

Report of Head of Housing Partnerships and Housing Growth

Report to Director of Environment and Housing

Date: 17th August 2015

Subject: Approval of a two tier Fixed Penalty Notice level for the Property Redress Scheme

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. In October 2014, The Department of Communities and Local Government (DCLG) announced that all letting agents and managing agents must be members of the mandatory Redress Scheme. Membership ensures that tenants will be able to complain to an independent person about the service they receive.
2. The Director has already approved the amendment of the sub-delegation scheme to authorise officers within Private Sector Housing to implement this scheme and also approved a report allowing the recruitment of a temporary post for an initial 12 month period to help implement the process.
3. When a Local authority becomes aware that a letting or Managing Agent is not complying with this legislation, it is first required to confirm its intention to serve a Notice on the agent. This Notice advises them of the offence and gives them 28 days in which to make written representations.
4. With regards enforcement, the expectation is that a £5K penalty should be considered the norm and that a lower penalty should only be considered if the Local Authority is satisfied that there are extenuating circumstances.
5. It is the responsibility of the Local authority to decide what such circumstances might be, taking into account any representations made by the agents within the 28 day period. Possible considerations could include the immediate co-operation of the

agent in joining the scheme or that £5K could be disproportionate to the turnover / scale of the business or lead to an organisation going out of business. Once a financial penalty is imposed by the final decision notice, the agent has a right of appeal to a property tribunal. Any appeal can include representations against the level of penalty imposed.

6. Officers have discussed this process with relevant stakeholders and reviewed practices in other Local authorities. Officers consider that a penalty is still justified in all cases of non-compliance but feel that a two tier penalty option should be imposed. This allows the Authority to allow a discount in cases where appropriate representations are received.

Recommendations

7. The Director of Environment and Housing is requested to approve the implementation of a two tier fixed penalty regime that allows a reduction in the penalty in line with agreed criteria.

1 Purpose of this report

- 1.1 The purpose of this report is to set out the mandatory Property Redress Scheme, introduced by DCLG, in October 2014 and to seek the Director's approval to introduce an agreed two tier fixed penalty structure.

2 Background information

- 2.1 It is a legal requirement for all lettings agents and property managers in England to belong to a government approved Redress Scheme from 1st October 2014. Membership must be renewed on an annual basis.
- 2.2 The Director has already approved the amendment of the sub-delegation scheme to authorise officers within Private Sector Housing to implement this scheme and also approved a report allowing the recruitment of a temporary post for an initial 12 month period to help implement the process.
- 2.3 The Redress Scheme provides a free independent service for resolving disputes between letting agents, property managers with their customers. The scheme is also designed to allow landlords using lettings agents or property managers to use the Scheme to make complaints about the service received.
- 2.4 The government anticipate that this Scheme will help to "weed out" bad lettings agents and property managers and help to drive up standards within the sector. The new requirement will be enforced by Local Authorities who can impose a fine of up to £5k where an agent or property manager has not joined a scheme and should have so done. The £5k fine is expected to be the norm but local authorities are expected to take account of written representations received within a 28 day period of the Intention Notice.
- 2.5 Guidance from CLG suggests that reasonable representations can include, but are not limited to:
 - Immediate co-operation of the letting or Managing agents,

- That the Letting or Managing Agents immediately join an appropriate Redress Scheme,
- That a £5K penalty could be disproportionate to the turnover / scale of the business or lead to an organisation going out of business.

2.6 There is no national guidance to Local Authorities on the setting of a financial penalty other than a £5K penalty should be the norm unless appropriate representations, as described above, are to be considered. It is therefore necessary for each Local authority to determine an appropriate penalty schedule that they should then make clear during communications with agents.

3 Main issues

- 3.1 It is expected that the Local Authority will ensure that all lettings agents and property managers are members of one of the three schemes. Each scheme is required to publish its membership list on its website so that membership details can be checked.
- 3.2 Together with officers from Legal Services and Finance officers from the Private Rented Sector Regulation Service have been working on the regulatory process required for the implementation of the Council's regulatory responsibility.
- 3.3 If the Council finds that any letting agent or property manager is not a member of one of the three schemes then a notice of intention to impose a fine will be issued. If within 28 days membership has still not taken place, and no contact has been received, the Council will issue a final notice to impose a £5k fine and allow 28 days for payment. There is no limit to the number of fines that can be levied on a single letting agent or property manager if they continue not to be a member of a scheme.
- 3.4 The letting agent or property manager has a right of appeal against a decision to impose a fine. The appeal is made to a first tier Tribunal and must be made within 28 days of the date of issue of the fine notice.
- 3.5 In cases where the letting agent or Property Manager do make written representations within the specified 28 day period following the service of an Intention Notice, then the Local Authority may decide to alter the level of penalty. Local Authorities will be expected to take account of the factors described above and have a clear policy on decision making.
- 3.6 Officers have reviewed policies of other authorities across the country and also spoken to other West Yorkshire Authorities. Whilst all agree that a financial penalty is still justified, the level of any reduced penalty varies substantially. There is no clear consistent policy being delivered with some authorities offering a discount of 95% whilst others offer only a 20% discount.
- 3.7 Officers consider that in cases where appropriate representations are received then it is reasonable to offer a discount on the full penalty notice charge. Officers propose that this discount is set at 50% which will result in a final

penalty notice being issued for £2,500. The agent still has a 28 day period following service of the final penalty notice to appeal to a first tier tribunal.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Detailed discussions have taken place with Legal Services about the Council's legal regulatory role. Legal Services have approved the legal notices and have also agreed the recovery process.
- 4.1.2 Discussions have also taken place with Finance about the issuing and recovery of the invoices through the Sundry Debtors System and an agreed process is in place.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no issues for Equality and Diversity / cohesion and integration.

4.3 Council policies and the Best Council Plan

- 4.3.1 The Council has an ambition to be the "Best City". One determiner of achievement will be whether or not the city has a housing offer that meets the ambition of "Best City". The Private Rented Sector is key market in the provision of housing in the city. The Council has a clear regulatory role in this sector to ensure that standards are maintained and tenants have access to a safe, warm and secure home. The implementation of this scheme will be another tool with which to regulate the sector.

4.4 Resources and value for money

- 4.4.1 The Director, Environment and Housing, has already agreed to the creation of a temporary Post, graded at SO2, to assist the service with the implementation of the Redress Scheme. The cost of the temporary post will be £36,508 at the top of SO2. Whilst there is no funding available for this position it is expected that it will be self-financing through the imposition of fines. The Council will levy a £5k on any letting agent or property manager who fails to register with one of the government backed Property Redress Schemes or £2,500 for those making successful representations. The Council is allowed to retain the fine income.
- 4.4.2 It is expected that the post will be self-financing but even if not, the post can be justified given that it will ensure that all agencies have complied with this important piece of legislation

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The decision being requested falls under the Director's delegations in accordance with part 3 of the constitution.
- 4.5.2 The government have introduced a Property Redress Scheme which Local Authorities are responsible for ensuring all lettings agents and property managers are registered with one of the three government backed schemes. Legal advice has been given by the Principal Legal officer for Housing Law and the scheme has been drawn up on that advice.

4.5.3 The decision is not open to call in as it is an administrative decision.

4.6 Risk Management

4.6.1 There is no risk management issue other than the Council needs to be clear on its enforcement intentions. The service will clearly publicise its intentions once a decision has been made and this will fall within an agreed enforcement protocol.

5 Conclusions

5.1 The implementation of the Property Redress Scheme, by government, provides an independent and free service for resolving disputes between tenants and lettings agents and property managers.

5.2 The scheme will be regulated by the Private Sector Housing Team and allows the Council to levy a retainable £5k fine for non-registration. It is also expected that a local authority will take account of any written representations following the initial notice of intent and it is proposed to reduce the size of the penalty in such cases by 50% to £2,500. The scheme will support the Council's work in regulating the private rented sector and tenants' rights to a safe, secure and warm home.

6 Recommendations

6.1 The Director of Environment and Housing is requested to approve the implementation of a two tier fixed penalty regime that allows a reduction in the penalty in line with agreed criteria.

7 Background documents¹

7.1 *Implementation of the Property Redress Scheme DDN report.*

7.2 *Amendments to the Director of Environments and Housing Sub Delegation scheme DDN report.*

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.