

<b>Report of:</b>	<b>Head of Environmental Health</b>
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<b>Portfolio Leader:</b>	<b>Housing</b>
<b>Key Decision:</b>	<b>Yes</b>
<b>Report Track:</b>	<b>Cabinet: 12/03/15</b>

**CABINET****12 MARCH 2015****REDRESS SCHEMES FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK – REQUIREMENT TO BELONG TO AN APPROVED SCHEME****1 Purpose of Report**

- 1.1 To advise Cabinet of a new duty imposed by the “Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme, etc.) (England) Order 2014”. (“The Order”)
- 1.2 To seek approval to amend the Council’s Scheme of Delegations in order to ensure that the Council is able to administer and enforce the Order.

**2 Recommendations**

- 2.1 That Cabinet approve the amendment of the Scheme of Delegations to delegate responsibility to the Head of Environmental Health for administering and enforcing the Order.

**3 Key Issues and Reasons for Recommendation**

- 3.1 The Order requires that persons involved in letting agency work or/and property management work in the private rented sector, are registered with an approved redress scheme.
- 3.2 The Council is the enforcing authority for this statutory requirement and is obliged to take enforcement action where it is aware a person engaged in letting agency or property management work has failed to register with an approved redress scheme.

- 3.3 A financial penalty of up to a maximum £5,000 can be levied against unregistered lettings/property management agents by the Council for failure to comply with the requirements of the Order.
- 3.4 Property management and/or letting agents against whom enforcement action is taken have a statutory right of Appeal.
- 3.5 Currently, no qualifications, experience or independent approval is needed to operate as a property manager or lettings agent, and bad practice can lead to frustration and an unpleasant experience for both landlords and tenants alike.
- 3.6 The introduction of this legislation will provide those tenants and landlords who do receive a poor service with a means of obtaining redress including compensation.
- 3.7 The Order does not apply to Social Landlords, such as Local Authorities and Housing Associations because they are already required to belong to the Housing Ombudsman Scheme by Schedule 2 to the Housing Act 1996.

#### **4 Relationship to Corporate Priorities**

- 4.1 This report supports the Council's Corporate Priorities as follows:
- (i) Place – the scheme contributes towards the improvement of the quality and availability of Private Sector Housing

#### **5 Report Detail**

- 5.1 From 1 October 2014, relevant persons involved in letting agency work or/and property management work in the private rented sector, are required to be registered with a redress scheme approved by the Secretary of State.

There are presently three approved schemes:

- The Property Ombudsman,
- The Ombudsman Services Property
- The Property Redress Scheme.

- 5.2 A range of exemptions apply and the following are not covered by the requirements of the Order:

##### **Lettings Agency work**

- Employers who find homes for their employers or contractors
- Higher and further education establishments
- Higher and further education establishments

- Charities - where they not operating as a business

### **Property Management work**

- Managers of commonhold land
  - Managers of student accommodation
  - Managers of refuge homes
  - Receivers and insolvency practitioners
  - Other authorities (e.g. National Park authority, police and crime commissioners, or fire and rescue authorities, etc.)
  - Right to Manage companies
  - Legal professionals
  - Managers instructed by local authorities and social landlords
  - Head tenant as a Manager
- 5.3 Failure to comply with the requirements of the Order is not a criminal offence. However the Council, has a duty to take enforcement action where it is satisfied, on the balance of probabilities, that a person who is required to register, has not registered with a redress scheme, and in such cases the Council can apply a financial penalty up to a limit of £5,000.
- 5.4 Council must follow a specified procedure (APPENDIX 1), including the issue of a 'Notice of Intention to' before imposing a Penalty and give the recipient the right to raise objections. Where the Council decides to apply a penalty there is a right of appeal to the First – Tier Tribunal.
- 5.5 Where the Council decision is not appealed, or if appeal is not upheld, the Council may recover the penalty. If necessary, the Council may apply to the civil court for recovery of the penalty fee.
- 5.6 Guidance from Department of Communities and Local Government indicates that the penalty fee should normally be £5000. However, the Council has discretion to reduce the amount of the penalty fee where it is satisfied that there are extenuating circumstances. These may include but are not limited to the following:
- The Agent or Manager not having set out to engage in property management, or estate agency, as a course of business
  - Exceptional personal hardship
  - The Agent or Manager no longer undertaking letting agency or property management work
  - The penalty would be disproportionate to the turnover/scale of the business or would result in the organisation going out of business
- 5.7 The Council may impose further penalties if a Lettings Agent or Property Manager continues to fail to join a redress scheme despite having previously

had a penalty imposed. There is no restriction on the number of penalty fees that may be imposed on a single organisation.

- 5.8 Income received from the payment of any penalty fees will be used to offset the administrative and other resources costs incurred in discharging the Council's statutory duty under the legislation. Any surplus income will be used to fund the Private Sector Housing Team's activities to improve housing and management standards within the private rented sector.
- 5.9 The Council's power to enforce the requirements of the Order should be delegated to the Head of Environmental Health who may then authorise suitably qualified officers within the service to issue Notices of Intent and pursue penalty fees in respect of breaches of the requirements of the Order.
- 5.10 The guidance acknowledges that in the early days of the requirement coming into force, lack of awareness could be an issue for some Letting and Property Management Agents. Consequently, a period of grace is considered appropriate, during which officers will raise the profile of the Redress Scheme with the trade and alert the relevant agents of the enforcement approach.
- 5.11 Currently, enquiries have identified 39 Lettings Agents and Property Management Agents operating in the district. Of these, 11 do not appear to be registered with an approved Redress Scheme. Letters are being sent to these companies reminding them of their legal obligations under the Order and the potential consequences of noncompliance.

## **6 Implications**

### **6.1 Financial**

The Financial Implications have been referred to throughout the report but can be summarised as follows:

A financial penalty of up to a maximum £5,000 can be levied against unregistered lettings/property management agents by the Council for failure to comply with the requirements of the Order.

No provision exists within the approved budget for this scheme however Income received from the payment of any penalty fees will be used to offset the administrative and other resources costs incurred in discharging the Council's statutory duty under the legislation. Any surplus income will be used to fund the Private Sector Housing Team's activities to improve housing and management standards within the private rented sector.

### **6.2 Legal**

As set out in the report.

**6.3 Human Resources**

Administration and enforcement of the Order will be contained within existing staff resources.

**6.4 Section 17 (Crime Prevention)**

None

**6.5 Human Rights Act**

None

**6.6 Data Protection**

None

**6.7 Risk Management**

The Council has a statutory duty to enforce the requirements of the Order. Failure to do so may render the Council liable to intervention.

**6.8 Equality & Diversity**

None

**6.9 Best Value**

None

**7 Appendices to the Report**

Appendix 1                  Enforcement Process

**Previous Consideration**

**Background Papers**



## ENFORCEMENT PROCESS

### Step 1 Notice of Intent

Written Notice of the Council's intention to impose the Penalty must be given to the Lettings/Property Management Agent, specifying:

- i) the reasons for the penalty;
- ii) the amount of the penalty; and
- iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the Notice of Intent was sent.

This written notice must be served within 6 months of the date on which the Council is in the position to issue the penalty fee (i.e. have gathered sufficient evidence and satisfied any internal requirements that a penalty fee is appropriate). The Notice will be served by a duly authorised officer of the Environmental Health Department.

The Notice of Intent may be withdrawn or the amount specified in the Notice reduced at any time by giving notice in writing.

### Step 2 Representations and Objections

The person served with the Notice of Intent has 28 days starting from the day after the date the Notice of Intent was sent to make written representations and objections to the Environmental Health Manager in relation to the proposed penalty fee.

### Step 3 Final Notice

At the end of the 28 day period the authorised officer (Senior Environmental Health officer or above) must decide, having taken into account any representations received, whether to impose the penalty fee and, if so, must give at least 28 days for payment to be made. When imposing a penalty fee, the Council must issue a final notice in writing which explains:

- i) why the penalty fee is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;
- v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the penalty fee.

The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

**Step 4 Appeals**

If an appeal is lodged the penalty fee cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- i) the decision to impose a penalty fee was based on a factual error or was wrong in law;
- ii) the amount of the penalty fee is unreasonable; or
- iii) that the decision was unreasonable for any other reason.

Appeals will be heard by the First-tier Tribunal (the General Regulatory Chamber) which may agree with the Council's Notice to issue a penalty or may decide to quash or vary the Notice and penalty fee.

**Step 5 Recovery of the penalty**

If the Lettings Agent or Property Manager does not pay the penalty fee within the period specified the authority can recover the fee with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fee, a certificate signed by the Head of Finance stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the penalty fee has not been paid.