

DECISION ITEM



REPORT OF	MEETING	DATE	ITEM
DEVELOPMENT SERVICES	ENVIRONMENT, HEALTH AND HOUSING COMMITTEE	9 JUNE 2015	6

THE REDRESS SCHEME FOR LETTINGS AGENCIES AND PROPERTY MANAGERS

PUBLIC ITEM

This item is for consideration in the public part of the meeting

SUMMARY

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 came into force on the 1st October 2014. The Order requires persons undertaking residential property lettings or management work to belong to a redress scheme for dealing with complaints in connection with that work. The Order places the responsibility for enforcing the provisions of The Order with the council. The Order introduces a penalty fine of up to £5,000 for non-compliance with the requirement to be a member of an approved redress scheme.

RECOMMENDATIONS

1. That the enforcement of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (The Order) be delegated to the Director for Development Services. The enforcement will be in accordance with The Order and as detailed in appendix 1 below.
2. That the penalty fine for non-compliance with the requirements of The Order be £5,000 unless extenuating circumstances exist to justify a lower amount. Consideration of extenuating circumstances to be delegated to the officers in recommendation 1 above.

CORPORATE PRIORITIES (delete ✓ which are not relevant)

To Promote the Enhancement of The Natural & Built Environment (Place)		To Encourage Cohesive Communities (People)	✓
To Promote a Thriving Economy (Prosperity)		To Meet Expectations of our Customers (Performance)	

SUMMARY OF PREVIOUS DECISIONS

No previous decisions.

REPORT

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 in to force on the 1st of October 2014. The Order makes it a legal requirement for people engaged in the private residential sector in the business of property letting and management to join one of three government approved redress schemes. The three recognised schemes are;
 - Ombudsman Services Property,
 - Property Redress Scheme, and
 - The Property Ombudsman.
2. The introduction of the requirement to belong to a redress scheme gives tenants and landlords in the private rented sector the ability to make a complaint to an independent person about the service they receive from their letting agent or property manager. If a complaint is upheld against a letting agent or property manager the redress scheme has a range of penalties available including apologies, changes in practice or in some cases compensation. It is important that agents and managers join a redress scheme to enable these remedies to become available.
3. The requirement to join a redress scheme will be enforced by local housing authorities. Fylde Council is the local housing authority for its area. As the designated enforcement authority the council will be responsible for checking that all lettings agents and property managers are properly registered with an approved scheme. The council's role will not extend to investigation and determination of complaints made to the schemes about any of their members.
4. There are some exceptions to the requirement to join a scheme including; employers finding homes for their employees, educational establishments, legal professionals, managers of refuge homes, receivers and insolvency practitioners, managers instructed by local authorities and social landlords etc.
5. The penalty for not being a member of an approved redress scheme is a monetary penalty of up to £5,000. There is a procedure to be followed in the imposition of a monetary penalty as prescribed by The Order and as detailed in the enforcement procedure in the appendix below.
6. Initial government guidance has been issued. The guidance sets out an expectation that a £5,000 fine should be the norm for non-compliance with the requirement to join a scheme and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. The fine is payable to the council and the proceeds may be used by the council for any of its functions.
7. It will be for the council to decide what, if any, circumstances should be considered as extenuating, having taken into account any representations made by the agent or manager within the 28 days following a notice of intention to impose a fine. Such matters could include; a genuine lack of awareness in the early days of the requirements; whether a £5,000 fine would be disproportionate to the turnover or scale of the business; the timeliness of corrective action; the co-operation with the council in investigating the alleged breach.
8. Members are asked to approve that the penalty for non-compliance with The Order is £5,000 unless extenuating circumstances apply and that enforcement of The Order and consideration of extenuating circumstances be delegated to the Director of Development Services or an appropriate officer delegated by the Director of Development Services.

IMPLICATIONS	
Finance	It is possible that there will be additional income to the council in the form of non-compliance penalties the value of which would be dependent on the level of non-compliance with the scheme. No such income has been assumed within the current approved revenue budget. There are no additional staffing requirements or any other staffing implications arising from implementation of the scheme.
Legal	A duty to enforce The Order is placed on the council.
Community Safety	There are no implications
Human Rights and Equalities	There are no implications
Sustainability and Environmental Impact	There are no implications
Health & Safety and Risk Management	There are no implications

LEAD AUTHOR	TEL	DATE	DOC ID
John Cottam	01253 658690	May 2015	

LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Explanatory memorandum to The redress schemes for lettings agency work and property Management work (requirement to belong to a scheme etc) (England) Order 2014	2014	http://www.legislation.gov.uk/uksi/2014/2359/pdfs/uksiem_20142359_en.pdf
Lettings Agents and Property Managers Which Government approved redress scheme do you belong to?	Oct 2014	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361556/Lettings_Agents_and_Property_Managers_redress_scheme_leaflet.pdf

Attached documents

1. Property Redress scheme – Enforcement procedure

Appendix 1: Property Redress - Enforcement Procedure

Where the council intends to impose a penalty for non-compliance with the Order it must follow the process set out below.

Step 1: Notice of intent

The council must give written notice of their intention to impose a penalty setting out

- The reasons for the penalty
- The amount of the penalty
- 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.

The written notice must be served within 6 months of the date on which the council is in a position to issue the fine, having gathered sufficient evidence and that a fine is appropriate. The council may withdraw the notice of intent or reduce the amount specified at any time by giving notice in writing.

Step 2: Representations and objections

The person on whom the notice of intent was served has 28 days starting from the day after the date the notice was served to make written representations and/or objections to the council in relation to the fine.

Step 3: Final notice

At the end of the 28 day period the council 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 council must issue a final notice in writing which explains:

- Why the fine is being imposed
- The amount to be paid
- How payment may be made
- The consequences of failing to pay
- That there is a right of appeal against the penalty to the First Tier Tribunal and that any such appeal must be made within 28 days following the imposition of the fine

The council may withdraw the final notice or reduce the amount of the fine at any time by giving notice in writing.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal has been determined. Appeals can be made on the grounds that:

- The decision to impose a fine was based on a factual error or was wrong in law
- The amount of the fine is unreasonable
- The decision was unreasonable for any other reason

The First Tier Tribunal may agree with the council's notice or may decide to quash or vary the notice and fine.

Step 5: Recovery of the penalty

If the person on who the fine is levied does not pay within the period specified, the council can recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the chief financial officer stating that the amount due has not been received by a date specified on the certificate will be taken as conclusive evidence that the fine has not been paid.