

TONBRIDGE & MALLING BOROUGH COUNCIL
HOUSING AND ENVIRONMENT SERVICES ADVISORY BOARD

01 June 2015

Report of the Director of Planning, Housing & Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 REDRESS SCHEME FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK

Summary

Since 1 October 2014 any person engaged in lettings agency or property management work must be a member of a Government approved redress scheme. This report draws Members' attention to the changes and seeks delegated authority to enforce the legislative provisions relating to this area of work.

1.1 Background

1.1.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013, introduced new enforcement responsibilities for Local Authorities.

1.1.2 Since 1 October 2014, all lettings agents and property managers in England have been under a legal obligation to become a member of a Government approved redress scheme.

1.1.3 The three approved redress schemes are:

- Ombudsman Services Property (www.ombudsman-services.org)
- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

1.1.4 The intention is to make it easier for tenants and landlords to complain about bad service, prevent disputes escalating and ultimately to seek to improve standards of those managing and operating accommodation in the private rented sector and to drive up property standards.

1.1.5 To ensure that the requirement for lettings agents and property managers to belong to a redress scheme is effective, enforcement arrangements have been

set out in the Order. As a District Council, Tonbridge & Malling Borough Council is the “enforcement authority” under the Order.

- 1.1.6 An enforcement authority can impose a fine (“a monetary penalty”) of up to £5,000 if it is satisfied, on the balance of probabilities, that a person is engaged in letting agency or property management work and has failed to join one of the three approved schemes (and is not exempt from the requirement to be a member of such a scheme).
- 1.1.7 The level of the penalty is to be determined by the enforcement authority. However, there are strict procedures set out in the Order that must be followed before a penalty can be imposed. These include serving a Notice of Intent on the relevant person who then has 28 days in which to make representations or objections. Following careful consideration of any representations or objections received, the enforcement authority must decide whether or not to impose a monetary penalty, with or without modifications. This must be in the form of a Final Notice, against which appeals can be made to the First-Tier Tribunal.
- 1.1.8 The enforcement authority may recover the monetary penalty on the order of the court, as if payable under a court order. Any monetary penalties received by an enforcement authority may be kept by the authority and used for any of its functions.
- 1.1.9 The enforcement guidance issued by DCLG states that: *“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”*.

1.2 Options

- 1.2.1 The available options are limited as the Council is under a mandatory duty to enforce the scheme. Therefore, delegated authority needs to be given to the appropriate Officer of the Council in order that we are in a position to respond to this duty.
- 1.2.2 However, the level of the monetary penalty is at the Council’s discretion. The options are:
- to agree the monetary penalty be set at the maximum of £5,000 in accordance with Government guidance (unless there are extenuating circumstances); or
 - to agree that the monetary penalty be set at some other amount.
- 1.2.3 As the DCLG guidance indicates an expectation of a £5,000 fine, it seems appropriate to choose this option. Any extenuating circumstances at the time will then be taken into account and the fine lowered if appropriate.

1.3 Legal Implications

- 1.3.1 Tonbridge & Malling Borough Council, as of 1 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.
- 1.3.2 The Council is obliged to enforce the Order and discharge the enforcement functions referred to in this report.

1.4 Financial and Value for Money Considerations

- 1.4.1 Enforcement of the Order is not likely to be onerous and will be carried out within existing resources of the Council’s Private Sector Housing Team.
- 1.4.2 It is not anticipated there will many (if any) fines issues, as the monetary penalty is likely to be a significant deterrent to those engaged in the relevant work. As such, the Council should not expect to receive any regular income from the issuing of monetary penalties under the Order.

1.5 Risk Assessment

- 1.5.1 None

1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

CABINET is RECOMMENDED to:

- 1.7.1 **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 to the Director of Planning, Housing & Environmental Health.
- 1.7.2 **AGREE** the penalty for non-compliance with the Order be £5,000, unless extenuating circumstances apply.
- 1.7.3 **AGREE** to authorise the Director of Planning, Housing & Environmental Health to determine what are extenuating circumstances and to determine what alternative penalty is appropriate in each case.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers: Nil

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