

 Brent	<p style="text-align: center;">Cabinet 24 April 2017</p> <p style="text-align: center;">Joint Report from the Strategic Directors of Regeneration & Environment and Community Wellbeing</p>
<p style="text-align: right;">Wards affected: All Wards</p>	
<p>Enforcing Legislation Concerning Letting Agent's Redress Scheme</p>	

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 or landlords in the private rented sector and leaseholders or freeholders dealing with residential property managers, can if required, complain to an independent person for the purposes of adjudication and/or reaching a settlement to any dispute.
- 1.2 Local Authorities are the 'enforcement authority' for this order and have a statutory duty to enforce it. A monetary penalty not exceeding £5,000 can be imposed by an enforcement authority against those breaching the requirements of the Order. It is proposed that Cabinet delegate enforcement of the Order to both the Council's Trading Standards and Private Housing Services and agree the value of the monetary penalty to be levied.

2.0 Recommendations

- 2.1 That Cabinet Members agree:
 - 2.1.1 To the introduction of a penalty charge of £5k, reduced to £2.5k if paid within 14 days for the non-compliance of the Redress Schemes for Letting Agents and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

2.1.2 Officers working in the Trading Standards Service, are delegated 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 Officers working in Private Housing Services, are delegated 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.

2.1.4 Delegating authority to the Trading Standards Senior Regulatory Service Manager and any manager above this position, to review the value of any penalty charge imposed subject to any representations made by recipient as prescribed by the Order.

2.1.5 Delegating authority to the Head of Service, Private Housing Services and any manager above this position, to review the value of any penalty charge imposed subject to any representations made by recipient as prescribed by the Order.

2.1.6 Any monetary penalties received in connection with the Order be used by either of the two teams issuing the penalty charge 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 or freeholders dealing with residential property managers, can if required, complain 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 to an approved scheme provider 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 affected by the Order was published by the Department for Communities and Local Government (DCLG) in 2014. Guidance for local authorities regarding the Order 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 is an 'enforcement authority' for the purposes of the Act. This differs from much of the other legislation Trading Standards have the duty 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 Order provides the enforcement authority discretion as to who should enforce the legislation.

3.8 The London Borough of Brent provide the Trading Standards Service to the London Borough of Harrow on a joint consortium basis with Brent being the host authority. The Service has a 'Joint Advisory Board' (JAB) made up of members from both Brent and Harrow Council's. At the JAB meeting on 24 October 2016, a report was presented to members, concerning the letting agents redress scheme. Whilst members of the JAB do not hold any decision making powers, they supported the Trading Standards Service receiving the delegations as set out in paragraph 2.1.2 above.

3.9 The DCLG guidance for local authorities referred to in paragraph 3.5 above, states on page 53 that '...trading standards officers will be able to enforce the regulations and issue the penalty notices, as well as housing officers'.

3.10 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.

3.11 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.

3.12 Trading Standards records show 223 business premises categorised as estate or

letting agents 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.

- 3.13 To date, the Trading Standards Service have carried out advisory visits where necessary to businesses following an allegation that they are not complying with the Order. No formal action has been taken in the London Borough of Brent for noncompliance.
- 3.14 It is not intended for there to be any duplication of work between the Trading Standards and Housing teams should all recommendations set out in 2.1 be agreed. Instead, it is suggested that whichever team receives a complaint from a member of the public, would 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. Each team will check with the other, before commencing any enforcement to avoid any repetition.
- 3.15 If evidence was discovered of any noncompliance after checking with redress scheme providers, the authority will allow one opportunity for an agent or property manager to join an approved redress scheme and will issue a letter of warning. If the agent or property manager does not follow this advice with 14 days of being contacted by the Council, then a 'Notice of Intent' to issue a monetary penalty will be issued, setting out the reasons and the penalty charge.
- 3.16 Following this Notice, the letting agent or property manager has 28 days to make written representations or objections to the authority as required by the Order. At this point, a decision is made as to whether to impose the penalty and a Final Notice is issued giving 28 days for payment to be made.
- 3.17 A lettings agent or property manager can lodge an appeal against the penalty to a Property Tribunal, within 28 days of the day on which the Final Notice was sent.
- 3.18 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 £5k.
- 3.19 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 £5k 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 DCLG guidance suggests that extenuating circumstances might include when the fine would be disproportionate to the turnover of the business or lead to the company going out of business.
- 3.20 It is entirely up to the London Borough of Brent to agree its own level of charge considering the DCLG guidance. However, Cabinet Members may wish to know that the The London Borough of Harrow has agreed its monetary penalty at £5k offering a 50% reduction for early payment within 14 days, but only on the basis

there has been no previous penalty charge.

- 3.21 If this report was agreed, it is suggested that the London Borough of Harrow's approach appears to be a sensible incentive to encourage payment and the same penalty with an early payment discount should apply in the London Borough of Brent proving consistency to the Trading Standards Officers who may be issuing penalty charges as well as those subject to the terms of the Order.
- 3.22 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 borough 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.
- 4.2 Any penalty fines received as a result of formal action will be used to offset the overall cost of the enforcement activity for the team involved. On the basis that the maximum penalty of £5k is agreed, it is likely that this would cover the 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 relevant team's budget. These will need assessing on a case by case basis.
- 4.3 Data obtained from the survey referenced in paragraph 3.11, showed that between October 2014 and June 2016, 49 penalty charge notices have 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 choose 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 payments received from penalty notices, will be minimal.

5. Legal Implications

- 5.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (SI 2014 No. 2359). The effect of this legislation is that as from 1 October 2014, it is a legal requirement for all letting agents and property managers in England to register with one of three Government-approved redress schemes. It is for local authorities to enforce these regulations.
- 5.2 This requirement means that the following groups of people would be able to complain to an independent person about the service they have received. These groups of people are: (1) Tenants and landlords with agents in the private rented sector and (2) Leaseholders and freeholders dealing with property managers in the residential sector.

- 5.3 The proposals put forward in this report are in line with the assertions contained in the DCLG 2015 guidance document entitled “ *Improving the Private Rented Sector and Tackling Bad Practice: A Guide for Local Authorities*”. The DCLG guidance document stated that both the Trading Standards and Private Housing Services departments of the local authority can enforce the 2014 Order.
- 5.4 In line with the Council’s Constitution Cabinet approval is now sought for the proposed delegation arrangements as set out in section 2 this report. The proposals in this report have no identifiable negative legal implications.

6. Equality Implications

- 6.1 The proposals in this report have been screened to assess their relevance to equality and were found to have no equality implications.

7. Staffing Implications

- 7.1 There are no significant staffing implications arising from this report. Written procedures and notices will need drafting to enforce the provisions of this Order. 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.

8.0 Background Information

- 8.1 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) Trading Standards Joint Advisory Board Report dated 24 October 2016 regarding letting agents redress scheme

<http://democracy.brent.gov.uk/documents/s45296/Enforcement%20of%20Legislation%20on%20Lettings%20Agents%20Redress%20Scheme.pdf>

- 4) 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>