

Blackburn with Darwen
Council
King William Street
Blackburn
BB1 7DY
UK

Date
23rd May 2019

Dear Sir or Madam,

Selective Licensing Scheme Fees

As you will be aware, the RLA is the leading body representing residential landlords across England and Wales, including a considerable number within, or owning property in, Blackburn.

We are writing in relation to your current fee structure and conditions for the Selective Licensing Scheme currently in operation.

Fee Structure & Additional Fees

The Scheme which came into force in 2017, operates a fee structure in which the licence holder pays a fee of £750 per property with an annual fee of £150 for that property.”. The power to charge a fee is set out in s87(3) of the Housing Act 2004 for selective licences. The fee charging power is limited by (87(7)). This states that a fee is chargeable on the application for a licence and this must reflect the cost of running the scheme. The fee is however allowed to reflect all of the costs including the operation of the scheme itself, education about the scheme, and the necessary inspections and enforcement activity to make the scheme effective. No other fee can be charged other than part of the application process. This point was confirmed by the RPT (as was) in *Crompton v Oxford City Council* [2013]. Because of this, Oxford amended its fee structure to reflect this ruling.

For the reasons set out above we consider that it is unlawful for the council to charge an application fee followed by an annual fee for each year the licence is maintained. It is not permissible to charge per annum for a licence, the fee is chargeable in respect of the application and, while it may include other costs in running a scheme that does not permit a charge which amounts to an annual subscription. While we appreciate the serious funding challenges faced by local authorities this does not justify the charging of fees that are not lawfully permitted.

Furthermore, Appendix 8 under the Section titled ‘Fee Reimbursements’ it is stated that: ***“Applications will be charged the full amount to accompany the application form. At the Council's discretion, a payment plan (20% of the initial fee and 4 annual payments) may be established to agree to payments to be made over an agreed period of time any such plan/agreement can only be repaid by direct debit”.***



It is our view that the process of charging the full amount of the licence fee on application does not accord with the decision of the Administrative Court in *Gaskin v Richmond Upon Thames (2018) EWHC 1996 (Admin)* and is unlawful for the same reasons as the payment structure there was found to be unlawful. This is because payment must be split into a charge for the application component and a Part Two payment which should only be sought if the application is successful and covers the cost of running and enforcing the scheme. Part Two payments should only be paid once the licence has been granted and issued to the now licence holder.

EICR Requirement

Section 2.1 of the Licence Conditions for your selective licensing scheme states that: *"Ensure that the electrical installation in the premises is checked and tested by a competent electrician and carry out any necessary repairs and modifications in accordance with the requirements of the current IEE Regulations. Please enclose a copy of a valid current electrical installation condition report (EICR) with your application form."*

Section 90(1) Housing Act 2004 is clear that a licence "may include such conditions as the local authority consider appropriate for regulating the management, use or occupation of the house concerned." In contrast to s67 Housing Act 2004, the equivalent provision in Part 2 of the Act, no mention is made in s90(1) HA of the use of conditions to regulate the "conditions and contents" of the property. This was emphasised in the recent Court of Appeal case of *Brown v Hyndburn Borough Council [2018] EWCA Civ 242*.

Following the Court of Appeal's reasoning in *Brown*, any licence condition that seeks to regulate the condition or contents of the house is unlawful and the local authority has no power to impose such a condition. Any such conditions should be removed. We note that the MHCLG recently drew the attention of local authorities to this case in one of their quarterly PRS newsletters.

Likewise, In *Brown* Mr Justice Hildyard confirmed that the s90(5) of the Housing Act 2004 is not itself a source of any power, residual or otherwise permitting the local authority to include licence conditions that seek to identify, remove or reduce hazards. These are covered by Part 1 of the Act and should be enforced using Part 1 powers, and the Housing Health and Safety Rating System. Councils should not rely on Part 3 licensing powers to enforce Part 1.

Conclusions

In conclusion, the RLA requests that the council amends its current fee structure, splitting the licence fee into two parts and removing the requirement of paying an annual fee and remove the licence condition requiring an EICR as part of the licence application process.

Yours sincerely,

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