

Mayor & Cabinet		
Report Title	Redress Schemes for Lettings Agency Work and Property Management Works – Request for Delegated Enforcement Authority	
Key Decision	No	Item No.
Ward	All	
Contributors	Executive Director for Community Services	
Class	Part 1	14 January 2015

1. Introduction

This report seeks approval for enforcement arrangements for the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, which makes it a legal requirement for all letting agents and property managers in England to join one of three Government approved schemes. This requirement, made under the Enterprise & Regulatory Reform Act 2014, took effect on 1 October 2014.

2. Purpose of the Report

- 2.1 This report seeks delegated authority, in accordance with the scheme of delegation contained in part VIII of the Council Constitution (September 2014), for the Executive Director of Community Services to implement arrangements for the enforcement of the 2014 Order. This Order makes it a legal requirement for all letting agents and property managers in England to join one of three Government approved schemes. In Lewisham it is envisaged that enforcement will be led by Trading Standards although a guidance document issued in December 2014 by the Department for Communities and Local Government (DCLG) acknowledges that due to the subject matter, the enforcement role may be shared with housing officers.

3. Policy Context

- 3.1 Lewisham's Sustainable Community Strategy contains the shared priorities for the borough. It sets out a framework for improving the quality of life and life chances for all who live in the borough. The Council has outlined ten corporate priorities which enables the delivery of the strategy. Implementing this legislation gives an added means of tackling rogue landlords to assist in making Lewisham a safer and more liveable place with high quality housing.
- 3.2 As a London Borough, Lewisham has a duty to enforce these provisions.

4. Recommendations

The Mayor is recommended to:

- 4.1 To agree to delegate the implementation and enforcement arrangements for The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (2014 No.2359), to the Executive Director of Community Services in consultation where appropriate with the Head of Strategic Housing.
- 4.2 To agree that the penalty for non-compliance with the Order shall be £5000.
- 4.3 To agree to authorise the Executive Director for Community Services, in consultation with the Head of Strategic Housing, to periodically review the monetary penalties for non-compliance with the Order, taking the recommendations of Department of Communities and Local Government guidance into account and to subsequently determine an alternative penalty level if considered appropriate. This will include any decision on whether to allow any penalty reduction for 'prompt' payment or a penalty reduction or waiver in extenuating circumstances.

5. Background

- 5.1 The Order, which came into force on 1 October 2014, makes it a legal requirement for all lettings agents and property managers in England to join one of three Government approved schemes. This now means that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with residential property managers, will be able to complain to an independent person about the service they have received.
- 5.2 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 which was published on 18 July 2013. As part of this inquiry, evidence was taken about tenant consumer detriment concerning the business practices of some letting agents. The requirement to join a redress scheme was identified as one of the recommendations to improve standards in the sector. Definitions of what constitutes letting agency and property management work is found in the Enterprise and Regulatory Reform Act 2013.
- 5.3 There are three Government approved schemes as follows:
 - (a) Ombudsman Services Property - (www.ombudsman-services.org/property.html)
 - (b) Property Redress Scheme (www.theprs.co.uk)
 - (c) The Property Ombudsman (www.tpos.co.uk)
- 5.4 Business guidance for lettings agents and property managers was published by DCLG on 8 October 2014. Enforcement guidance for local authorities became available in early December 2014.

- 5.5 A maximum penalty of £5,000 may be imposed by the enforcement authority where it 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. The level of penalty is to be determined by the enforcement authority. There are strict procedures and a series of mandatory stages to follow before a penalty may be imposed.
- 5.6 The authority must give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations or objections to the authority, starting from the day after the date the notice of intent was sent.
- 5.7 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 issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made.
- 5.8 There is a right of appeal to the General Regulatory Chamber against any fine imposed. The General Regulatory Chamber is part of HM Courts & Tribunals Service.
- 5.9 By implementing this legislation the Council will be in a position to take action against businesses that are not members of an approved scheme and this will be for the benefit of local private sector tenants and also those responsible businesses that have joined a scheme.
- 5.10 DCLG enforcement guidance states an expectation that £5000 should be considered the normal penalty to be imposed for a breach of the order but does refer to the possibility of a lower sum being accepted only if the local authority is satisfied that extenuating circumstances apply. It suggests that the size of the business committing the breach may be a factor to consider as might be a genuine lack of awareness of legal requirements in the early stages of implementing the requirements.
- 5.11 As DCLG guidance as to extenuating circumstances seems vague at best and informal discussions with trading standards colleagues in other areas reveal a general uncertainty about a consistent approach to penalty reductions and waivers, it is proposed that the Lewisham initial approach to any breach should be to impose the £5000 maximum penalty and consider any representations made about penalty reduction on a case by case basis. This will be reviewed as the new requirements become embedded and discussions between enforcement authorities on consistency in applying penalty reductions & waivers reach some consensus.

6. Financial Implications

- 6.1 The cost of the additional enforcement duty will be met through re-prioritising existing resources with no additional cost to the Council. Trading standards team have already distributed advice and information to the 80 local businesses known or believed to engage in letting agent activities. As a number also undertake estate agency work Trading Standards will have already engaged with them concerning requirements for this sector. The number of local property management businesses concerned remains uncertain. Any penalty fines received will offset the overall cost of enforcement activities within the service.
- 6.2 Trading Standards is currently engaged in other enforcement action against certain local lettings & estate agents for various alleged trading malpractices.
- 6.3 The number of penalty fines cannot be estimated with any certainty so it would not be appropriate to set a budget for the income at this stage. However, if numbers prove to be significant and predictable proposals for treatment of the resulting income will be developed.

7. Legal Implications

- 7.1 A London Borough Council as of 1st October 2014, is an 'enforcement authority' for the purposes of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc) (England) Order 2014 ("2014 Order") (Pursuant to Article 2 thereof.).
- 7.2 The Council is by virtue of Article 7 of the 2014 Order obliged to enforce the said Order.
- 7.3 The 2014 Order has been made pursuant to the Enterprise and Regulatory Reform Act 2013. ("The Act"). Article 3 of the 2014 Order imposes the requirement to belong to a redress scheme on persons who engage in 'lettings agency work' and Article 5 thereof imposes the requirement to belong to a redress scheme on persons who engage in 'property management work'. Section 83 (2)A of the Act provides that a "redress scheme" is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person." Sections 83 (7) and 84 (6) of the said Act defines what is meant by "lettings agency work" and "property management work" respectively.
- 7.4 There are three approved redress schemes as detailed within paragraph 5.3 above.
- 7.5 Article 8 (2) of the 2014 Order provides that failure to belong to a redress scheme, will result in a monetary penalty being imposed by the 'enforcement authority' and the "amount of the monetary penalty must not exceed £5000" (Art. 8(2)).

- 7.6 Article 10 (3) of the 2014 Order provides that “sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.”
- 7.7 The Council’s Trading Standards team regularly enforces matters on behalf of the Council within the context of lettings agents and property management agencies and most recently has worked closely with the Council’s Housing enforcement teams within the context of the national initiative against “rogue landlords”.
- 7.8 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.9 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 7.10 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.11 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

7.12 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

7.13 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8. Crime and Disorder Implications

8.1 Whilst the monetary penalties for breaching requirements are civil rather than criminal in nature, the requirements will provide an additional means of dealing with those rogue businesses who employ a range of unscrupulous tactics aimed at exploiting vulnerable residents and who on occasion resort to violence and intimidation for business gain.

9. Equalities Implications

9.1 Persons on low and fixed incomes and other vulnerable groups may particularly suffer adverse effects as a result of businesses and others failing to comply with regulatory obligations. There is also evidence that rogue traders target those they perceive to be vulnerable. Adoption of these requirements will thus increase their protection.

9.2 There is no evidence that the operators of lettings and property management businesses originate from particular sectors of the community hence there is considered to be no disproportionate negative impact on any priority group.

9.3 It is considered that there would be no adverse equalities impact on the protected characteristics.

10. Environmental Implications

10.1 There are no environmental implications in this report.

Background Papers

Document	Date
<p>The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (2014 No.2359)</p> <p>http://www.legislation.gov.uk/ukxi/2014/2359/contents/made</p>	<p>3 September 2014</p>
<p>Lettings Agents and Property Managers Which Government approved redress scheme do you belong to? (DCLG Guidance)</p> <p>https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes</p>	<p>October 2014</p>
<p>Guidance for Local Authorities on The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014</p>	<p>December 2014</p>

If you require any further information about this report, please contact John Pye, Trading Standards, Markets & acting Environmental Health Manager on 020 8314 2018.