



**AGENDA ITEM: 15**

**CABINET: 13 January 2015**

**COUNCIL: 25 February 2015**

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**Report of: Assistant Director Community Services**

**Relevant Managing Director: Managing Director (People and Places)**

**Relevant Portfolio Holder: Councillor D Sudworth**

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**SUBJECT: REDRESS SCHEMES FOR LETTINGS AGENCY WORK AND  
PROPERTY MANAGEMENT WORK**

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Wards affected: Borough wide

### **1.0 PURPOSE OF THE REPORT**

1.1 To inform Members of the enforcement powers provided to the Council by the Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

### **2.0 RECOMMENDATIONS**

- 2.1 That the Assistant Director Community Services be given delegated authority to carry out enforcement action under the Order.
- 2.2 That the Enterprise and Regulatory Reform Act 2013 be included in the Acts listed in the Scheme of Delegation to Chief Officers under 4.2D (Assistant Director Community Services).
- 2.3 That Members agree to the monetary penalty for failure to comply be set at £5,000, with the discretion to impose a lesser penalty where there are extenuating circumstances.

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### **3.0 BACKGROUND**

3.1 The Enterprise and Regulatory Reform Act 2013 (the Act) received Royal Assent on the 25 April 2013. Under s.83 of the Act, the Secretary of State may by order,

require persons who engage in lettings agency work or property management work, be members of a redress scheme for dealing with complaints. Any redress scheme must be approved by the Secretary of State.

3.2 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (the Order), was made on the 3<sup>rd</sup> September 2014 and came into force on the 1<sup>st</sup> October 2014. The Order places the enforcement responsibility at District Council level.

3.3 The Government approved schemes are:

- Ombudsman Services Property
- Property Redress Scheme
- The Property Ombudsman

3.4 Where the enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme, the authority may serve a notice requiring the person to pay the authority a monetary penalty. The level of the penalty is to be determined by the authority but must not exceed £5,000.

#### **4.0 WHAT IS MEANT BY LETTINGS AGENCY WORK?**

4.1 Lettings agency work means tasks carried out by an agent in the course of a business 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

4.2 The following is not classed as lettings agency work:

- 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;
- providing a way for landlords or tenants to continue to communicate directly with each other

4.3 Social housing providers are not covered by the scheme nor are local authorities who help people find tenancies in the private rented sector as they are covered by the Housing Ombudsman Scheme. Higher and further education establishments providing accommodation are also excluded as are employers who find homes for their employees.

#### **5.0 WHAT IS MEANT BY PROPERTY MANAGERS WORK?**

5.1 Property management work means tasks carried out by a person in the course of their business in response to instructions from another person who wishes to arrange services, repairs, maintenance, improvement or insurance or to deal with any other aspect of the management of residential premises. For example, high street and web-based agents, agents managing leasehold blocks of flats

and other organisations who manage property on behalf of the landlord or freeholder.

5.2 The requirement to belong to a redress scheme does not apply to a manager of commonhold land, student accommodation provided by an education establishment, refuge homes or right to manage companies. Social housing providers and local authorities are also excluded as they are covered by the Housing Ombudsman Scheme.

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

- a dwelling house let under a long lease (includes leases granted for more than 21 years, leases granted under the right to buy and shared ownership leases);
- an assured tenancy under the Housing Act 1998; or
- a protected tenancy under the Rent Act 1977

5.4 Property management work arises where a landlord instructs 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 that contains flats let under a long lease or let to assured or protected tenants.

## **6.0 LANDLORDS**

6.1 Where a landlord lets and manages their property directly, they will not generally be caught by the definitions given above as they are not acting on instructions from another party.

## **7.0 RESIDENT MANAGEMENT COMPANIES**

7.1 Resident management companies usually arise where a management company owns the freehold of a building and manages the building directly. Under these circumstances, there is no requirement for the company to join a redress scheme as they are not managing the premises on the instruction of someone else.

## **8.0 CHARITIES**

8.1 Charities are not excluded from the requirement to join a redress scheme as they will already be exempt if they are not operating as a business. Charities that find accommodation for homeless people in the private rented sector are also excluded unless they charge a fee for the service.

## **9.0 FAILURE TO JOIN A REDRESS SCHEME**

9.1 The local authority can impose a monetary penalty of up to £5,000 where a lettings agent or property manager has not joined a redress scheme where they are required to do so.

9.2 The authority must give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The letting agent or property manager will have 28 days (starting the day after the notice of intent

was served) to make written representations or objections to the authority. At the end of the 28 day period, the authority must decide whether to impose the penalty. If the penalty is to be issued, a final notice must be served giving at least 28 days for payment to be made.

- 9.3 The lettings agent or property manager has a right of appeal against the penalty to the First Tier Tribunal. The appeal must be made within 28 days of the day on which the final notice was sent.
- 9.4 If a lettings agent or property manager fails to join a redress scheme after the imposition of a monetary penalty, the authority can impose further penalties. There is no limit to the number of penalties that can be imposed if they continue to fail to join a scheme.
- 9.5 Each of the approved redress schemes will publish a list of members on their respective websites enabling the public and the local authority to check whether a lettings agent or property manager has joined.

## **10.0 LEVEL OF MONETARY PENALTY**

- 10.1 Guidance issued on the 4<sup>th</sup> December 2014 recommends that the penalty be set at £5,000 with the local authority having the discretion to impose a lesser penalty where there are extenuating circumstances.

## **11.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 11.0 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **12.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 12.1 There are no significant financial or resource implications in undertaking enforcement action under this legislation.
- 12.2 There is the potential to generate an income for the Council where enforcement action is taken that results in the imposition of a penalty.

## **13.0 RISK ASSESSMENT**

- 13.1 The implementation of this legislation provides the Council with increased powers to ensure that lettings agents and property managers join an approved redress scheme. In turn, there is an opportunity for the Council to increase revenue income where a penalty is imposed due to the failure of an agent or property manager to comply.
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## **Background Documents**

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

07/10/14 Lettings Agents and Property Managers: Which Government approved redress scheme do you belong to?

<https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes>

18/11/14 Enterprise and Regulatory Reform Act 2013

<http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>

18/11/14 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

<http://www.legislation.gov.uk/ukdsi/2014/9780111116821/article/8>

## **Equality Impact Assessment**

There is a direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report

## **Appendices**

1. Equality Impact Assessment
2. Minute of Cabinet 13 January 2015



# Equality Impact Assessment Form



<b>Directorate:</b> Community Services		<b>Service:</b> Private Sector Housing	
<b>Completed by:</b> Laura Lea		<b>Date:</b> 18 <sup>th</sup> November 2014	
<b>Subject Title:</b> Redress Schemes for Lettings Agency Work and Property Management Work			
<b>1. DESCRIPTION</b>			
Is a policy or strategy being produced or revised:	No	<i>*delete as appropriate</i>	
Is a service being designed, redesigned or cutback:	No		
Is a commissioning plan or contract specification being developed:	No		
Is a budget being set or funding allocated:	No		
Is a programme or project being planned:	No		
Are recommendations being presented to senior managers and/or Councillors:	Yes		
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty ( <b>Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations</b> ):	Yes		
Details of the matter under consideration:	New legislation places a duty on the Council to enforce lettings agents and property managers to join an approved redress scheme.		
<p><i>If you answered <b>Yes</b> to any of the above go straight to Section 3</i></p> <p><i>If you answered <b>No</b> to all the above please complete Section 2</i></p>			
<b>2. RELEVANCE</b>			
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	Yes	<i>*delete as appropriate</i>	
If <b>Yes</b> , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered <b>Yes</b> go to Section 3</i>	By enforcing the legislation, the Council can ensure that lettings agents and property managers operating in the private sector are providing their customers with a right of redress against their working practices where they feel they have not been properly treated. This places a further element of protection for vulnerable client groups.		
If you answered <b>No</b> to both Sections 1 and 2 provide details of why there is no impact on these three groups: <i>You do not need to complete the rest of this form.</i>			
<b>3. EVIDENCE COLLECTION</b>			
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	Lettings agents and property management companies operating in the private sector, private rented sector tenants.		
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?			
Which of the protected characteristics are most relevant to the work being carried out? Age	No	<i>*delete as appropriate</i>	

Gender	No
Disability	No
Race and Culture	No
Sexual Orientation	No
Religion or Belief	No
Gender Reassignment	No
Marriage and Civil Partnership	No
Pregnancy and Maternity	No
<b>4. DATA ANALYSIS</b>	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	The requirement to join a redress scheme and the duty of the Council to enforce that requirement have only just been introduced therefore there isn't currently a service in place.
What will the impact of the work being carried out be on usage/the stakeholders?	There are no views available as the service is not currently in operation.
What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	None
If any further data/consultation is needed and is to be gathered, please specify:	N/A
<b>5. IMPACT OF DECISIONS</b>	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	The introduction of the enforcement power will have a positive impact on anyone with renting in the private sector who has a protected characteristic. By ensuring a letting agent/property manager is a member of a redress scheme, management practices will be improved within the sector as the tenant will have an independent body to address any complaints to.
<b>6. CONSIDERING THE IMPACT</b>	
If there is a negative impact what action can be taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	N/A
What actions do you plan to take to address any other issues above?	No actions  <i>If no actions are planned state no actions</i>
<b>7. MONITORING AND REVIEWING</b>	
When will this assessment be reviewed and who will review it?	1 year after the Council decision to include the enforcement power within the list of delegations (February 2016)



## MINUTE OF CABINET – 13 JANUARY 2015

**71. REDRESS SCHEMES FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK**

Councillor Sudworth introduced the report of the Assistant Director Community Services which advised of the enforcement powers provided to the Council by the Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

In reaching the decision below, Cabinet considered the details set out in the report before it and accepted the reasons contained therein.

- RESOLVED
- A. That the Assistant Director Community Services be given delegated authority to carry out enforcement action under the Order.
  - B. That the Enterprise and Regulatory Reform Act 2013 be included in the Acts listed in the Scheme of Delegation to Chief Officers under 4.2D (Assistant Director Community Services).
  - C. That the monetary penalty for failure to comply be set at £5,000, with the discretion to impose a lesser penalty where there are extenuating circumstances.

