THE INTRODUCTION OF PENALTY CHARGES FOR LETTINGS & MANAGING AGENTS FAILING TO REGISTER WITH REDRESS SCHEMES (REP1377)

EXECUTIVE SUMMARY

1. Under the “Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014” all letting and managing agents have to register with one of three Redress Schemes. The intention is to ensure that private sector tenants who receive an unfair service from an agent have a straightforward independent option to hold the agent to account. Tenants are able to take their complaint to a Redress Scheme Ombudsman for a legally binding decision and could receive compensation. The three official schemes are run by The Property Ombudsman, Ombudsman Services Property and the Property Redress Scheme.

2. The provision for enforcement is set with the Local Housing Authority and it is the Councils duty to investigate where an agent is alleged to have failed to register with one of the three schemes and issue a financial penalty in cases of non compliance.

3. This report sets out a recommendation for delegated enforcement powers to be given to the Private Sector Housing team and presents a proposed financial penalty structure for a series of offences.

Is the report Open or Exempt? | Open
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Wards Affected: | All Wards in the District

Cabinet Member: | Councillor Sue Allen, Cabinet Member for Housing

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1 INTRODUCTION

1.1 There are around 12,000 lettings agents in England, handling approximately two-thirds of all residential lettings. The size of the private rented sector in England is increasing, up from 2.4m households in 2005 to 4.0m in 2012. In line with the Government’s policy to protect tenants, it is important that people living in this sector have the ability to complain if they receive poor service from their agent. Common complaints include how agents handle security and holding deposits, missed appointments, pressure to take tenancies, poor customer service, misleading adverts, opaque and variable fees and repairs not being carried in a timely or satisfactory manner.

1.2 Under the “Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014”, all persons who engage in letting agency work or property management work have to register with one of three official redress schemes approved by the Secretary of State to ensure their tenants and leaseholders have a straightforward option to hold agents to account. Anyone who feels they get a poor service from their letting agent will then be able to take their complaint to one of three Redress Schemes and could receive compensation. The three official schemes are run by The Property Ombudsman, Ombudsman Services Property and the Property Redress Scheme. Certain exemptions from the requirements are specified including registered social housing providers and Local Authority housing providers who are already overseen by other Ombudsman Schemes.

1.3 Article 3 Imposes the requirement for persons who engage in lettings agent’s works to belong to a scheme and Article 5 imposes the same requirement for persons who engage in property management work. An agent’s registration and compliance can be quickly checked online with any of the three registered schemes.

1.4 Article 7 of the Order makes provision for enforcement and the accompanying Explanatory Memorandum states that the requirements should be enforced at a local level by Private Sector Housing teams, who have a working knowledge of agents operating in their area.

2 INTERVENTION AND ENFORCEMENT

2.1 Enforcement should always be proportionate and the recommended approach is designed to be cost effective by enabling the imposing a fine on an agent significantly greater than the anticipated cost of joining an official scheme. This is to minimise the impact on the courts and tribunals. Article 8 of the Order, therefore permits a Local Authority to impose a fine of up to £5000 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.

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<tr>
<th>Number of Offences</th>
<th>Level of Proposed Fine</th>
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<tr>
<td>First Offence</td>
<td>£100</td>
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<tr>
<td>Second Offence</td>
<td>£2500</td>
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<tr>
<td>Third and subsequent Offences</td>
<td>£5000</td>
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2.2 The schedule to the Order provides that where an enforcement authority intends to impose a penalty they must give written notice of their intention, setting out the reasons for the penalty, the amount of the penalty and explain that there is a 28 day period to make written representations or objections. At the end of the 28 day period the enforcement authority must decide 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 explain
again why the fine is being imposed, the amount to be paid, how payment may be made, and the consequences of failing to pay. It must also explain about the right to appeal to a First Tier Tribunal and that such appeal must be made within 28 days after the imposition of the fine.

2.3 The Council may halt the process of imposing or pursuing a penalty at any stage. Any written representations or appeals will be discussed with the Head of Service for Private Sector Housing and each case assessed on its merits.

2.4 Should an agent be able to demonstrate compliance to Private Sector Housing or even sign up to a scheme during any stage of the communication and enforcement process, then no fine would be issued and any Notice of Intent subsequently withdrawn, if this occurs within the 28 days specified before payment of a penalty is due. A penalty fine is only likely to be enforced against an agent who has refused to comply with the requirements of the Order. Repeat fines are appropriate where agents remain unregistered to an official Redress Scheme.

3 HOW DOES THIS RELATE TO EAST SUFFOLK BUSINESS PLAN?

3.1 This proposal supports the Eastsuffolk vision through the provision of a scheme designed to improve the quality of life for everyone growing up in, living in and working in Eastsuffolk.

3.2 The Three-pronged Strategy is complimented by the empowerment of the private rented sector residents, ensuring they have a voice against unscrupulous property agents and better protecting their housing rights, communities and health. Economic growth will not be fettered by the possibility of financial penalties on poor managing agents whilst the responsible and professional agents in the sector are expected to flourish. A small amount of revenue is expected to be generated from the application of financial penalties but this cannot be easily quantified or projected.

3.3 This initiative underpins the Housing Critical Success Factors of the Business Plan by ensuring agents are advertising their premises appropriately, so enabling residents in the private rented sector are able to apply for appropriate housing from the outset.

3.4 The planned Actions for SCDC and WDC are supported by supporting and protecting families who may be vulnerable to seek assistance at an early stage. Opportunities for affordable housing may increase once tenants are more aware of their right to complain against fees and charges.

4 FINANCIAL AND GOVERNANCE IMPLICATIONS

4.1 This initiative is being delivered within existing resources, however, a small Government support grant of £750 was received and subsequently divided between the Private Sector Housing and Housing Options teams to assist with administrative costs in the identification of agents who do not yet appear to be registered.

5 OTHER KEY ISSUES

5.1 This report has been prepared having taken into account the results of an Equality Impact Assessment, a Sustainability Impact Assessment and a Partnership Impact Assessment which have not highlighted any significant impacts.

6 CONSULTATION

6.1 Non required.

7 OTHER OPTIONS CONSIDERED

7.1 No other options are possible as LA enforcement is mandatory under the Order. Only the level of fine and delegated authority for enforcement needs to be determined by each LA.
8 REASON FOR RECOMMENDATION

8.1 LA enforcement is mandatory as specified within the Order but the level of fine and delegated authority for enforcement needs to be determined by each LA.

RECOMMENDATIONS

1. That delegated authority is given to the officers of Private Sector Housing to investigate and enforce the requirements of the Order
2. That the Committee agrees the financial penalty structure as being proportionate and is adopted into the Authorities Book of Fees and Charges

APPENDICES - None

BACKGROUND PAPERS.

Please note that copies of background papers have not been published on the Council's website but copies of the background papers listed below are available for public inspection free of charge by contacting the relevant Council Department.

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<th>Date</th>
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