

Crawley Borough Council

Report to Cabinet
18th March 2015



Redress Schemes for Lettings Agency and Property Management Works – Enforcement Arrangements

Report of the Head of Strategic Housing and Planning Services – SHAP/44

1. Purpose

- 1.1 New legislation has been introduced making it a legal requirement for all lettings agents and qualifying property management companies in England to join one of three Government-approved redress schemes. Local authorities are the designated enforcement authorities for ensuring this requirement is met and may impose a monetary penalty of up to £5000 for non-compliance. This report seeks approval for the arrangements to enforce The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

2. Recommendations

- 2.1 The Cabinet is asked to:
- 2.2.1 Approve the Lettings Agents Redress Scheme Enforcement Policy set out in Appendix 1 to this report and to delegate authority through the Head of Strategic Housing and Planning Services for the implementation of the policy.

3. Reasons for the Recommendations

- 3.1 The recommendations will enable the Council to act as the enforcing agency by formally adopting an enforcement policy and the delegated authority to implement this in accordance with guidance provided by the Department of Communities and Local Government (DCLG)

4. Background

- 4.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.(England)Order 2014 which came into force on 1st October 2014 makes it a legal requirement for lettings agents and property managers in England to join one of three Government approved redress schemes. These are
- Ombudsman Services Property
 - Property Redress Scheme
 - The Property Ombudsman

Definitions of 'lettings agency work' and 'property management work' are given in the Enforcement Policy set out in Appendix 1 to this report.

- 4.2 The Order gives tenants and landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with residential property managers the opportunity to complain to an independent body about the service received. Complaints may be considered where a person believes that the agent has infringed their legal rights, failed to follow the rules and obligations set out under the Code of Practice, treated them unfairly, or been guilty of maladministration. If on investigation the complaint is upheld, the ombudsman can require an apology, an explanation of what went wrong, practical action to correct the problem, compensation of up to £25,000. If the letting agent is found not to be following the rules of the scheme, the agent can be reprimanded, fined or expelled from the service.
- 4.3 Local authorities are the designated enforcing authority under the Order and as such have responsibility for checking that lettings agents are members of an appropriate redress scheme. This check is relatively straightforward to make as each redress scheme will publish a list of members on their website. This list can be cross referenced against agents operating in the local authority area. As enforcing authority a local authority's role in this regard is limited to ensuring compliance with registration requirements and does not extend to investigation and determination of complaints made under the redress scheme or any involvement in this process.
- 4.4 Where an enforcing authority is satisfied on the balance of probability that a letting agent or property manager has failed to comply with the requirement to belong to a redress scheme, they are able to impose a monetary penalty of up to £5,000. There are a series of mandatory stages to follow before a penalty may be imposed, as outlined in the Enforcement Policy (see Appendix 1).

5. Description of Issue to be resolved

- 5.1 The scheme was brought into effect as part of the Government's response to the Communities and Local Government Select Committee inquiry into the private rented sector published on 18 July 2013. As part of this inquiry, evidence was taken about the business practices of letting agents and property managers. The requirement to join a redress scheme was identified as one of the recommendations to improve standards in the sector.
- 5.2 In order to fulfil the enforcing authority role introduced through this order the Council is required to adopt an enforcement policy

6. Information & Analysis Supporting Recommendation

- 6.1 The proposed level of financial penalty is in accordance with DCLG guidance.
- 6.2 Although the regulations do not specify which service should be responsible for carrying out the enforcement role the DCLG had provided the following advice: *"The intention is for enforcement to be carried out by local authority housing teams as it was felt they would have closest links to, and knowledge of, the lettings market in the area, which is why county councils were not included in the list. This decision was made following discussions with the Local Government Association."* It is therefore proposed that the Council's Private Sector Housing team takes responsibility for this enforcement, because the team is already responsible for policing management and property standards in the private rented sector.

7. Implications

- 7.1 Financial – Initial research indicates that all of the known lettings agents and property management companies with offices in the Borough are members of one of the approved schemes. Therefore it is not envisaged that the implementation of the Order will have any notable impact on staffing resources, as the risk of having to enforce the penalty is low. The Council has discretion to determine the maximum penalty and any reduction to the penalty to be imposed. The charging regime recommended in the enforcement policy is in accordance with DCLG guidance and is therefore considered to be robust.
- 7.2 Legal – The Council has a duty to enforce the statutory requirement and to determine the level of monetary penalty to impose should enforcement become necessary.
- 7.3 Equalities Impact – The Equalities Impact Assessment has identified that the implementation of this legislation will not have an adverse equalities impact.
- 7.4 Environmental – There are no environmental implications resulting from the changes proposed.

8. Background Papers

[Redress Schemes for Lettings Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc\) \(England\) Order 2014](#)

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APPENDIX 1

CRAWLEY BOROUGH COUNCIL LETTINGS AGENTS REDRESS SCHEME ENFORCEMENT POLICY

1.0 Legal Requirement

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 made it a legal requirement for all lettings agents and property managers in England to join a Government approved redress scheme by 1st October 2014.

The redress schemes give tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector the opportunity to complain to an independent body about the service received.

The three government approved redress schemes are:

- Ombudsman Services - Property (www.ombudsman-services.org/property.html)
- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

1.1 What is meant by 'lettings agency work'?

'Lettings agency work' is defined in the Enterprise and Regulatory Reform Act 2013 as things done by an agent in the course of a business in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 except where the landlord is a private registered provider of social housing or the tenancy is a long lease. It does not apply to local authorities, employers who find homes for their employees or contractors, higher and further education establishments, and legal professionals.

1.2 What is meant by 'property manager's work'?

In the Enterprise and Regulatory Reform Act 2013, property management work means things done by a person in the course of a business in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

For there to be property management work, the premises must consist of, or contain:

- a dwelling-house let under a long lease - "long lease" includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases;
- an assured tenancy under the Housing Act 1988; or
- a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructs an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas) that contains flats let under a long lease or let to assured or protected tenants.

It does not include managers of commonhold land, managers of student accommodation, managers of refuge homes, receivers and insolvency practitioners, right to manage companies, legal professionals, housing associations, local authorities (including managers

instructed by local authorities and social landlords), landlords, and resident management companies, and where head tenants are managers.

Charities - the Order does not exclude charitable organisations because any charity that is not operating as a business will already be exempt from the requirement. Charities that find accommodation for homeless people in the private rented sector often deliberately mirror the activities of a letting agent but only work with homeless people. Unless they are charging a fee for the service, the charity could argue that it is not operating in the course of a business and therefore be excluded from the duty.

1.3 What is meant by 'in the course of business'?

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work 'in the course of business' so will therefore not apply to 'informal' arrangements where a person is helping out rather than being paid for a role which is their usual line of work.

2.0 Enforcement Process

The Council is the enforcing authority where the head office of the lettings agent or property manager is based in Crawley. For Crawley Borough Council the power to enforce this legislation is delegated to the Private Sector Housing Team and set out in the Executive Decision Making Sub Delegation Scheme for the Strategic Housing and Planning Services Division. The process of taking enforcement action is set out below.

2.1 Notice of Intent

A written notice of intention to impose a penalty is to be served on the agent/manager, setting out:

- the reasons for the penalty;
- the amount of the penalty; and
- 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 must be served within 6 months of having gathered sufficient evidence and being satisfied that a fine is appropriate. The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

2.2 Representations and Objections

The person on whom the notice of intent was served has 28 days starting from the day after the date the notice was sent to make written representations and objections. The Council will consider all representations on their own merit. In particular the following may be considered relevant when deciding the final level of penalty:

- Internal failed preventative measures – in cases of national agents that have other branches registered but due to internal processes failing the local office is unregistered, reduce the penalty by up to 20%.
- Good attitude and cooperation with the Council – in cases where the agent has cooperated fully with the Council in investigating the breach of the Order, reduce the penalty by up to 20%.
- Immediate and voluntary remediation – when the breach was brought to the attention of the agent they immediately joined a relevant scheme, reduce penalty by up to 20%.

- No previous history of non-compliance with other housing legislation – if this is a first breach of any housing related legislation, reduce penalty by up to 20%.
- Any relevant personal circumstances. Reduce penalty by up to 20%.
- Undue financial hardship – if the fine would cause the agent undue financial hardship such that it might not be able to continue to operate, reduce penalty by up to 20%.

2.3 *Final Notice*

At the end of the 28 day period the Council will decide, having taken into account any representations received, whether to impose the penalty and, if so, must give at least 28 days for payment to be made. A final notice must also be issued in writing which explains:

- why the penalty is being imposed;
- the amount to be paid;
- how payment may be made;
- the consequences of failing to pay;
- 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.

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

2.4 *Appeals*

If a person wishes to appeal the notice, they need to lodge an appeal with the General Regulatory Chamber. If an appeal is made, the fine cannot be enforced until a decision is made. Appeals can be made on the grounds that:

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

The first-tier tribunal of the General Regulatory Chamber will hear the appeal and may agree with the authority's notice to issue a penalty or may decide to quash or vary the notice and penalty.

2.5 *Recovery of the penalty*

The Council will impose a standard £5000 penalty in accordance with DCLG guidance unless satisfied that there are extenuating circumstances. In this event the penalty will be reduced in accordance with the provisions set out in 2.2 above.

If the lettings agent or property manager does not pay the penalty within the 28 day period the Council can recover the penalty with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the penalty, a certificate signed by the Council's chief finance officer 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 has not been paid.