



**London Boroughs of Brent and Harrow
Trading Standards Joint Advisory Board
24 October 2016**

Report from the Regulatory Manager

FOR INFORMATION

All Wards

Enforcement Of Legislation Concerning Letting Agents Redress Scheme

1.0 SUMMARY

- 1.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, (the Order) came into force on 1 October 2014. Subject to certain exemptions, it creates a legal requirement for lettings agents and property management businesses to join a Government approved scheme so that tenants, landlords in the private rented sector and leaseholders and freeholders dealing with residential property managers, can if required, complaint to an independent person for the purposes of adjudication and/or reaching a settlement to any dispute.

2.0 RECOMMENDATIONS

- 2.1 That Members agree:

- 2.1.1 The Trading Standards Service, being authorised by the London Borough of Brent's Cabinet, to take full or part responsibility for the Council's statutory duty of enforcing the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.
- 2.1.2 The Trading Standards Service being authorised by the London Borough of Harrow's Cabinet (subject to consultation with the Portfolio Holder and Divisional Director), to take part responsibility for the Council's statutory duty of enforcing the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.
- 2.1.3 Any monetary penalties received in connection with the Order be used to fund the costs of enforcing the Order.

3.0 DETAILS

- 3.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, (the Order) came into force on 1 October 2014. Subject to certain exemptions, it creates a legal

requirement for lettings agents and property management businesses to join a Government approved scheme so that tenants, landlords in the private rented sector and leaseholders and freeholders dealing with residential property managers, can if required, complaint to an independent person for the purposes of adjudication and/or reaching a settlement to any dispute.

3.2 There are three Government approved schemes as follows:

1. Ombudsman Services Property
2. Property Redress Scheme
3. The Property Ombudsman

3.3 The schemes require a yearly membership fee to be paid and cover breaches of letting agency codes of conduct such as:

- Ensuring transparency about fees for tenants
- Preventing false or misleading property descriptions
- Poor quality customer service
- Disputes surrounding refunds of deposits taken to reserve a property known as 'holding deposits'
- Not passing on tenants' rents to their landlord
- Infringement of consumer's legal rights and/or unfair treatment

3.4 Redress schemes typically require letting agencies to:

- Follow a strict code of practice
- Operate their own complaints procedure to be followed in the event of a dispute
- Cooperate with any investigation commenced by the Redress Scheme operator

3.5 Guidance for business effected by the Order was published by the Department for Communities and Local Government (DCLG) in 2014. Guidance for local authorities regarding the Order which was published in March 2015. Links to these two sets of guidance can be found in Appendix 1.

3.6 This legislation followed the DCLG inquiry into the private rented sector which identified high levels of consumer detriment in respect of 'letting and property management businesses' trading practices. One recommendation resulting from the inquiry, was the requirement of such businesses to join a redress scheme seeking to improve overall standards.

3.7 This Order states it is the duty of every 'enforcement authority' to enforce the Order. The London Borough of Brent and the London Borough of Harrow are both 'enforcement authorities' for the purposes of the Act. This differs from much of the other legislation Trading Standards has the responsibility to enforce which specifically says it is the duty of every 'weights and measures authority to enforce.....' (Trading Standards are a weights and measures authority). Instead, this provides the enforcement authority discretion as to who should enforce the legislation.

- 3.8 The London Borough of Harrow has already delegated its Divisional Director authority to enforce the provisions of this Order following a Cabinet meeting on 19 November 2015 whereas the London Borough of Brent has yet to delegate the responsibility.
- 3.9 The DCLG guidance for local authorities referred to in paragraph 3.5 above, states on page 53 that 'Where Trading Standards services sit within one of these enforcing authorities, trading standards officers will be able to enforce the regulations and issue the penalty notices, as well as housing officers'.
- 3.10 A survey was carried out by London Trading Standards in June 2016. 27 London Boroughs responded, of which 56% of the replies confirmed Trading Standards teams were enforcing the provisions of this Order. The remaining 44% were in the process of seeking the required authorisation.
- 3.11 Our records show 159 business premises categorised as estate or letting agents in Harrow and 223 in Brent. It is unlikely that the Order will apply to all of them but it will be applicable to most. The survey referred to above showed that London local authorities who had carried out proactive checks to gauge compliance with the Order found between 95-99% of businesses to be compliant.
- 3.12 To date, we have carried out advisory visits where necessary to businesses following an allegation that they are not complying with the Order. We have not taken any formal action for noncompliance.
- 3.13 It is not our intension to duplicate work already being carried out by the London Borough of Harrow. Instead, we suggest that whichever team receives a complaint from a member of the public, would consult with colleagues within Brent or Harrow and thereon in, take the lead role in enforcing the provisions of this Order. This means that in circumstances where other offences may have been committed, the relevant department can conduct any investigation rather than having to refer the matter to another Council team which would then lead to duplicity with two different teams investigating the same business.
- 3.14 In practical terms, subject to agreement with Harrow's Housing Team and others as appropriate, this would mean if we revealed noncompliance of the Order alongside other offences which Trading Standards investigate, then after consultation, we would take the lead role investigating the matter. If however, a complaint was received by Harrow's Housing Team alleging breaches of other legislation within their jurisdiction, then after consultation with us, they would take the lead.
- 3.15 We would also suggest the same practise is agreed in Brent, with Trading Standards sharing enforcement responsibilities with colleagues in Private Housing Services, subject to their agreement.
- 3.16 The Order provides powers that when the local authority is satisfied on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined such a scheme, that a monetary penalty can be imposed of up to £5,000.

- 3.17 Whilst the enforcement authority has the discretion to determine the level of penalty, the DCLG guidance referred to in paragraph 3.5 above 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'. The London Borough of Harrow has agreed its monetary penalty at £5,000 offering a 50% reduction for early payment within 14 days but only on the basis there has been no previous penalty charge.
- 3.18 If this report was agreed, we suggest that the same penalty and early payment discount would apply to Harrow based businesses. The London Borough of Brent would be able to agree its own level of charge considering the DCLG guidance.
- 3.19 If a lettings agent or property manager remains noncompliant with the Order and does not join a redress scheme following a penalty being imposed, then there is no limit to the number of penalties that could be issued should a breach continue.

4. FINANCIAL IMPLICATIONS

- 4.1 On the assumption that levels of compliance with the Order within our boroughs is generally good, it would be our intention to absorb routine advice regarding compliance with this Order within current staffing resources and existing budgetary provision. Where it is necessary to take formal action to enforce the requirements of the Order, a greater staffing resource will be needed which may result in staff being taken away from other duties. It should also be noted, that if enforcement of this Order was considered to be a high priority requiring proactive checks to relevant businesses, then a financial budget to provide for additional staffing resources would be required.
- 4.2 Any penalty fines received as a result of formal action, will be used to offset the overall cost of the enforcement activity within the Service. On the basis that the maximum penalty of £5,000 is agreed, it is likely that this would cover the Service's costs up to the point of issuing the penalty charge. It is possible that if businesses do not pay the penalty, steps will need to be taken to enforce the debt which will incur additional costs from the Service's budget. These will need assessing on a case by case basis.
- 4.3 Data obtained from the survey referenced in paragraph 3.10, showed that between October 2014 and June 2016, 49 penalty charge notices has been issued in London by Trading Standards, 39 of which were generated by two Boroughs alone. Despite this, it is expected that most businesses will chose to comply with the terms of the Order as the cost of membership is much lower than any penalty fine. Therefore, it is expected that any income received from penalty notices, will be minimal.

5. STAFF IMPLICATIONS

- 5.1 There are no significant staffing implications arising from this report. Written procedures and notices will need drafting to enforce the provisions of this Order, for the purposes of consistency, we would propose adopting a similar template used already in the London Borough of Harrow. Staff will need training in relation to these procedures but it is expected that this can be accommodated within

existing staffing resource and there is a free training 'toolkit' available online to assist with this process.

6.0 BACKGROUND INFORMATION

- 6.1 Any person wishing to obtain more information should contact Simon Legg, Senior Regulatory Service Manager, Regulatory Services, Brent Civic Centre, Engineers Way, Wembley Middlesex HA9 0FJ.

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APPENDIX 1

- 1) Department for Communities and Local Government Guidance for Letting Agents and Property Managers

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361556/Lettings_Agents_and_Property_Managers_redress_scheme_leaflet.pdf

- 2) Department for Communities and Local Government Guidance for Local Authorities

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412921/Improving_private_rented_sector.pdf

- 3) London Borough of Harrow Cabinet Report dated 19 November 2015

<https://www.harrow.gov.uk/www2/documents/s131027/Legislation%20affecting%20Private%20Rented%20Sector%20-%20Main%20Report.pdf>