for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (referred to in this guidance as the Requirement Regulations 2019 from hereafter), sections 133, 134 and 135 of the Housing and Planning Act 2016(a), the Tenant Fees Act 2019 sections 19, and 21 – 26, and Part 3 - Chapter 3 of the Consumer Rights Act 2015,

2.3. Who can enforce?

In the Requirement Regulations 2019 it is the duty of every local authority in England to enforce the requirements of regulations 3 and 4 in its area.

- Regulation 3 – Requirement to belong to an approved client money protection scheme from 1 April 2019.
- Regulation 4 – Transparency Requirements

The Housing and Planning Act 2016 references, "enforcement authority" in relation to client money protection schemes to mean a local weights and measures authority in England:

a) Local weights and measures authorities ("Trading Standards") – it is the **duty** of every local weights and measures authority in England to enforce in its area

b) The lead enforcement authority – the lead enforcement authority **has the power** to take steps to enforce the relevant letting agent legislation where necessary or expedient to do so.

Information on who the lead enforcement authority is can be found at the below link which will be kept up-to-date by the Ministry of Housing, Communities and Local Government and further information on the lead enforcement authority can be found in section 5 of this guidance).

https://www.gov.uk/government/collections/tenant-fees-act

Enforcement authorities in England may impose a financial penalty under the Requirement Regulations 2019 in respect of a breach under Regulation 3 or 4 which occurs outside that authority's area where there is a connection to its own enforcement area (as well as in respect of a breach which occurs within that local authority's area).

Where an enforcement authority proposes to impose a financial penalty under the Requirement Regulations 2019 for a breach that occurs in the area of a different local authority the enforcement authority must notify the enforcement authority in the relevant local authority of its intent to do so. On receipt of this notice to enforce, the duty of the notified local authority to enforce ceases - further information on this can be found in section 6.6 'Duty to notify'.

2.4. When do these requirements come into force?

Commencement – The requirement on a property agent to be a member of an approved client money protection scheme came into force on 1 April 2019 (the 'commencement date')

Transitional Period – There is no transitional period for the mandatory requirement to obtain membership of an approved client money protection scheme.

However, there is a grace period of one year from the commencement date in respect of one of the minimum membership requirements for agents to recognise the difficulties that some agents may be facing obtaining a client account.

This grace period will run until the 1 April 2020 where schemes may accept agents as members who have made all reasonable efforts to hold client money in a client money account with a bank or building society authorised by the Financial Conduct Authority. However, a scheme may also choose not to make use of this flexibility and may continue to

require all prospective members have an appropriate client account in place. After 1 April 2020 approved schemes must require that all agents have an appropriate client account in place to maintain their membership of an approved client money protection scheme.

Section 3 – Application

The Requirement Regulations 2019 applies to all property agents in the private rented sector in England holding client money. Where a property agent does not hold client money, they are not required to become a member of an approved client money protection scheme. Some examples of client money are provided in section 4.1. Agents can demonstrate that they do not hold client money by providing evidence which may take the form of, but is not limited to;

- Evidence that the tenant pays rent directly to landlord – contact between landlord and agent and/ or bank statements.
- Evidence that deposits are paid directly to the landlord for the landlord to make arrangements to protect this money with an authorised Tenancy Deposit Scheme.
- Evidence that any invoices for maintenance of services or remedial work on a client property is given directly to the client to pay.

Client money protection applies to tenancies and grants of licence of less than 21 years. Therefore, activities associated with lettings of 21 years or over are outside the scope of the Requirement Regulations 2019.

Section 4 – Mandatory Client Money Protection provisions

4.1. The provisions under Regulation 3 and 4 of the Requirement Regulations 2019

In regard to Regulation 3 of the Requirement Regulations 2019 from 1 April 2019 property agents in the private rented sector in England who hold client money must be a member of an approved or designated client money protection scheme.

Client money protection schemes must have received this approval from the Secretary of State for Housing, Communities and Local Government. It is for the Secretary of State to determine whether these approved client money protection scheme offer adequate protection for tenant and landlords in compliance with the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 (known hereafter as the Approval Regulations 2018) on an ongoing basis. The Secretary of State also has the power to withdraw approval. We have published separate guidance for schemes applying to the Secretary of State to become an approved client money protection scheme[1].

A full list of these approved client money protection schemes can be found at the below link which will be kept up-to-date by the Ministry of Housing Communities and Local Government;

https://www.gov.uk/client-money-protection-scheme-property-agents

[1] This guidance can be found at the following link: https://www.gov.uk/government/publications/applying-to-become-an-approved-client-money-protection-scheme

Enforcement authorities (which includes the lead enforcement authority) should actively engage with these approved schemes to identify where agents have failed to gain membership, as this is usually the first signal that an agent may be in breach of the Regulations. The ultimate risk of client money being lost normally crystallises when an agent becomes insolvent at which point there will be less chance of monies being recovered. Therefore, enforcement authorities should not wait until this stage to begin enforcement action but instead take a proactive approach to working with the approved schemes to identify non-compliance. There are provisions in the Approval Regulations 2018 for approved schemes to share information on the membership of agents and claims against the scheme with local authorities.

More generally, enforcement authorities should take a proactive approach to identifying whether agents are complying with mandatory client money protection requirements. The Transparency Requirements (which are discussed below), including the requirement to display a certificate of membership, should aid authorities in doing so. As well as acting on intelligence about agents, authorities can check the websites and outlets of these agents to see whether a valid certificate is displayed and cross reference this against the published lists of approved client money protection schemes.

If this non-compliance is identified early enough (before an agent has become insolvent) then there will still be time for the agent to put in place corrective measures to mitigate the risk of client money being lost and to ultimately obtain membership of an approved scheme. In contrast, if a reactive approach is taken, then non-compliance is only likely to be identified when client money is lost and at the point where there is no prospect of the agent being able to take corrective action to make good any deficits in client money holdings. Proactive enforcement work is therefore crucial to the success of client money protection and being able to ensure that tenants and landlords can be compensated in the instance of their agent losing their money.

Client money as defined in the Requirement Regulations 2019 means money received by a property agent held on behalf of another person in the course of English letting agency work within the meaning of section 54 of the Housing and Planning Act 2016 or English property management work within the meaning of section 55 of that Act. This does not include money held in accordance with an authorised tenancy deposit scheme within the meaning of Chapter 4 of Part 6 Housing Act 2004.

In essence any monies held on behalf of the landlord or tenant in advance of being due is treated as client money. In order to help enforcement authorities, understand what constitutes client money this guidance sets out examples of client money below which could include but are not limited to:

a) The rent

Money paid by the tenant and owed to the landlord for the permission to reside in the property for an agreed period which is held by the property agent after their fees have been deducted.

b) Utilities[2], council tax and communication services[3]

Where utilities, council tax and communication services payments are not included in the rent and are held in advance of the date of payment by a property agent for them to make arrangement for payment, this is client money.

c) Monies paid to a property agent for repairs and maintenance work

Usually one-off payments paid in advance for specified remedial work to be carried out on the property as the need arises and arranged by the property agent – this would be the client money.

d) Maintenance floats

It is common for property agents to hold maintenance floats which is money that is paid in advance by the landlords and held in case any repairs or maintenance work is needed on the property

e) Miscellaneous money

Money that is paid in advance and held by a property agent for professional work (not covered by c) or d) above) and is not due for immediate payment on demand.

f) Unprotected security deposits

Where a tenant or landlord gives the agent the deposit for the property the agent has 30 days to protect this money in one of the three government-approved Tenancy Deposit Protection (TDP) schemes. However, during the period in which this deposit in held by the agent and before it is protected with a TDP scheme this is an unprotected deposit and within the scope of client money protection.

g) Holding deposits

Where a tenant pays an agent a holding deposit to secure the tenancy of a property before the contract is signed, this is client money.

Transparency Requirements

Regulation 4 of the Requirement Regulations 2019 defines the Transparency Requirements for property agents who are required to be a member of an approved client money protection scheme.

Under the first part of the Transparency Requirements (paragraph 1 of Regulation 4) an agent is required to display the certificate confirming their membership of an approved client money protection scheme prominently in their office(s) and on their website. Furthermore, this certificate must be displayed in a visible location in each of the agent's premises in

[2] Electricity, gas or other fuel, water or sewerage
[3] A service enabling any of the following to be used - a telephone other than a mobile phone, the internet, cable television, satellite television

England at which the agent deals face-to-face with persons using or proposing to use the agent's services as a property agent.

As best practice agents should also publish a copy of their membership certificates on third party websites (any portal on which a property to let is advertised, for example, Rightmove, Zoopla or Facebook) and the certificate should be published alongside listings on portals.

The first part of the Transparency Requirements also requires an agent to produce a copy of the certificate from their approved client money protection scheme to any person (which includes enforcement authorities) who may reasonably require it, free of charge.

This first part will only apply if the scheme administrator of an approved or designated client money protection scheme has provided a certificate as required under regulation 8(1) of the Approval Regulations 2019.

In the event a property agent has its membership from an approved client money protection scheme revoked or becomes a member of a different approved client money protection scheme the agent must notify each of its clients in writing of this change in circumstances within 14 days of the occurrence. This obligation exists whether or not the separate obligations in the first part of the Transparency Requirements (which relate to certificates of membership, as above) also apply. Therefore, In the event that a property agent joins an approved scheme but does not receive their certificate of membership and then decides to join another scheme they are still required to write to their clients informing them of this change in circumstance.

An agent must not display a client money protection scheme certificate suggesting they are a member of an approved scheme if they do not hold this membership. This includes agents who were previously members but whose membership has been revoked or lapsed. If an agent knowingly displays or continues to display ~~this~~ certificate in circumstances where they do not hold membership, thus misleading a client to enter into a financial transaction, then enforcement authorities should give consideration to whether a criminal offence may have been committed, for example an offence under the Consumer Protection from Unfair Trading Regulations 2008[4] and to whether it would be appropriate in the circumstances to refer the matter to the police.

There are related requirements under the Consumer Rights Act 2015 which complement those in the Requirement Regulations 2019. Property agents who hold client money on behalf of another person as part of letting agency or property management work have historically been required to disclose whether or not they are a member of a client money protection scheme. From 1 June 2019 under the Consumer Rights Act 2015 (as amended by the Tenant Fees Act 2019) property agents who are required to be a member of an approved client money protection scheme will need to indicate that they are a member of such a scheme and give the name of this scheme.

4.2. Penalties

Breaches of the Regulations for property agents in England to become a member of an approved client money protection scheme or adhere to the Transparency Requirements are civil breaches with financial penalties.

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[4] https://www.legislation.gov.uk/ukdsi/2008/9780110811574/schedule/1

Only one penalty may be imposed on the same property agent in respect of the same breach. For example, where an agent has failed to prominently display their membership certificates across multiple offices (providing each office belongs to the same legal entity) this is treated a one financial penalty as it is for the same breach. However, a further penalty may be imposed on the same property agent in respect of the same breach where there is a continuing breach of duty. The further penalty can be imposed where

(a) the breach continues after the end of the relevant period[5], or
(b) having validly appealed the previous final notice the breach continues after the end of a further period of 28 days (which begins the day after the appeal is determined, withdrawn or abandoned).

Penalty for breach of the requirement to belong to a client money protection scheme

Where an enforcement authority in England is satisfied *beyond reasonable doubt* that a property agent has breached the requirement to belong to an approved client money protection scheme (Regulation 3), the authority may impose a financial penalty in respect of the breach which;

- may be of such amount as the authority imposing it determines; but
- must not exceed £30,000.

Penalty for breach of the Transparency Requirements

The Transparency Requirements (Regulation 4) will be breached where a property agent who is required to be a member of an approved client money protection scheme and who has been supplied with a copy of a certificate of membership from its scheme administrator;

- fails to display a certificate of its membership of an approved client money protection scheme prominently in their office(s) or on their website, and/ or
- fails to provide copies of these certificates free of charge to anyone who reasonably asks

Each of the above breaches account for a separate breach of the Transparency Requirements. Therefore, where an agent has breached more than one of these requirements they will be liable for a financial penalty for each one. For example, in the event that an agent fails to display their membership certificate and also fails to provide a copy of these certificates free of charge to anyone who reasonably asks these are two individual breaches with two separate potential financial penalties.

The Transparency Requirements (Regulation 4) will also be breached where a property agent:

- fails to notify its clients of any change in the status of its membership of an approved scheme within 14 days of the occurrence.

[5] Relevant period means the period of 28 days beginning with the day after that on which the final notice in respect to the previous penalty for the breach was served.

Where an enforcement authority in England is satisfied *beyond reasonable doubt* that a property agent has breached Regulation 4 the enforcement authority may impose a financial penalty in respect of the breach which;

- may be of such amount as the authority imposing it determines; but
- must not exceed £5000.

However, this penalty will not apply in relation to a breach of the first part of the Transparency Requirements if the agent can show that it has taken all reasonable steps to obtain a copy of its membership certificate and the scheme administrator has failed to supply it.

Enforcement authorities will be able to retain the money raised through financial penalties with this money reserved for future housing enforcement in the private rented sector. Please see Section 6.5 – 'Proceeds of financial penalties' where this is explained in further detail.

To be clear, while the requirements of Regulation 3 and 4 are interlinked they are separate civil breaches and where relevant, enforcement authorities must give consideration to which breach it is pursuing when taking enforcement action.

Where in addition to breaching the Requirement Regulations 2019, an agent breaches the requirements in the Consumer Rights 2015 relating to the disclosure of client money protection scheme membership, enforcement action could also be brought under the Consumer Rights Act.

Where an enforcement authority in England is satisfied on *the balance of probabilities* that a property agent has breached the Consumer Rights Act 2015 the enforcement authority may impose a financial penalty in respect of the breach which;

- may be of such amount as the authority imposing it determines; but
- must not exceed £5000

Section 5 – The Lead Enforcement Authority

5.1. What is the lead enforcement authority?

In the Tenant Fees Act 2019, the lead enforcement authority is the Secretary of State, or a person whom the Secretary of State has arranged to be the lead enforcement authority in accordance with s.24, subsection (2).

The Secretary of State may make arrangements for a local weights and measures authority in England to be the lead enforcement authority for the purposes of the relevant letting agency legislation instead of the Secretary of State.

'Relevant letting agency legislation' in this context in the Tenant Fees Act 2019 means,

- Chapter 3 - Part 3 of the Consumer Rights Act 2015 as it applies in relation to dwelling-houses in England,
- an order under section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013,

- regulations under section 133, 134 or 135 of the Housing and Planning Act 2016 (which includes the Requirement Regulations 2019 made under these powers)

5.2. What are the duties of the lead enforcement authority?

For the purposes of the Requirement Regulations 2019 the lead enforcement authority will oversee the operation of all the relevant letting agency legislation (as per above) and because of this oversight will provide information and advice to relevant authorities and the public in England about the operation of the relevant legislation in a manner that it considers appropriate.

The lead enforcement authority may also disclose information to relevant authorities for the purposes of enabling that authority to determine whether there has been a breach of other relevant legislation. For example, enforcement authorities may wish to know whether an agent has previously committed a breach in another region to assist them in determining an appropriate financial penalty.

In the case where the lead enforcement authority is not the Secretary of State, it is also the duty of the lead enforcement authority to keep under review and from time to time advise the Secretary of State about: social and commercial developments in England and elsewhere relating to tenancies, the carrying on of letting agency work and related activities, and the operation of the relevant property agency legislation. For example, to report the number of financial penalties levied for a breach of the Requirement Regulations 2019.

5.3. Enforcement by the Lead Enforcement Authority

The lead enforcement authority can undertake its own enforcement action, either where a breach is reported directly to the lead enforcement authority or where local weights and measures authorities do not have the capacity to enforce and then refer the case to the lead enforcement authority.

If an enforcement authority is unable to take enforcement action they should ask the lead enforcement authority for guidance, in the first instance, and if all avenues have been explored, the lead enforcement authority may take steps to enforce the legislation themselves.

If such action is taken the lead enforcement authority may exercise the same powers as the relevant local authority and must notify that authority of their action. The latter is relieved of the duty to enforce the breach, but must assist the lead enforcement authority if required, for example, by providing information.

Section 6 – The procedures for enforcing mandatory client money protection

6.1. Evidence gathering

An enforcement authority must be satisfied beyond reasonable doubt that an agent has breached Regulation 3 (the requirement to belong to an approved client money protection scheme) and/ or Regulation 4 (Transparency Requirements) to impose a financial penalty. It is up to enforcement authorities to assess whether they have sufficient evidence to impose a financial penalty and this decision will stand unless challenged by appeal. Enforcement

authorities may wish to safeguard their decision with a review panel for example, but this is at the discretion of the enforcement authority.

To prove an assertion, enforcement authorities should gather evidence. It is up to the discretion of the enforcement authority as to what sort of evidence to gather. However, enforcement authorities may wish to:

- Consult with approved client money protection schemes on whether the agent was ever a member. Approved client money protection schemes should maintain a list of member agents on their website therefore this should be cross checked in the first instance.
- Check their own records and the records of the lead enforcement authority to establish whether a sanction for a previous breach has been imposed.
- Check any relevant literature, such as contracts between the landlord and agent, tenancy agreements, company websites, or software such as 'hypercam' which captures computers screen actively and sound simultaneously allowing investigators to record their evidence gathering action with verbal annotation. Software such as the 'wayback machine' which acts as internet archive can be used to check previous versions of a webpage, which may have since been altered.
- Request any recorded exchange between the parties, such as emails/ letters or text messages and bank statements showing proof of payment to an agent.
- Inform the police in the event of a theft of clients' money or fraudulent activities by the property agent.

6.2. Determine the appropriate financial penalty

Enforcement authorities have discretion when determining the appropriate level of financial penalty within the limitations set out in the Requirement Regulations 2019.

Enforcement authorities are expected to develop and publish their own policy on determining the appropriate level of financial penalties to impose which may be part of pre-existing enforcement policy. Enforcement authorities are expected to consider each breach on a case by case basis and for the maximum amount to be reserved for the worst offenders.

The actual amount levied in any particular case should be fair and proportionate reflecting the severity of the breach as well as taking into account the agent's previous record of non-compliance.

Enforcement authorities should take into account any information and intelligence published by the lead enforcement authority on the relevant letting agency legislation (with reference to client money protection) to ensure their policies are in line with the national approach to promote consistency, alongside local priorities.

Enforcement authorities should consider the following factors to help ensure that the financial penalty is set at an appropriate level:

a) **Severity of the breach** – the more serious the breach, the higher the penalty should be.

This should include considering:

- The track record of the agent – a higher penalty will be appropriate where the agent has a history of failing to comply with their obligations and/or their actions were deliberate, and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Agents are running a business and should be expected to be aware of their legal obligations; and
- Harm caused to the tenant or landlord – the greater the harm, the greater the amount should be when imposing a financial penalty.

b) Deterring agents from breaching the Requirement Regulations 2019

Breaching the legal requirements of mandatory client money protection is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the civil penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations.

This should include considering:

- Deterring the agent from repeating the breach;
- Deterring others from committing similar breaches; and
- Removing any financial benefit, the agent may have obtained because of committing the breach.

c) Aggravating and mitigating factors. In order to determine the financial penalty, the enforcement authority should consider whether there are any aggravating factors and/or mitigating factors in each case.

Below is a non-exhaustive list of factors that enforcement authorities **may wish to consider** depending on the circumstances and local priorities when determining the level of penalty;

Aggravating factors include;

- Previous civil convictions or record of non-compliance with relevant legislation
- Obstruction of the investigation or deliberate concealment of the activity or evidence
- The agent has made no reasonable attempts to comply with the Requirement Regulations 2019 – for example they have not sought to join an approved client money scheme
- Where an agent has been expelled from an approved scheme and has not taken immediate action to join another scheme or ensure it is not holding client money.

Mitigating factors include:

- Co-operation with the investigation
- No previous breaches

- Reduction for an early admission of the breach
- Evidence that an agent has made every reasonable effort to join an approved client money protection scheme but is unable to do so for issues outside of their control
- Limited impact of the breach i.e. where no money has been misappropriated
- Where an agent is a sole trader and there is evidence of health reason preventing reasonable compliance (poor mental health, unforeseen health issues and/ or emergency health concerns)

d) Fairness and proportionality. The final determination of any financial penalty should be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach.

Factors to consider include:

- Totality principle. If issuing a financial penalty for more than one breach, or where the agent has already been issued with a penalty, consider whether the total financial penalties are just and proportionate to the breaches.
- Impact of the financial penalty on the agent's ability to comply with the law and whether it is proportionate to their means
- Impact of the financial penalty on the business – if the fine would be disproportionate to the turnover/scale of the business or would lead to the agent going out of business.

6.3. Issuing a financial penalty

Before imposing a financial penalty, the enforcement authority must give the agent notice of their intention to do so ("notice of intent"). This notice must be given within a period of six months, beginning with the first day on which the authority has sufficient evidence that the person has breached the prohibitions in the Act. If the breach is a continuing breach, the notice must be given while the breach is continuing or within six months of the last day on which the breach occurred.

The notice of intent should set out the date on which the notice of the intent is served and must set out the amount of the penalty, the reasons for imposing the penalty and information about the right to make representations.

A person who is given a notice of intent has up to 28 days to make representations. After the end of the period for representations, the enforcement authority must decide whether or not to impose a financial penalty and if so, the amount of the penalty.

If the enforcement authority decides to impose a financial penalty, it must give the person (property agent) a final notice imposing the penalty ("final notice"). The final notice must require payment of the penalty within 28 days of the day after that on which the notice was served. The final notice must set out certain information for example, the amount of the penalty, the reasons for imposing it, how and when to pay, the rights of appeal and consequences of failing to comply with the notice.

An enforcement authority may at any time withdraw a notice of intent or final notice. The authority may also reduce the amount specified in a notice of intent or a final notice

The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.

6.4. Recovery of financial penalty

In the event the property agent does not pay the whole or any part of a financial penalty the enforcement authority which imposed the penalty may recover the outstanding amount on the order of a county court.

In such court proceedings, a signed certificate from the enforcement authority's chief financial officer stating that the amount due has not been received by the date specified in the certificate is conclusive evidence of fact as per Paragraph 6(3) of the Schedule to the Requirement Regulations 2019, unless the contrary can be proved by the agent.

6.5. Proceeds of financial penalties

Where an enforcement authority imposes a financial penalty under either Regulation 3, 4 or both, it may apply the proceeds to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

The proceeds of penalties can be used to meet the costs and expenses of enforcement functions in the following housing legislation;

- Under the Requirement Regulations 2019
- Under Parts 1 to 4 of the Housing Act 2004
- Under Part 2 of the Housing and Planning Act 2016

Where the enforcement functions above do not apply, local authorities may use the proceeds of financial penalties to fund the costs of functions associated with housing enforcement, specifically the following;

- Connected with an investigation of, or proceedings relating to, a contravention of the law relating to housing or landlord and tenant; or
- Connected with the promotion of compliance with the law relating to housing or landlord and tenant.

Any part of any financial penalty recovered for activities other the scope of the enforcement function (as defined above) must be paid into the Consolidated Fund[6].

6.6. Duty to notify

There are certain circumstances in which an enforcement authority must notify another body of enforcement action.

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[6] The Consolidated Fund is the Government's general bank account at the Bank of England. Payments from this account must be authorised in advance by the House of Commons. The Government presents its 'requests' to use this money in the form of Consolidated Fund Bills

These provisions are particularly important where an enforcement authority intends to act in respect of a breach that occurs outside of its local area. For example, where an agent has multiple properties in different areas or if a breach has been committed by an agent that operates nationally. The duty to notify will ensure that work is not duplicated, and a record of previous enforcement action should be kept so that, if a future breach occurs, the relevant enforcement authority can check whether this is a first breach or not.

Where an enforcement authority proposes to impose a financial penalty outside of its local area, it must notify that area's enforcement authority of its intention to do so. When such a notification is received the latter is relieved of its duty to enforce the Requirement Regulations 2019. This duty is reinstated if the enforcement authority is informed that the enforcing authority has not taken the enforcement action proposed. It is therefore best practice that the enforcing authority notify the enforcement authority in the relevant area if they do not take enforcement action in its area.

The duty to notify the relevant area's enforcement authority applies where the lead enforcement authority is the body which proposes to take enforcement action. Where the lead enforcement authority notifies the relevant authority but, does not take the action proposed it is *required* by s.26(4) of the Tenant Fees Act 2019 to notify the enforcement authority in the relevant area.

An enforcement authority must wherever the lead enforcement authority requires it to do so, supply information to the lead enforcement authority about the exercise of the relevant authority's enforcement functions – supplying the level of detail and particulars required. This will allow the lead enforcement authority to maintain its oversight role gathering information to facilitate a consistent approach in enforcement action across the enforcement authorities.

6.7. Collaborating with other local authority bodies

We encourage close working between district and county councils in non-unitary authorities to utilise each teams' areas of expertise and ensure effective enforcement by Trading Standards.

Trading Standards teams have responsibilities in enforcing requirements on letting agents and existing consumer protection laws. Trading Standards have a broad remit and a number of investigatory skills and resources. District councils that are not trading standards authorities are likely to have strong local knowledge of their private rented sector, for example, a database of Houses in Multiple Occupation (HMOs) and records of previous non-compliance.

If district councils become aware of a breach, we would encourage teams to work with their local Trading Standards team to share information.

Enforcement authorities should seek the guidance of the lead enforcement authority if they are unsure of the help at their disposal.

Where an agent is operating in multiple areas, it would be advisable to consult with enforcement authorities in the relevant areas where the agent operates to ascertain whether

other authorities are taking action. Enforcement authorities may also seek guidance from the lead enforcement authority, who should be able to assist with more complex cases.

Section 7 – Appeals

7.1. Can a property agent appeal a financial penalty?

Yes. There is a right to appeal to the First-tier Tribunal against a financial penalty. An appeal against a financial penalty must be brought within 28 days from the day after the final notice was served. An agent may appeal against the decision to impose a penalty or the amount of the penalty. An appeal is to be a re-hearing of the enforcement authority's decision but may take into account additional evidence of which the enforcement authority was unaware at the time of issuing a financial penalty.

If an agent makes an appeal, the final notice is suspended in relation to the part of the notice which is the subject of the appeal until the appeal is determined or withdrawn.

On appeal, the First-tier Tribunal may confirm, vary or quash the final notice. The maximum amount that the First-tier Tribunal can impose is the same as the maximum amount that the enforcement authority could have imposed.

End of guidance.