

Enforcement of the new legal requirement for letting/managing agents to register with a Redress Scheme

Summary:

From 1 October 2014, regulations came into force which provide that persons involved in letting agency work or/and property management work in the private rented sector, are required to be registered with an approved redress scheme.

The Council is the enforcing authority for this statutory requirement and is required to take enforcement action where it is aware a person engaged in letting agency or property management work is not registered with an approved redress scheme. A financial penalty of up to £5,000 can be levied by the authority for non-compliance.

The Council's Private Housing Standards team is responsible for this area of enforcement and the following recommendations for enforcement were approved by the Cabinet Member for Homes and Neighbourhoods on 2 December 2014.

Approved Recommendations:

- a) the arrangements detailed in the following report, for the discharge of the Council's duty to enforce the requirement on persons engaged in Lettings Agency Work and Property Management Work, to register with an approved redress scheme.
 - b) that Council officers are authorised to carry out the functions detailed in the following report and set out in Appendix 1 to the report
 - c) the framework for setting financial penalties set out in paragraph 5 of the report
 - d) that the penalty income will fund the administration costs of discharging the Council's statutory duty, with any surplus income being used to fund the Private Housing Standards team's activities to improve housing and management standards within the private rented sector
 - e) that the Director of Housing and Neighbourhood Services be authorised to amend the enforcement arrangements set out in the report, including officer authorisations and the framework for setting financial penalties, as she considers appropriate.
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**REPORT TO: The Cabinet Member for Homes and Neighbourhoods
(paragraphs 1-5)
Proposed Arrangements for Discharging the Council's Duty to Enforce the
Statutory Requirement that Persons Engaged in Letting Agency or
Property Management Work are Registered with an Approved Redress
Scheme**

1.0 SUMMARY

- 1.1 From 1 October 2014, regulations came into force which provide that persons involved in letting agency work or/and property management work in the private rented sector, are required to be registered with an approved redress scheme.
- 1.2 The Council is the enforcing authority for this statutory requirement and is required to take enforcement action where it is aware that a person engaged in letting agency or property management work is not registered with an approved redress scheme. A financial penalty of up to £5,000 can be levied by the authority for non-compliance.
- 1.3 It is recognised nationally that it will be the housing teams already dealing with the private rented sector that would take on this responsibility for enforcement. It is therefore proposed that the Council's Private Housing Standards team will take on the responsibility in Sheffield, as the team is already responsible for regulating the private rented sector and are experts in this field. This report seeks approval for the Council to exercise its enforcement duties in the way described in the report.
- 1.4 This new work area creates an additional resource pressure for the team. However, it is expected that there will not be a negative impact on the General Fund. It is intended that the Council's administration costs of discharging their statutory duty will be met out of the income raised from the penalties imposed on Letting Agents or Property Managers for non-registration with an approved redress scheme. Retaining the monies without detrimental effect on existing team budgets, also assists with other enforcement action to improve conditions in the private rented sector in the city in order. This pursues the Council's key objectives of achieving Safe and Secure Communities, making Sheffield a Vibrant City and a Great Place to Live.

2.0 WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

- 2.1 The Council's Private Housing Standards team often sees examples of bad management and unlawful practices from people and organisations who set themselves up to operate as Property Managers or Estate Agents.
- 2.2 No qualifications, experience or independent approval is needed to operate as a manager or agent, and bad practice can lead to frustration and an unpleasant experience for both landlords and tenants in the city.

2.3 The introduction of this legislation is welcomed as it will help discourage incompetent property managers and agents, and those lacking the necessary knowledge and expertise, from operating in Sheffield's private rented sector.

2.4 It will encourage the better managers and agents to be even more diligent, and will provide those tenants and landlords who do receive a poor service with a means of getting redress including compensation.

3.0 OUTCOME AND SUSTAINABILITY

3.1 The arrangement contributes to the Council's Corporate Plan 2011-14 outcomes:

3.2 Safe and Secure Communities

- Communities to *be* safe and secure
- Communities to *feel* safe and secure

Living in a privately rented property which is badly managed exposes tenants to possible hazards in the home. Better management by more accountable agents and property managers should help to reduce hazards. Where rogue agents and managers harass their tenants, or fail to keep to the proper legal procedures, this leads to the affected tenant feeling insecure and vulnerable. Discouraging rogue property managers will help us to alleviate this problem.

3.3 A Great Place to Live

- Desirable homes
- Thriving neighbourhoods
- Place management

Improved standards and management of properties should contribute significantly to community integration and the perception of the neighbourhood as well as to more desirable properties.

3.4 Vibrant City

- Destination of choice

Having a well-managed private rented sector in the city is crucial to it being an attractive and desirable place for people to come to work and study. The first experience of the city for many students and young people coming to work in the city, will be as private tenants.

4.0 ABOUT THE NEW LEGISLATION

4.1 **Background and overview of legislation:** From 1 October 2014, relevant persons involved in letting agency work or/and property management work in the private rented sector, are required to be registered with a Secretary of State approved redress scheme. There are

presently 3 approved schemes: the Property Ombudsman, Ombudsman Services Property and the Property Redress Scheme.

4.2

Although we cannot be sure how many agents are not registered, we are already aware of a significant number who are not. We consider that this new legislation will be a valuable tool in tackling irresponsible letting and management in the private rented sector. Standards of management and property conditions are enforced in Sheffield by the Private Housing Standards Team and the proposals which follow, propose that this team will carry responsibility for enforcing the requirement to belong to a redress scheme.

4.3

The requirement for property managers and agents to register with a redress scheme, and the local authority's duty to enforce the legislation, are introduced by The Enterprise and Regulatory Reform Act 2013 and The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014. Elsewhere in the report these two pieces of legislation are referred to together as, 'the regulations'.

4.4

It is not a criminal offence if a landlord or agent does not comply with the regulations. However the Council, has a duty to enforce compliance where it is satisfied, on the balance of probabilities, that a person who is required to register, has not registered with a redress scheme, and in such cases the Council can apply a monetary penalty up to a limit of £5,000.

4.5

There is a notice process that the Council must follow before imposing a penalty, giving the recipient the right to raise objections. Where the Council decides to apply a penalty there is a right of appeal to the First – Tier Tribunal. Where the Council decision is not appealed, or if appeal is not upheld, the Council may recover the penalty. If necessary, the Council may apply to the civil court for recovery.

4.6

The proposed administration process for discharging the Council's statutory duty under the regulation is set out in Appendix 1 to the report.

5. The financial penalties

5.1

This paragraph sets out the penalty framework, to be applied whenever the Council decides the penalty to be imposed in individual cases. It is the intention that the penalty set will be sufficient to meet the Council's administrative costs for discharging this statutory duty. In addition, it is intended that the penalties set under this framework, will act as an effective deterrent against non registration. The amount of penalty payable in each case will be £5,000, which is the guidance from Department of Communities and Local Government.

5.2

However the Council may decide to reduce the amount of the set penalty. The following paragraphs set out the circumstances where the Council may consider reducing the set penalty.

- 5.3 Where the Council is satisfied, on the balance of probabilities, that the Letting Agent or Property Manager, when operating as such, failed to comply with the requirements under the regulations, but had ceased to operate in that capacity at the time of issue of the Notice of Intent, then the penalty may be reduced to £3,000.
- 5.4 Where representations or objections are received from a person who has been served a Notice of Intent, and the Council is satisfied from the information provided that, on a balance of probabilities, there are exceptional circumstances, and that as a consequence, the application of the full financial penalty will not serve the strategic goal of improving housing or management standards within the private rented sector in the city, it may impose a reduced penalty. Such circumstances could, for example include, but are not be limited to:
- the agent or manager not having set out to engage in property management, or estate agency, as a course of business,
 - exceptional personal hardship, or
 - having other reasonable excuse for failing to comply with the property redress scheme regulations (not knowing about the regulations will not itself usually amount to reasonable excuse).
- 5.5 Where the Council is satisfied, on a balance of probabilities, that a Letting Agent or Property Manager is being obstructive, in failing to answer reasonable questions put to them regarding their compliance with the requirement to register, or answers such questions falsely, or otherwise hinders the reasonable investigations of officers in relation to compliance, this will be taken into account where the Council is considering reducing the financial penalty and may be weighed against any factors in favour of reducing the financial penalty.
- 5.6 Where, a financial penalty has been imposed and the appeal process has been exhausted, or the time limit for appeal has been reached, but the Council is satisfied, on the balance of probabilities, that a Letting Agent or Property Manager still fails to comply with the regulations, the Council, may impose a further financial penalty. In accordance with the penalty framework, the penalty will be set at £5,000.
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Appendix 1

Procedure for the enforcement of the requirement for letting agents and property managers to belong to a Redress Scheme.

Investigation

Where information comes to the attention of Private Housing Standards that there may be non-compliance by a letting agent or property manager with the requirement to belong to an approved redress scheme, an investigation will be conducted by an officer within the Private Housing Standard team (the Investigating Officer). The Investigating Officer may be a Private Housing Standards Officer, Senior Private Housing Standards Officer, Tenancy Relations Officer or Legal and Policy Officer. Information may be received from the public, external organisations or any other person, or arise from a proactive investigation.

The investigation will include consulting the public registers of all the approved redress schemes, and may include any other lawful investigation activity that the Investigating Officer considers appropriate to establish whether the requirements of the regulations have been met. When the Investigating Officer has completed his investigation he will need to decide on the balance of probabilities, whether he is satisfied that there has been non-compliance by the letting agent or property manager of the redress scheme requirements. Where he has decided that there has been non-compliance, he will serve a Notice of Intent.

A Notice of Intent

A Notice of Intent will be served within 6 months of the date the Investigating Officer decided (on the balance of probabilities) that the letting agent or property manager has failed to comply with the requirement to belong to a redress scheme. The notice will be served on the letting agent or property manager.

The Notice of Intent must include:

- (a) the reasons for imposing the monetary penalty;
- (b) the amount of the penalty to be paid;
- (c) information as to the right to make representations and objections within 28 days beginning with the day after the date on which the Notice of Intent was sent.

A Notice of Intent will be served by the Investigating officer.

Representations and objections:

A person on whom a Notice of Intent is served has 28 days beginning with the day after the date on which the notice was sent, to make written representations and objections to the enforcement authority in relation to the proposed monetary penalty.

After the end of the period, the decision of the Investigation Officer, that there was none compliance with the redress scheme requirements and the penalty imposed, will be reviewed by a more senior officer (the Reviewing Officer). The Reviewing Officer, will have regard to any representations and objections made by the recipient of the notice.

The Reviewing Officer can be any of the following officers:

(1) where the Notice of Intent was served by Private Housing Standards Officer or Tenancy Relations Officer;

Senior Private Housing Standards Officer or Legal and Policy Officer.

(2) where the Notice of Intent was served by a Senior Private Housing Standards Officer, or Legal and Policy Officer:

Team Manager.

The Reviewing Officer having taken into account any representations or objections made, will decide on the balance of probabilities whether or not to confirm the Investigation Officer's decision that there was a failure to comply with the redress scheme requirements. If he confirms the decision that there was none compliance with the redress scheme requirements, he will need to decide whether or not to confirm the decision to impose the financial penalty set in the Notice of Intent, with or without modifications.

Where representations or objections are received from a person who has been served a Notice of Intent, and the Reviewing Officer is satisfied from the information provided that, on a balance of probabilities, there are exceptional circumstances, and that as a consequence, the application of the full financial penalty will not serve the strategic goal of improving housing or management standards within the private rented sector in the city, he may impose a reduced penalty. Such circumstances could, for example include, but are not be limited to:

- the agent or manager not having set out to engage in property management, or estate agency, as a course of business,
- exceptional personal hardship, or
- having other reasonable excuse for failing to comply with the property redress scheme regulations (not knowing about the regulations will not itself usually amount to reasonable excuse).

Where the Reviewing Officer is satisfied, on a balance of probabilities, that a Letting Agent or Property Manager is being obstructive, in failing to answer reasonable questions put to them regarding their compliance with the requirement to register, or answers such questions falsely, or otherwise hinders the reasonable investigations of officers in relation to compliance, this will be taken into account where the Council is considering reducing the financial penalty and may be weighed, by the Reviewing Officer against any factors in favour of reducing the financial penalty.

Where the decision to impose a penalty is confirmed, a Final Notice will be served on the recipient of the Notice of Intent.

A Final Notice

Where it is decided to impose a financial penalty, a Final Notice will be served on the recipient of the Notice of Intent.

The Final Notice must include:

- (a) the reasons for imposing the monetary penalty; .
- (b) information about the amount of the penalty to be paid; .
- (c) information about how payment may be paid; .
- (d) information about the period in which the payment must be made, which must not be less than 28 days; .
- (e) information about rights of appeal; and .
- (f) information about the consequences of failing to comply with the notice.

The Final Notice may be served by a Team Manager or Service Manager, but cannot be served by the same person who acted as Reviewing Officer.

Withdrawing or amending a Notice of Intent or Final Notice

The Council, at any time, where it receives or becomes aware of information, not considered when it decided to serve a Notice of Intent or Final Notice, may review the decision. Where it decides on a balance of probabilities, that the recipient of the notice had complied with the redress scheme requirements or that he was not subject to the requirements, it may withdraw the notice.

Further, where, upon review, the Council decides that there has been none compliance with the redress scheme requirements, but considers that the penalty should be reduced, it may reduce the amount specified in the notice. The decision to carry out a review, and the carrying out of that review, will be taken by a more senior officer to the officer who made the original decision to serve the notice in line with the service requirements above.

First tier Tribunal Appeal

Where the Council receives from the First-tier Tribunal notice that a recipient of Final Notice has made an appeal to it, the matter will be referred to the Private Housing Standards Team Manager, to decide how the Council will respond, including representation at appeal hearings

Recovering the penalty monies

The monies will be recovered by using the council's existing debt recovery processes. However, if the person subject to the penalty fails to pay the monies owed, the Council may choose to pursue court proceedings. Where there is a failure to pay a penalty, the matter will be referred to the Service Manager, Private Housing Standards, to decide whether enforcement action will be taken and if so, what form that action will take, including court proceedings.

Where it is decided to commence court proceedings to recover an unpaid penalty, a certificate confirming that the amount of penalty due has not been received, signed by the Chief Finance Officer is required. The Service Manager, Private Housing Standards shall arrange the acquisition of the certificate.