



**Licensing and
Regulatory Committee**

**Thursday, 07 April
2016**

**Matter for Information
and Decision**

**Title: Redress Schemes for Lettings Agency Work and Property
Management Works**

Author: Robert Watson - Environmental Health Officer

1. Introduction

- 1.1.** This report seeks authority for the Head of Communities to implement arrangements for the enforcement of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (the 'Order') made under the Enterprise and Regulatory Reform Act 2013 and to adopt the necessary powers.
- 1.2.** The local authority is the enforcing body and is required to set out its policy determining the level of fines to be imposed and the reasons. In Oadby and Wigston it is proposed enforcement will be led by the Environmental Health Team. The report seeks approval of these matters.

2. Recommendations

That Members:

- 2.1.** Agree to delegate the implementation and enforcement arrangements for the Order to the Head of Communities and Environmental Health Team Leader;
- 2.2.** Agree that the penalty for non-compliance with the Order shall be £5000;
- 2.3.** Agree to authorise the Head of Communities and Environmental Health Team Leader, to review the monetary penalties for non-compliance with the Order, taking the recommendations of Department of Communities and Local Government guidance into account; and
- 2.4.** Agree the amendments to the current Corporate Enforcement and Prosecution Policy as set out in paragraph 3.7.

3. Information

- 3.1.** The Order came into force on 1 October 2014 and makes it a legal requirement for all lettings agents and property managers in England to join one of three Government approved schemes. This now means that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with residential property managers, will be able to complain to an independent person about the service they have received.

- There are three Government approved schemes as follows:
- Ombudsman Services Property

- Property Redress Scheme
- The Property Ombudsman

By implementing this legislation the Council will be in a position to take action against businesses that are not Members of an approved scheme and this will be for the benefit of local private sector tenants and responsible businesses that have joined a scheme. It also gives an added means of improving the standard of private sector housing within Oadby and Wigston and assists in tackling rogue landlords or agents which give the sector a bad name.

A maximum penalty of £5,000 may be imposed by the enforcement authority where it is satisfied that someone is engaged in letting or property management work and is required to be a Member of a redress scheme, but has not joined.

- 3.2. Before a penalty can be imposed the authority must give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations or objections to the authority, starting from the day after the date the notice of intent was sent.
- 3.3. At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made. There is a right of appeal to the HM Courts & Tribunals Service.
- 3.4. Guidance states an expectation that £5000 should be considered the normal penalty to be imposed but does refer to the possibility of a lower sum being accepted only if the local authority is satisfied that extenuating circumstances apply. It suggests that the size of the business committing the breach may be a factor to consider as might be a genuine lack of awareness of legal requirements in the early stages of implementing the requirements.
- 3.5. As guidance to extenuating circumstances is relatively vague it is proposed that the Oadby and Wigston initial approach to any breach should be to impose the £5000 maximum penalty and consider any representations made about penalty reduction on a case by case basis.
- 3.6. This will be reviewed as the new requirements become embedded and discussions between enforcement authorities on consistency in applying penalty reductions reach consensus.
- 3.7. There will be no additional cost to the Council in carrying out this enforcement duty and it will be met through existing resources. Any penalty fines received will offset the overall cost of enforcement activities within the service however it is not anticipated a large number of fines will be issued.
- 2.8. Penalty Charge Notices are a new approach to housing legislation; they are not referred to in the Corporate Enforcement and Prosecution Policy adopted by the Policy Finance and Development Committee on 22 July 2014. The amendments to the Policy will be included in a revised policy being to be approved by the Policy Finance and Development Committee. The Government has announced proposals to use penalty notices for other breaches. The Corporate Enforcement and Prosecution Policy needs to be amended to reflect both the requirements of The Order and this changing style of enforcement by amending the second paragraph of Section 7 of the Policy to the

following:

Where steps to deal with a matter informally does not result in compliance, or in more serious cases, formal enforcement action will be considered, e.g. issuing a statutory notice, fixed penalty or penalty charge notice, offering a formal caution, or prosecution. Formal action may include:

- Fixed Penalty and Penalty charge Notices

Email: robert.watson@oadby-wigston.gov.uk

Tel: (0116) 257 2679

Implications	
Financial	No significant implications.
Legal	The enforcement of these Regulations makes additional powers available to the Environmental Health team to remedy poorly managed private rented properties.
Risk	If the legislation is not implemented there is a reputational risk to the Council in not implementing legislation and being able to take appropriate action.
Equalities	The legislation will be equally applied to all landlords and all tenants.