

22 January 2015

Name of Cabinet Member:

Cabinet Member for Policing and Equalities – Councillor Townshend

Director Approving Submission of the report:

Executive Director of Place

Ward(s) affected:

All

Title:

Fines Policy - Redress Schemes for Letting Agents and Property Management.

Is this a key decision?

No

Executive Summary:

There is a legal requirement for all lettings agents and property managers in England to have joined a Government-approved redress scheme by 1 October 2014. This is as a result of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

This means that a complaint can be made to an independent person about service provided by letting agents and property managers in the residential sector. The complaint can be made by tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector, and leaseholders and freeholders. This will make it easier for tenants and landlords to complain about bad service and prevent disputes escalating.

The local authority is the enforcing body, and is required to set out its policy that will determine the level of fines to be imposed and to identify the reasons why. This report seeks approval for the setting of those two criteria.

Recommendations

Cabinet Member is asked to:

- (1) Approve the level of fines detailed in Para 2 below.
- (2) Approve the criteria set out applicable to each level of fine.

List of Appendices included:

Appendix 1. – Letting Agent and Property Manager Redress Enforcement Process

Appendix 2. - Part 1 of the Equalities and Consultation template.

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

1. Context (or background)

Enforcement

To ensure the effectiveness of the requirement for lettings and property management agents to belong to a redress scheme, there must be a process for ensuring compliance and a fair and effective penalty where the requirement is not met.

Enforcement authority

The enforcement authority for the purposes of this Order is a district council, a London Borough Council, the Common Council of the City of London in its capacity as a local authority, or the Council of the Isles of Scilly. These are all local housing authorities but this does not limit the enforcing role to Housing officers. Where Trading Standards services sit within one of these enforcing authorities, Trading Standards officers as well as Housing officers will be able to enforce the regulations and issue the penalty notices.

Penalty for breach of requirement to belong to a redress scheme

The enforcement authority 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 without being a member of a redress scheme.

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)

Where an enforcement authority intends to impose a penalty they must follow the process set out below.

Enforcement process:

Step 1: Notice of Intent

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

- i) the reasons for the penalty;
- ii) the amount of the penalty; and
- iii) 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.

Step 2: Representations and Objections

The person on whom the notice of intent was served has 28 days to make written representations and objections to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the enforcement authority must issue a final notice in writing which includes an explanation of:

- i) why the fine is being imposed;
- ii) the amount to be paid;
- v) that there is a right to appeal against the penalty to the First-tier Tribunal within 28 days after the imposition of the fine.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal is concluded. Appeals can be made on grounds that include:

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

Appeals will be heard by the General Regulatory Chamber, and further details about the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

Step 5: Recovery of the penalty

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

2. Options considered and recommended proposal

2.1 The level of the fine / monetary penalty can be up to £5000. However if the level of the fine is unreasonable then an appeal can be lodged. Whilst the LGA guidance states the level of fine should normally be £5000 (which is merely based on the wishes of government ministers), officers suggest the following amounts and criteria may be considered to be more proportionate and reasonable:

2.2

- Warning letter issued and complied with in 14 days prior to any Notice of Intent being served – No financial penalty
- Warning letter not complied with, single non-compliance – Notice of Intent served to issue £1000 fine
- Warning letter not complied with, more than one non-compliance – Notice of intent served to issue £2500 fine
- Warning letter not complied with, multiple and persistent non-compliance – Notice of Intent served to issue £5000 fine.

2.3 The process for issuing a Warning Letter allowing 14 days to join a scheme, and any subsequent enforcement action and appeals process, is detailed in the flow diagram attached as Appendix 1 List of stakeholders

2.4 It is therefore recommended that the Cabinet Member:

- (1) Agree the level of fines detailed in Para 2.
- (2) Agree the criteria set out applicable to each level of fine.

3. Results of consultation undertaken

- 3.1 Consideration has been given to the Department of Communities and Local Government 'Best Value Statutory Guidance' dated September 2011. However, as letting agents and property management companies are businesses and the potential consultation would relate to sanctions imposed by legislation, formal consultation is not considered to be necessary.
- 3.2 A communications plan has been developed to help raise awareness with letting agents and property management companies by articles in newsletters, links on websites, mailshots and emails

4. Timetable for implementing this decision

- 4.1 Recommendations 1 and 2 will be implemented immediately.

5. Comments from Executive Director of Resources

5.1 Financial implications

No additional resource will be required to implement the proposed enforcement of the redress schemes for letting agents and property management, other than for legal representation at an appeal hearing. Any additional income generated will contribute towards Council resources.

5.2 Legal implications

Legal Services have been involved in determining the process to be followed to enforce The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

The decision-making process and ultimately defending a decision at tribunal level is no different to many other aspects of regulatory services.

6. Other implications

Similar sanctions are available under estate agency law. However the level of penalty here is £1000.

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

By helping to provide a fair trading environment and allowing a successful rental property sector grow and succeed, the redress scheme helps support a vibrant local economy.

6.2 How is risk being managed?

The risk of enforcing the Order is no more onerous than any other piece of legislation and is part of a staged enforcement process.

6.3 What is the impact on the organisation?

None

6.4 Equalities / EIA

Consideration has been given to the public sector duty under the Equality Act 2010 to reduce inequalities when making decisions of a strategic nature. However, this is a regulatory requirement and Cabinet Member decision is sought to offer transparency only to the amount of fine imposed. As these requirements apply to Letting Agents and Property Management companies the impact on small businesses or individuals is considered to be minimal.

Part 1 of the Equalities and Consultation template has been completed and is attached at Appendix 2. Officers consider there is no need for further consultation in this case.

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

None

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Appendix 1

Letting Agent and Property Manager Redress Enforcement Process

