

**London Boroughs of Brent and Harrow
Trading Standards Joint Advisory Board
26 June 2019**

FOR INFORMATION

**UPDATE CONCERNING ADVICE AND ENFORCEMENT AROUND LETTINGS
AND PROPERTY MANAGEMENT BUSINESSES AND TWO NEW STATUTORY
DUTIES FOR THE TRADING STANDARDS SERVICE**

1.0 SUMMARY

- 1.1 The purpose of this report is to update the Joint Advisory Board on the progress made by the Trading Standards Service in delivering our Lettings and Property Management Project and two new statutory duties for the Service, enforcing the provisions of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 and the Tenant Fees Act 2019.

2.0 RECOMMENDATIONS

- 2.1 For Members to consider the report and make recommendations where appropriate and note the two new statutory duties.

3.0 DETAILS

- 3.1 This project was commissioned as a result of new legislation which came into force regulating letting agents and property management businesses. The Consumer Rights Act 2015 (the CRA) introduced new requirements for businesses operating within this profession, to display a comprehensive list of all fees and charges payable by tenants and landlords engaging the services of an agent. It further required agents to display other “prescribed information”, namely details of membership held with a government approved redress scheme and details as to whether the business is a member of a client money protection (CMP) scheme.
- 3.2 This information must be displayed on any website operated by the business and within any premises whereby the agent deals face to face with clients or perspective clients.
- 3.2 A financial penalty of up to £5k (subject to representations received by the recipient) could be imposed if Trading Standards are satisfied on the balance of probabilities that someone who is engaged in letting or property management work has failed to correctly display its fees or prescribed information.
- 3.3 A further penalty of £5k (subject to representations received by the recipient) could be imposed where agents were found to be operating without appropriate Redress

Scheme membership under the Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014. This Order specifies that someone engaging in letting or property management work must be a member of a recognised ombudsmen scheme to assist with dispute resolution if needed.

- 3.4 Members should note that a report was presented to the Joint Advisory Board on 24 October 2016, recommending that Trading Standards are delegated responsibility for enforcing the legislation in relation to redress schemes in both boroughs. Whilst this has been agreed within the London Borough of Brent, we still have not been delegated responsibility for this function in the London Borough of Harrow, so at present, any non-compliance would need to be referred to Harrow's Housing Team.
- 3.5 This arrangement does create some inefficiencies as it means Trading Standards staff are unable to deal with any non-compliance in relation to this area of law, whilst they are covering other aspects of advice or enforcement with a business.
- 3.6 During 2018, an officer was nominated to lead on the project with specific responsibility for generating advice letters, conducting website and premise inspections, drafting notices of intent, and where relevant, training other staff members in relation to the procedures around enforcement of the legislation.
- 3.7 Subsequent to advising some 193 agents in Brent and 97 within Harrow, an initial area based scoping exercise was carried out and compliance levels surrounding the display of fees and prescribed information were found to be low. Conversely, the survey indicated that nearly all agents held redress scheme membership.
- 3.8 Since April 2018, the websites of 39 agents have been inspected. Of the 39, only 9 were fully compliant, in that they adequately displayed fees and prescribed information.
- 3.9 21 of these businesses were physically visited by the Officer and full inspections carried out. Of these 21, 15 were issued with a Notice of Intent (NOI) proposing to issue a financial penalty.
- 3.10 Representations put forward by those businesses were individually reviewed by the Trading Standards Senior Regulatory Service Manager. A decision was made to either withdraw the notice, amend the penalty proposed or issue the penalty without making any changes.
- 3.11 6 Notices of Intent ended with no formal action being taken. Letters of warning were issued and the businesses concerned were brought into compliance.
- 3.12 7 of the businesses issued with a NOI, were subsequently given penalty notices for failure to comply with the provisions of the CRA. Of these 7, 1 was also found to be operating without being a member of a Government approved redress scheme under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

- 3.13 These 7 generated a total of £22,750. One agent appealed a penalty notice to the First Tier (Property) Tribunal who found in the Council's favour although they did reduce the penalty from £20k to £5k. This remains unpaid and despite steps being taken to chase payment of the debt, the company has since dissolved meaning it is unlikely the penalty will ever be paid.
- 3.14 A further 2 businesses were issued with penalty notices amounting to £6,500. Both are currently going through the appeal process and it is envisaged a decision will be made by the First Tier (Property) Tribunal in the forthcoming weeks.
- 3.15 A further 2 business have been issued with Notices of Intent proposing penalties totalling £50k. One has been issued with three Notices of Intent for failure to comply with the provisions of the CRA, failure to be a member of an approved Redress Scheme, and failure to join an approved Client Money Protection Scheme. The other business has been issued with two Notices for failure to comply with the provisions of the CRA and failure to be a member of an approved Redress Scheme. Representations will be considered following the end of the 28 day period and a decision made in line with the contents of paragraph 3.8.
- 3.16 Compliance rates remain low and whilst many businesses have improved, there is still evidence of rogue practices which have a significant and detrimental impact on tenants and landlords.
- 3.17 This is further supported by the introduction of two new pieces of legislation this year both of which Trading Standards have a statutory duty to enforce, that impose hefty fines on agents who fail to adhere to new obligations.
- 3.18 Under The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, all letting and property management agents who hold client money must join a government approved Client Money Protection Scheme (CMP). Prior to this, it was not compulsory for agents to hold such membership, they simply had to state whether or not they were part of a CMP scheme. Now, if an agent does not join a CMP scheme, a financial penalty of up to £30k can be imposed. Furthermore, if an agent fails to display their CMP certificate of membership, they may be liable for a penalty up to £5k.
- 3.19 In addition to this, from 1 June 2019 the Tenant Fees Act 2019 came into force banning the majority of fees that landlords or agents impose on their tenants. Previously, agents were permitted to charge whatever fees they wanted and often this included charges described as administration fees, tenancy renewal fees, referencing fees and credit check fees among others. The Citizens Advice have reported that private renters are charged an average of £400 in fees¹. The new legislation provides that only permitted fees will be allowed. A penalty of up to £5k can be imposed if Trading Standards are satisfied on the balance of probabilities that a Letting Agent is found to have charged a prohibited fee.
- 3.20 If an agent commits a further breach under the Tenant Fees Act within the period of 5 years, they may be guilty of a criminal offence or as an alternative to

¹ Caroline Aliwell Senior Policy Researcher at Citizens Advice - housing and consumer. Tenant Fees Bill - 2nd reading

prosecution, an increased penalty of up to £30k may be imposed by Trading Standards.

3.21 These are two new legislative requirements on top of existing obligations the original project focused on. It is envisaged that compliance levels will be low and further advisory work followed up with enforcement where appropriate will be necessary.

3.22 This work is currently being undertaken by an agency member of staff dedicated solely, to delivering the project which is for a fixed term of 6 months. The Officer is responsible for:

- i. Supporting and educating honest businesses
- ii. Increasing levels of compliance thus Improving landlords and tenant's rights
- iii. Reducing the cost of rentals and greater transparency in the marketplace
- iv. Taking appropriate action against those who fall below the required legal obligations.

4.0 FINANCIAL IMPLICATIONS

4.1 The cost of employing an agency member of staff for a six-month period to carry out the continuing project work, is approximately £36k. This is being funded equally from Harrow's salary budget which currently has a surplus due to a vacancy and the Brent POCA reserves.

4.2 During 2018/19, the Service received an income of £17,750 as a result of financial penalties imposed against letting agents.

4.3 Since this work has commenced, the Department of Housing Communities and Local Government has issued further guidance which places a more stringent approach to how the value of penalty charge notices are calculated. This will mean that the value of penalty notices issued during 2019/20, could potentially be less than those issued the previous year.

4.4 Whilst the introduction of the new Tenant Fees Act 2019 does create further breaches which attract penalty charges, we will be operating a lighter touch approach to enforcement of this legislation during the early stages of its implementation,

4.5 Taking paragraphs 4.3 - 4.4 into consideration, the Service is projecting to receive an income of approximately £25k during the current financial year arising from payment of penalty notices.

5.0 LEGAL IMPLICATIONS

5.1 The continuation of this project brings about enforcement of four separate pieces of legislation governing the lettings industry.

5.2 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) came into force on 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. Following delegation of enforcement powers, it is now the responsibility of Trading Standards to enforce these regulations.

- 5.3 The Consumer Rights Act 2015 requires letting agent businesses to clearly display details of any fees they charge for the rental of property, in their business premises and on their websites. The legislation took effect on 27 May 2015. It is statutory for local authority Trading Standards to enforce this Act.
- 5.4 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 requires all letting and property management agents who hold client money to join a government approved Client Money Protection Scheme. The legislation took effect on 1 April 2019. It is statutory for local authority Trading Standards to enforce these Regulations.
- 5.5 The Tenant Fees Act 2019 sets out to ban virtually all fees imposed on tenants from letting agents and landlords. Only the permitted fees listed in the legislation will be allowed. This legislation comes into force on 1 June 2019. It is statutory for local authority Trading Standards to enforce this Act.
- 5.6 The proposals put forward in this report are in line with the assertions contained in statutory guidance produced by the Ministry of Housing, Communities & Local Government. This includes:
 - i. DCLG 2015 guidance document entitled "*Improving the Private Rented Sector and Tackling Bad Practice: A Guide for Local Authorities*"
 - ii. 12 March 2019 - Client money protection for letting and managing agents
 - iii. 1 April 2019 - Tenant Fees Act 2019: statutory guidance for enforcement authorities

6.0 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.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 There is no requirement to specifically consult Ward Members about this report as it affects all wards across both Boroughs.

8.0 Human Resources/Property Implications

- 8.1 There are no significant staffing implications arising from this report due to the dedicated member of agency staff. New advice letters and notices will have to be drafted in line with the new legislation, all of which have be dealt with by officer leading the project.
- 8.2 There is a possibility that additional work may be generated by way of appeals to the

First Tier Tribunal, in which case, a greater staffing resource will be needed and may result in staff being taken away from other duties.

Any person wishing to obtain more information should contact Simon Legg, Head of Regulatory Services, Regulatory Services, Brent Civic Centre, Engineers Way, Wembley Middlesex HA9 0FJ. Telephone: (020) 8937 5522 Email: simon.legg@brent.gov.uk

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Report sign off:

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