

Agenda item:

Title of meeting: Cabinet Member For Housing

Date of meeting: 16th March 2015

Subject: The Redress Scheme for Letting Agents and Managing Agents.

Report by: Alan Cufley Head of Corporate Assets, Business & Standards

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 To appraise the Cabinet Member for Housing on the implications of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014.
- 1.2 To seek approval from the Cabinet Member for Housing that the Private Sector Housing Team undertake proactive enforcement in respect of the Order

2. Recommendations

It is recommended that the Cabinet Member for Housing;

- 2.1 **Approves that the enforcement of this legislation is undertaken proactively by the Private Sector Housing Team (*and the income generated from any fines imposed is kept within the Housing Standards budget*).**
- 2.2 **Gives delegated authority to the Head of Corporate Assets, Business and Standards to review level of fine imposed dependent on circumstances and representation**
- 2.3 **Authorises engagement with neighbouring authorities to discuss the manner in which they will be addressing enforcement of this legislation**

3. Background:

- 3.1 New legislation has been introduced which means that from 1 October 2014 it has been a legal requirement for lettings agents and property managers in England to join one of three Government approved redress schemes.

- 3.2 Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This requirement will mean that tenants and landlords, with agents in the private rented sector; leaseholders and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received.
- 3.3 Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards throughout the private rented market.
- 3.4 The requirement to be part of one of the recognised schemes must be enforced by the local authority (Private Sector Housing Team), where an agent or property manager who should have joined a scheme has not done so, can impose a fine of up to £5,000.

4. Process Involved in Issuing a Fine.

- 4.1 The authority must give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty to the person or company that has not complied with the legislation.
- 4.2 The lettings agent or property manager will have 28 days to make written representations or objections to the Private Sector Housing team, starting from the day after the date the notice of intent was sent.
- 4.3 At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose a fine and, if so, issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made.
- 4.4 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.

5. Reasons for recommendations:

- 5.1 The Private Sector Housing team currently work very closely with the majority of professional letting and management companies within the city. The team also deals with individual landlords and locally based, non-commercial, managing agents who may, due to this legislation, be required to register but have not fully understood the requirements set by the legislation.
- 5.2 It is proposed that the maximum fine of £5000 should be considered, but a lower fine can be charged if the enforcement authority is satisfied that there are extenuating circumstances.
- 5.3 The decision to determine the level of fine will take into account a number of specific points, but the main areas will be the representations made by the

company / person including whether the maximum fine of £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to the organisation going out of business.

- 5.4 It is anticipated that during early consideration of the activity of an agent or property manager they will be given a short grace period in which to join one of the redress schemes rather than impose a fine.

6. Equality impact assessment (EIA)

- 6.1 The pre impact assessment has indicated that a full impact assessment is not required.

7. City Solicitor's comments

- 7.1 The scheme refers specifically to persons engaged in either property maintenance work or letting agency work, it is applicable to all persons and each office. Subject to complying with service of an appropriate notice of intention and default by the agent then the Authority may impose a financial sanction for non-scheme membership up to a maximum of £5000. The imposition of a fine would need to be upon a proportionate basis considering all the circumstances of the individual case. Upon a fine being imposed appeal lies to the First Tier Tribunal. Costs awards can be made in this Tribunal; in the circumstances it is incumbent upon the Authority to be able to justify its earlier decision and level of sanction. See: The Tribunal Costs and Enforcement Act 2007, section 29(1).

8. Head of Finance's comments

- 8.1 In line with the existing Portfolio Reserve regime, all service managers are expected to manage their services within their existing cash limits. As a result, due to there being no additional external funding to meet this new statutory enforcement role, it has been agreed that due to the adhoc nature of the income generated through fines, that such income be treated as windfall, and be retained within the service, to meet the additional enforcement costs going forward.
- 8.2 It should be noted that any shortfall in income to fund enforcement costs in the year will either be met from the Portfolio Reserve or by delivering savings from elsewhere within the Portfolio.

.....
Signed by:

Alan Cufley
Head of Corporate Assets, Business and Standards

Appendices:

None

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
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/contents

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

Councillor Steve Wemyss
Cabinet Member for Housing