

For publication

The Redress Schemes For Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014. Enforcement of Fees and Charges

For publication

Meeting: Cabinet

Date: 12 September 2017

Cabinet portfolio: Cabinet Member for Health and Wellbeing

Report by: Health and Wellbeing Manager

1.0 Purpose of report

This report outlines the arrangements for the implementation and 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). The scheme gives powers to local authorities to impose a fine of up to £5000 if an agent fails to join a government authorised 'redress scheme'.

2.0 Recommendations

- 2.2 That the Council's functions and responsibilities under The Redress Schemes For Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, be delegated to the Health and Wellbeing Manager and Private Sector Housing Manager.
- 2.3 That any monetary penalties received in connection with the Order be used to fund the costs of enforcing the order and any other work in relation to the Private Sector Housing Function.

3.0 Report details

- 3.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (**Appendix A**), 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.
- 3.2 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.
- 3.3 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)
- 3.4 The schemes deal with breaches of letting agency codes of conduct and issues including:
- Lack of transparency about fees for tenants
 - Inaccurate property descriptions
 - Disputes about refunds of holding deposits taken to reserve a property
 - Inaccurate accounting and not passing tenants' rents to their landlord
 - Slow or poor service
- 3.5 Redress schemes typically require letting agencies to:
- Follow a code of practice
 - Have an in-house complaints procedure
 - Cooperate with any investigation and agree to pay compensation promptly if the redress scheme awards it.

- 3.6 Business guidance from the Department for Communities and Local Government (DCLG) for lettings agents and property managers was published on 8 October 2014, titled “Lettings Agents and Property Managers Which Government approved redress scheme do you belong to?” (**Appendix B**). “Guidance for Local Authorities” was published in December 2014 (**Appendix C**).
- 3.7 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 which are set out in DCLG guidance “Guidance for Local Authorities” (**Appendix C**).
- 3.8 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.
- 3.9 It is proposed that Chesterfield Borough Council’s approach to any breach should be to impose the £5000 maximum penalty and consider any representations made on a case by case basis.

Implementation

- 3.10 The Private Sector Housing Team will enforce the legislation on a largely reactive basis, by investigation of complaints / intelligence received concerning unregistered agents. However proactive work will be undertaken in the form of:
- Marketing campaigns have and will continue to be undertaken to mitigate this risk so letting agents / property managers in the private rented sector are aware of their duties with regards to the regulations.
 - Proactive checks of required membership will be undertaken as part of Mandatory Licence Applications for Houses in Multiple Occupation (HMO). All agents and property

managers will be required to confirm details of scheme membership as part of all HMO Licence applications.

- A search for membership of a scheme will take place upon receipt of any housing related complaint involving a letting or management agent and this will form part of the council's normal enforcement process.

3.11 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. 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. If the letting agent or property manager does not pay the monetary penalty within the period specified the authority can recover the penalty with the permission of the court as if payable under a court order.

3.12 There is a right of appeal to the First Tier Property Tribunal (RPT) against any penalty imposed. The appeal must be made within 28 days of the day on which the final notice was sent.

3.13 The local authority can impose further penalties if a lettings agent or property manager fails to join a redress scheme despite already having 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 if they continue to fail to join a scheme.

3.14 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.

4.0 **Human resources/people management implications**

4.1 All administration and enforcement of legislation in connection with The Redress Schemes For Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, will be carried out within the existing

resources of the Private Sector Housing Team. A restructure of this team took place earlier in 2017 which has taken account of the implementation of this legislation.

5.0 Financial implications

5.1 This initiative is being delivered within existing resources.

6.0 Legal and data protection implications

6.1 Any legal considerations are contained within the body of the report.

7.0 Consultation

7.1 There is no legal requirement contained within The Redress Schemes For Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, for local authorities to consult. However, the Private Sector Housing Team have written to all known Property Agents / Managers within Chesterfield Borough to advise them of the legislation, the duties this places on agents and the penalties for non-compliance.

8.0 Risk management

8.1 Because the local authority can charge fees for these core functions the risk to the Council is low.

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
There is a risk that there will remain Lettings Agents and Property Managers operating within Chesterfield Borough who will not be registered with one of the three Government Redress Schemes.	M	M	<ul style="list-style-type: none"> The Private Sector Housing Team will enforce the legislation on a reactive basis. Marketing campaigns have and will continue to be undertaken to mitigate this risk so letting agents / property managers 	M	L

<p>Meaning that tenants living in properties managed by those agents / managers will not have the same protection as tenants whose agents / managers have registered.</p>			<p>in the private rented sector are aware of their duties with regards to the regulations.</p> <ul style="list-style-type: none"> • A search for membership of a scheme will take place upon receipt of any housing related complaint involving a letting or management agent and this will form part of the council's normal enforcement process. • Proactive checks of required membership will be undertaken as part of Mandatory Licence Applications for Houses in Multiple Occupation (HMO). All agents and property managers will be required to confirm details of scheme membership as part of all HMO Licence applications. 		
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9.0 Equalities Impact Assessment (EIA)

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 The equalities impacts of the proposals in this report for race, disability, gender, sexual orientation, age and religion have been considered and assessed in the Preliminary Equalities Impact Assessment (**Appendix D**). However, it is considered that there would be no adverse equalities impact on the protected characteristics.

10.0 **Alternative options and reasons for rejection**

10.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, from 1 October 2014, places a legal requirement for all letting agents and property managers in England to register with one of three Government-approved redress schemes. Local authorities have a statutory duty to enforce these regulations. As such there are no other options to consider in relation to this legislation.

11.0 **Recommendations**

11.2 That the Council's functions and responsibilities under The Redress Schemes For Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, be delegated to the Health and Wellbeing Manager and Private Sector Housing Manager.

11.3 That any monetary penalties received in connection with the Order be used to fund the costs of enforcing the order and any other work in relation to the Private Sector Housing Function.

12.0 **Reasons for recommendations**

12.1 To ensure that the Health and Wellbeing Manager and Private Sector Housing Manager is authorised to exercise all necessary operational enforcement powers in respect of the The Redress Schemes For Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

12.2 To ensure that the Chesterfield Borough Council (the local housing authority) is able to undertake its statutory duty to serve remedial notices and to serve penalty charge notices in respect of The Redress Schemes For Letting Agency Work and Property

Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

Decision information

Key decision number	745
Wards affected	All Wards
Links to Council Plan priorities	To improve the health and wellbeing of people in Chesterfield Borough. To reduce inequality and support the more vulnerable members of our communities.

Document information

Report author	Contact number/email
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Background documents	
These are unpublished works which have been relied on to a material extent when the report was prepared.	
<i>This must be made available to the public for up to 4 years.</i>	
Appendices to the report	
Appendix A	The Redress Schemes For Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014
Appendix B	Lettings Agents and Property Managers Which Government approved redress scheme do you belong to?
Appendix C	Guidance for Local Authorities
Appendix D	Preliminary Equalities Impact Assessment

