

REDRESS SCHEMES FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK (REQUIREMENT TO BELONG TO A SCHEME ETC) (ENGLAND) ORDER 2014

Health and Housing Advisory Committee - 20 June 2017

Report of Chief Officer Environmental & Operational Services

Status: For Decision

Also considered by: Cabinet - 13 July 2017

Key Decision: No

The Executive Summary: The Order makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme by 1st October 2014. Enforcement and the setting of the level of penalty charge applicable for a breach of the Order is the responsibility of the Council.

Portfolio Holder Cllr. Michelle Lowe

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Recommendation to Advisory Committee: To recommend to Cabinet to approve a penalty charge of £5,000 for breaching the order, unless following representation extenuating circumstance applies.

Recommendation to Cabinet: To approve a penalty charge of £5,000 for breaching the order, unless following representation extenuating circumstance applies.

Reason for recommendation: To determine the amount of monetary penalty applicable in each case of a breach of the Order. Without such a determination enforcement activity will not be possible.

Introduction and Background

- 1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, SI 2014/2359 became operative on 1st October 2014.

As a result of the Order tenants, prospective tenants, landlords dealing with commercial lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service

received. This will make it easier for tenants and landlords to complain about poor service and prevent disputes escalating.

3. The 'Enforcement Authority' for the Order is the Council.
4. The Council can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined.
5. The three government approved redress schemes are:
 - i. Ombudsman Services Property (www.ombudsman-services.org)
 - ii. Property Redress Scheme (www.theprs.co.uk)
 - iii. The Property Ombudsman (www.tpos.co.uk)
6. Enforcement process is prescribed by the Order and is set out below.

Step 1: Notice of Intent
When it is proposed to impose a monetary penalty, the authority must serve on that person a written notice of what is proposed.
Step 2: Representations and Objections
A person on whom the notice is served may within 28 days make written representations to the proposed imposition of a monetary penalty.
Step 3: Final Notice
After 28 days the Council will decide on whether to impose a monetary penalty, if it does then at least 28 days must be given before payment is required. When imposing a monetary penalty a final notice must be issued explaining <ol style="list-style-type: none">i) why the fine 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 fine.
Step 4: Appeals
An appeal can be made by the letting agent or property manager to the First-tier Tribunal, who can agree with the enforcement authority's notice to

issue a penalty or may decide to quash or vary the notice and fine.

Step 5: Recovery of the penalty

If the lettings agent or property manager does not pay the fine within the period specified the authority can recover the fine with the permission of the court as if payable under a court order.

A flow chart is attached as an appendix.

7. Guidance from the Department of Communities and Local Government states 'The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances'. Following this guidance it is envisaged that the full £5000.00 penalty would be applied.

Other Options Considered and/or Rejected

8. Option 1 - Do nothing, given the determination of Central Government to ensure rogue elements in the private rented sector either improve their service or leave the sector, option 1 is unrealistic.
9. Option 2 - To agree a different penalty charge, Central Government has specifically expressed a wish for the imposition of the maximum monetary penalty.

Key Implications

Financial

There are no significant financial implications in terms of additional administrative or staff costs. It is expected there will be a very limited number of penalty notices issued.

Legal Implications and Risk Assessment Statement.

Determining the monetary penalty is required before the penalty charges are enforceable. Processes associated with issuing of a penalty charge, payment and appeals are clearly described within the Order.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Conclusion

It is recommended that the maximum level of monetary penalty, (£5,000) is applied to those who breach the requirements of the Order.

Appendices

Flowchart - Letting Agent and Property Manager
Redress Enforcement Process

Background Papers:

The Redress Schemes for Lettings Agency Work
and Property Management Work (Requirement to
Belong to a Scheme etc.) (England) Order 2014,
SI 2014/2359

Annex C: Improving the private rented sector and
tackling bad practice.

Richard Wilson

Chief Officer Environmental & Operational Services