

ANNEX C

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

Introduction

This Order makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme by 1 October 2014.

This now means that tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service received. This will make it easier for tenants and landlords to complain about bad service and prevent disputes escalating.

The requirement will be enforced by local housing authorities (see section 3 for more details) and this note provides guidance for local authorities on who the requirement applies to and how it should be enforced. It is designed to cover the most common situations but it cannot cover every scenario and is not a substitute for reading 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) which can be found at: <http://www.legislation.gov.uk/uksi/2014/2359/contents/made>

Enforcement authorities (local authorities) will be able to ascertain whether an agent or property manager has joined a redress scheme, as all three schemes publish a list of their members on their website. It should be possible to determine if someone is acting as an agent either through a consumer complaint or through the equivalent of a mystery shopper exercise. Neither of these approaches requires new powers.

SECTION 1: LETTINGS AGENTS

What do we mean by 'lettings agency work'

'Lettings agency work' is defined in the [Enterprise and Regulatory Reform Act 2013](#) as things done by an agent, in the course of a business (see Section 2 below), in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 except where the landlord is a private registered provider of social housing or the tenancy is a long lease.

In the Act, lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided; and
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector because a local authority is already a member of the Housing Ombudsman Scheme.

The intention is that all “high street” and web based letting agents, and other organisations, including charities, which carry out lettings agency or property management work in the course of a business will be subject to the duty to belong to an approved redress scheme.

Exclusions from the requirement to belong to a redress scheme – lettings agency work

Employers who find homes for their employees or contractors: Article 4(2) of the Order excludes things done by an employer where the prospective tenant is an employee, or a contractor. It excludes the person the prospective tenant provides work or services to where the prospective tenant is a worker, or a contractor, or is on secondment. It also excludes the hirer where the prospective tenant is an agency worker.

This is because an employer may either directly, or via a third party, help an employee find accommodation as a way to attract and then retain workers, especially in areas of high labour demand. This would fall within the definition of lettings work but, to avoid discouraging organisations from providing housing assistance to those who work or provide services for them, they have been exempted from the requirement to belong to a redress scheme.

Higher and further education establishments: Article 4(3)(a) of the Order excludes higher and further education establishments. Universities, for example, often provide a service for their students to help them find property to rent. While this is lettings agency work as per the definition, the housing teams are not acting as independent

agents and have a wider duty of care for the students at their institution. If an individual student feels that the housing teams have not provided a good service there are existing channels for students to complain to including the students union.

Legal professionals: Article 4(3)(b) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. Legal professionals could be considered as carrying out lettings type work, for example, when they draft tenancy agreements. They are excluded from the duty as they are already heavily regulated and complaints about their services can be made to the Legal Ombudsman.

The Order does not exclude charitable organisations because any charity that is operating not as a business will already be exempt from the requirement. It is important that where charitable organisations are operating in the course of a business and especially where they are dealing with the most vulnerable that those most in need of support are not denied the opportunity to seek redress where things have gone wrong.

SECTION 2: PROPERTY MANAGEMENT

What do we mean by 'property management work'

In the Enterprise and Regulatory Reform Act 2013, property management work means things done by a person in the course of a business (see Section 2 below) in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

However, it does not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme by Schedule 2 to the Housing Act 1996.

For there to be property management work, the premises must consist of, or contain:

- a) a dwelling-house let under a long lease - "long lease" includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases;
- b) an assured tenancy under the Housing Act 1988; or
- c) a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas, corridors, stairwells etc.) that contains flats let under a long lease or let to assured or protected tenants.

The legislation will apply to people who in the course of their business (see Section 2 below) manage properties, for example, high street and web based agents, agents managing leasehold blocks and other organisations who manage property on behalf of the landlord or freeholder.

Exclusions from the requirement to belong to a redress scheme – property management work

Managers of commonhold land: Article 6(2) of the Order excludes managers of commonhold land even if one of the units is subsequently let on an assured tenancy. This is to avoid the manager having to join a redress scheme if one of the units on the development was let under a relevant tenancy type, when this is not something they are likely to be aware of. A relevant tenancy type means:

- a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;
- b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977; or
- c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies.

The exemption for managers of commonhold land only applies to the manager of the whole development- where an agent manages an individual dwelling-house in such a development, the duty to belong to a scheme will apply.

Managers of student accommodation: Articles 6(3) to (7) of the Order exclude student accommodation; in particular, halls of residence (which may be run privately), accommodation provided to students by education authorities and charities; and accommodation provided by any landlord where the students are nominated by an educational establishment or charity. Educational institutions will often rent bed space from trusted private providers (frequently agreeing a certain number of beds for a number of years and hence guaranteeing a level of rental income for the private provider) and then give that provider a list of names (nominated students) who will actually take up residence each year. The legislation is not aimed at university managed accommodation which is already well regulated and students have other mechanisms to complain, including through the students union.

Managers of refuge homes: Articles 6(8) to 6(10) of the Order exempt organisations that provide accommodation (refuge homes) for people who are fleeing from actual, or threat of, violence or abuse including controlling, coercive or threatening behaviour, physical violence or abuse of any other description (including both physical and mental). Where those organisations are not operated on a commercial basis and the costs of operation are provided wholly or in part by a government department or agency, a local authority, or the organisation is managed by a voluntary organisation or charity then there is no requirement for the managers of the building to join a redress scheme. The management and letting of such properties goes significantly wider than property management per se and the person living in such a property will not be occupying it as their permanent residence.

Receivers and insolvency practitioners: Article 6(11)(a) of the Order excludes work done by a person (“A”) in the course of a business where the property is subject to a mortgage and A is the receiver of the income of it. When a borrower defaults on a mortgage the receiver is appointed as agent for the mortgagor and steps into their shoes. As such it would not be appropriate to treat the receiver as a managing agent and require them to join a redress scheme.

Other authorities: Article 6(11)(b)(i) of the Order excludes authorities where Part 3 of the Local Government Act 1974 applies, as these authorities will already be subject to investigation by the Local Government Ombudsman. Such bodies include a local authority as not all local authorities are social landlords, a National Park authority, police and crime commissioners, or fire and rescue authorities etc. The requirement to belong to a scheme under this Order does not apply to work carried out by these authorities.

Right to Manage companies: Article 6(11)(b)(ii) excludes Right to Manage companies who acquire the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002 as they are in effect long leaseholders who have taken direct management of their block of flats from the landlord.

Legal professionals: Article 6(11)(b)(iii) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. This is because they are already heavily regulated and complaints by relevant persons about their services can already be made to the Legal Ombudsman. (Where a property management firm is part of a joint venture with a legal firm but is operating under its own identity and is carrying out property management work then it will have to join an approved or designated redress scheme as under these circumstances it will not be authorised or licensed under the Legal Services Act 2007.)

Managers instructed by local authorities and social landlords: Article 6(12) of the Order excludes things done where a Local Authority or a social landlord have

instructed the person undertaking the work. Again this is because local authorities and registered social providers are already heavily regulated and consumers already have guaranteed access to an Ombudsman.

If a person is exempt from the redress scheme as they are not operating in the course of a business but they are collecting rent they will still have legal responsibilities as “manager” where the property is a [House in Multiple Occupation](#).

Head tenant as a manager: where a leaseholder receives a reduced service charge in exchange for maintenance work around the property for example gardening in a block of flats, or cleaning and maintains common areas such as stairwells, car parks and corridors. In such cases they are not required to be part of a redress scheme, as they are not doing the work in the normal course of business. In cases where the level of service is deemed to be sub-standard, other leaseholders can complain to the main agent or freeholder that their subcontractor is not up to standard.

Implicit exclusions from the requirement to belong to a redress scheme

Landlords are not explicitly excluded by the Order but are not generally caught by the Enterprise and Regulatory Reform Act as they are not acting on instructions from another party.

Resident management companies are not explicitly excluded by the Order although, in many cases, these are not caught by the Enterprise and Regulatory Reform Act 2013. Resident management companies can arise in different circumstances, but where the residents’ management company owns the freehold and manages the block itself there is no requirement for the company to join a redress scheme. This is because, under the definition in the Act, property management work only arises where one person instructs another person to manage the premises and, in this case, the person who owns the block (and is responsible for its management) and the person managing the block are one and the same.

Likewise, where a resident management company does not own the freehold but is set up and run by the residents and manages the premises on behalf of the residents this would also be excluded as the work is only in respect of the residents’ own premises and would not be operating in the normal course of business.

What do we mean by ‘in the course of business’

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work ‘in the course of business’ [as referred to in sections 83 and 84 of the Act](#). The requirement will therefore not apply to ‘informal’

arrangements where a person is helping out rather than being paid for a role which is their usual line of work. Some examples of 'informal arrangements' which would not come under the definition of 'in the course of business' are set out below:

- someone looking after the letting or management of a rented property or properties on behalf of a family member or friend who owns the property/properties, where the person is helping out and doesn't get paid or only gets a small thank you gift of minimal value;
- a friend who helps a landlord with the maintenance or decoration of their rented properties on an ad hoc basis;
- a person who works as a handyman or decorator who is employed by a landlord to repair or decorate their rented property or properties when needed;
- a landlord who occasionally looks after a friend's property or properties whilst they are away and doesn't get paid for it;
- a joint landlord who manages the property or properties on behalf of the other joint landlords.

Whilst it is not possible to cover all eventualities in this note one of the key issues to consider when deciding what could be considered an 'informal arrangement' is whether the person doing the letting or property management work is offering their services to genuinely helping out a friend or acquaintance, instead of being paid for their services..

Charities - the Order does not exclude charitable organisations because any charity that is not operating as a business will already be exempt from the requirement, Charities which find accommodation for homeless people in the private rented sector often deliberately mirror the activities of a letting agent but only work with homeless people. Unless they are charging a fee for this service it is likely that the charity could argue that is not operating in the course of a business and therefore be excluded from the duty.

SECTION 3: ENFORCEMENT

In order for the requirement for lettings and property management agents to belong to a redress scheme to be effective there needs to be a process for ensuring compliance and for there to be 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 will be able to enforce the regulations and issue the penalty notices, as well as housing officers.

For failure to publish prices on a website, the enforcement authority will be the local authority in whose area the head office of the lettings agent or property manager who has not complied with the requirement.

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 and is required to be a member of a redress scheme, but has not joined.

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)

Each scheme will publish a list of members on their respective websites so it will be possible to check whether a lettings agent or property manager has joined one of the schemes.

The expectation is that a £5,000 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. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.

The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.

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

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.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate). It is up to each local authority to decide who should serve the notice.

The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 2: Representations and Objections

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent 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 explains:

- i) why the fine is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;

v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

Step 4: Appeals

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

- 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.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on 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

If the lettings agent or property manager does not pay the fine within the period specified the authority 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 enforcement authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.

