

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 18th June 2018

CONTACT OFFICER: Ginny De Haan, Service Lead - Regulatory Services
Andy Clooney, Trading Standards Manager

(For all enquiries) (01753) 875988

WARD(S): All

PORTFOLIO: Cllr Pavitar Mann - Cabinet Member for Regulation & Consumer Protection

PART I **NON-KEY DECISION**

ENFORCEMENT OF REDRESS SCHEMES FOR LETTING AGENTS ETC

1 Purpose of Report

This report seeks approval to make 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 which makes it a legal requirement for all letting agents and property management operators in England to join one of three Government approved schemes. In support of this objective, trading standards officers are to be given the delegated authority to issue fixed penalty notices up to the maximum of £5000.

2 Recommendation(s)/Proposed Action

The Cabinet is requested to resolve:

- (a) That the implementation and enforcement of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 be delegated to trading standards via the Service Lead for Regulatory Services.
- (b) That it be noted that the day to day enforcement of the Order will be undertaken by officers in the Trading Standards Service in accordance with the existing similar authorisations in the Council's constitution.
- (c) That the monetary penalty for non-compliance with the Order be set at the maximum sum of £5,000 in line with the recommendations of the Department of Communities and Local Government (DCLG) guidance.
- (d) That the Service Lead for Regulatory Services be authorised to make amendments to the amount of the monetary penalty, in accordance with the guidance where the enforcement authority is satisfied that there are extenuating circumstances taking into account any representations made by the lettings agent or property manager during the 28 day period, following the authority's notice of intention to issue a fine.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Joint Wellbeing Strategy Priorities**

The recommendations support the SJWS in respect of providing good quality homes in the private rented sector by helping and maintaining compliance in that area, whilst punishing those business's who show no willingness to comply. The provision of good quality homes and housing to Slough residents is central to the SJWS.

In Slough 20% of households in Slough are overcrowded compared to 8% across England. 28% of the borough's private rented housing and 34% of its privately owned sector are categorised as 'non decent'. The combination of rapidly increasing property prices and low incomes means that some people are unable to move into larger, better quality housing. People who are homeless, living in temporary accommodation or move around a lot may not be registered with a local GP or be known to local health services. This makes monitoring the health of people difficult and can put them at added risk.

3b **Five Year Plan Outcomes**

This proposal will help to deliver the following Five Year Plan outcomes:

- Slough will be an attractive place where people choose to live, work and stay
- Our residents will live in good quality homes
- Slough will attract, retain and grow businesses and investment to provide opportunities for our residents

4 **Other Implications**

(a) **Financial**

The cost of enforcement will be met through existing resources with no additional cost to the Council.

It is envisaged that resources will need to be diverted on occasion of non compliance which may impact on the delivery of other work. Any penalty fines received should offset the overall cost of enforcement activities within the service.

(b) **Risk Management**

The Failure to meet new and existing statutory requirements is specifically addressed in the Regulatory Services risk register.

Controls in place to mitigate this risk include review of service priorities, internal auditing, periodic updates of the scheme of delegation and the business planning process.

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
To delegate the implementation and enforcement of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 to the service lead for Regulatory Services	<p>Risk. Failure to meet statutory requirement.</p> <p>Threat. Rogue letting agents continue to take advantage of vulnerable residents. Central government intervention.</p> <p>Opportunity. To improve conditions for residents in rented accommodation</p>	Enforcement policy approach, ensure availability of trained and competent staff, internal auditing and quality control, periodic update of the scheme for delegation and business and service planning process.	6	N/A
To note that the day to day enforcement of the Order will be undertaken by officers in the Trading Standards Service in accordance with the existing authorisation in the Council's constitution	<p>Risk. Failure to meet statutory requirement.</p> <p>Threat. Rogue letting agents continue to take advantage of vulnerable residents. Central government intervention.</p> <p>Opportunity. To improve conditions for residents in rented accommodation</p>	Enforcement policy, training of staff, internal auditing and quality control, periodic update of the scheme for delegation and business and service planning process.	6	N/A
To agree that the monetary penalty for non-compliance with the Order be set at the maximum sum of £5,000 in line with the recommendations of the final	<p>Risk/Threat. Non adherence to government recommendations.</p>	<p>Will set penalties at maximum sum of £5000.</p> <p>The authority may at any time by giving notice reduce or revoke a fine. See</p>	6	N/A

Department of Communities and Local Government (DCLG) guidance.		recommendation 4.		
To authorise the Service Lead for Regulatory Services to make amendments to the amount of the monetary penalty, in accordance with the guidance where the enforcement authority is satisfied that there are extenuating circumstances.	Opportunity To give flexibility in approach related to varying situations based on evidence	Enforcement policy approach. scope to reduce or revoke penalty.	6	N/A

(c) Human Rights Act and Other Legal Implications

- i. The Council has a legal duty to enforce the Order and in that regard to determine the level of monetary penalty to impose on Lettings Agents and Property Managers.
- ii. By implementing this legislation, the Council will be in a position to take action against businesses that are not members of an approved scheme which will be for the benefit of local private sector tenants and also businesses that have joined a scheme.
- iii. The recommendations allow for the monetary penalty to be varied in accordance with the guidance where there are extenuating circumstances.

(d) Equalities Impact Assessment

The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in s149 of the Equality Act 2010 (the Act). A screening for the equalities impact assessment has been carried out on the effect of the Order. The Order has very low relevance in relation to its impact on the protected characteristics as all businesses will be contacted, not just a sample and this work will contribute towards the corporate priorities of the council.

The background paper referred to in section 9 is the impact assessment of regulation of letting and management agents by an independent body conducted at consultation stage.

5 **Supporting Information**

- 5.1. The Order came into force on 1 October 2014, making it a legal requirement for all letting agents and property management operators in England to join one of three Government approved schemes. All Slough letting agents on our records, and property management companies are currently members.
- 5.2. The effect of the Order is that tenants and landlords with agents in the private rented sector and leaseholders and freeholders dealing with letting agents and property management operators in the residential sector can now complain to an independent person about the service they have received.
- 5.3. The requirement to join a redress scheme was identified as one of the recommendations from the Local Government Select Committee inquiry into the private rented sector (July 2013) to improve standards in the sector
- 5.4. There are three Government approved schemes as follows:
 - a) Ombudsman Services Property (www.ombudsman-services.org/property.html)
 - b) Property Redress Scheme (www.theprs.co.uk)
 - c) The Property Ombudsman (www.tpos.co.uk)
- 5.5. The DCLG guidance for local authorities, attached as Appendix 1, will be used to develop/implement the scheme locally.
- 5.6. A maximum penalty of £5,000 may be imposed by the enforcement authority where it is satisfied, on the balance of probabilities 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. The level of penalty is to be determined by the enforcement authority.
- 5.7. There are strict procedures and a series of mandatory stages to follow before a penalty may be imposed.
- 5.8. The authority may at any time by giving notice reduce or revoke a fine.
- 5.9. Attached at Appendix 2 is the impact assessment of regulation of letting and management agents by an independent body conducted at consultation stage.
- 5.10. Day to day enforcement of the Order will be undertaken by officers in the Trading Standards Team, in accordance with the existing authorisation in the Constitution and local authority guidance.
- 5.11. A consideration for reducing the £5,000 fine would be where compliance is achieved; the fine is disproportionate to the turnover/scale of the business which could lead to an organisation going out of business or where there is some other negative consequence as a result, e.g. health impact.
- 5.12. The enforcement authority must take into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine.
- 5.13. The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a

penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.

- 5.14. The penalty fines received by the enforcement authority can be used to cover the officer costs associated in enforcing this new requirement.
- 5.15. Where an enforcement authority intends to impose a penalty they must follow the process set out in the Order. Any enforcement action taken will be in accordance with our enforcement policy.

6 **Comments of Other Committees**

The report has not gone to any other committees. Slough Borough Council Housing have been consulted on the scope of the legislation.

7 **Conclusion**

The desired outcome is that by implementing the recommendations as set out, we will be able to ensure that all letting agents and property management operators in the borough belong to a redress scheme which offers an independent investigation of complaints about hidden fees or poor service, so improving standards and compliance in this sector.

8 **Appendices Attached**

None

9 **Background Papers**

'A' - Department of Communities and Local Government Redress Scheme Guidance for Local Authorities.

'B' - Department of Communities and Local Government Impact Assessment or the regulation of letting and management agents by an independent body conducted at consultation stage.