

<b>Cabinet Meeting</b>		<b>Agenda Item: 6</b>
<b>Meeting Date</b>	25 May 2016	
<b>Report Title</b>	The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014	
<b>Cabinet Member</b>	Cllr John Wright, Cabinet Member for Housing	
<b>SMT Lead</b>	Kathryn Carr Director of Regeneration	
<b>Head of Service</b>	Amber Christou	
<b>Lead Officer</b>	Philip Garland	
<b>Recommendations</b>	<ul style="list-style-type: none"> <li>i. Members note the legal requirements of the Order, and agree the level of penalty.</li> <li>ii. The Head of Resident Services in consultation with Cabinet Member for Housing be delegated to consider any representations from a letting agent or property manager and decide whether to impose the fine with or without modifications.</li> <li>iii. That the Scheme of Delegation be amended to add the new powers and duties conferred by The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a scheme etc) (England) Order 2014 to the Head of Resident Services' delegations, to provide effective delegation to officers.</li> </ul>	

## **1 Purpose of Report and Executive Summary**

- 1.1 To inform Members of the relevant legislation under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, and agree the Council's policy on penalty charges.
- 1.2 To ensure that the Scheme of Delegation be amended to add the new powers and duties conferred by The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a scheme etc) (England) Order 2014 to the Head of Resident Services' delegations.

## **2 Background**

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

- 2.2 A letting agent or manager will be anyone who receives instruction from a landlord to find a person wishing to rent a dwelling house and/or manage the tenancy, though some exemptions do apply.
- 2.3 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. In such cases, this order provides that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with property managers in the residential sector, are able to complain to an independent person about the service they have received.
- 2.4 The requirement to join an approved redress scheme is enforced by Swale BC, who under the legislation can impose a fine of up to £5,000 where an agent or property manager has failed to do so. Enforcement is by issue of a written notice of the intention to impose a penalty, setting out the reasons and the amount of the penalty. The lettings agent or property manager then have 28 days to make written representations or objections to the Council.
- 2.5 At the end of the 28 day period the Council 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.
- 2.6 Further penalties can be imposed if a lettings agent or property manager fails to join a redress scheme despite already having had a penalty imposed.
- 2.7 A lettings agent or property manager can appeal against the penalty to the First-tier Tribunal which handles all such housing matters, outside of the courts system. The appeal must be made within 28 days of the day on which the final notice was sent.

### **3 Proposal**

- 3.1 The proposal is that the Council introduce a policy for imposing monetary penalties under the legislation described above.
- 3.2 it is expected that most agents will comply and only a small proportion of interventions will result in penalties being levied. The level of penalty must include a punitive element for failure to comply, and be of sufficient level to encourage compliance with the Order.
- 3.3 Bearing this in mind, the main principles outlined below are to be taken into account when setting penalty charges under the Order:
- the level of penalty should cover the cost of all officer time, any administrative costs, and a fine; and

- the Council considers that a lesser penalty will be merited on the occasion of a first offence, which should attract a reduced penalty in recognition of early admission of liability and savings in administration costs.
- 3.4 Taking these principles into account, the recommendations is for setting the level as £2,500 for a first offence, and then £5,000 for a second or subsequent offence.
- 3.5 A review of these penalties will be undertaken once enough cases have been dealt with to form an accurate picture of the costs of administration and the deterrent effect of the potential penalty, but in any case in enough time to inform the annual review of fees and charges for the 2018/19 financial year.
- 3.6 It is also recommended that the Scheme of Delegation be amended to add the new powers and duties conferred by The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a scheme etc) (England) Order 2014 to the Head of Resident Services, to provide effective delegation to officers to operate the regulations.

## 4 Alternative Options

- 4.1 There are broadly three alternative options.
- 4.2 **Option 1:** Charge a higher amount or the maximum penalty of £5,000 in all cases. This approach would be open to challenge on appeal to the Tribunal that the amount is unreasonable, which would be hard to defend.
- 4.3 **Option 2:** Charge a lesser amount or not charge a fixed penalty at all. However, this approach would discourage compliance with the regulations.
- 4.4 **Option 3:** Give no reduction or lesser amount for initial offence. There are merits in offering a reduced fine for first offence, as set out in principles above, both in ensuring future compliance and reducing staff time in recovering the fine without redress to court action.

## 5 Consultation Undertaken or Proposed

- 5.1 None undertaken as yet. Once this policy is approved it proposes, all letting agents will be contacted to inform them of the scheme, and request that they provide evidence as to which of the Government schemes they belong to.

## 6 Implications

Issue	Implications
Corporate Plan	This Policy supports the aim of the Corporate Plan to make Swale a Community to be proud, by working to help communities to be safe.
Financial, Resource and	The Regulations will be enforced using the existing resources of

Property	the Private Sector Housing Team. A small grant of £761 has been received from the DCLG to assist in the enforcing of this Order for 2016/17.
Legal and Statutory	As set out in the report.
Crime and Disorder	None.
Sustainability	None.
Health and Wellbeing	None.
Risk Management and Health and Safety	None specific.
Equality and Diversity	None specific.

## **7 Appendices**

7.1 None.

## **8 Background Papers**

8.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a scheme etc) (England) Order 2014 can be viewed at [www.legislation.gov.uk/ukdsi/2014/9780111116821/contents](http://www.legislation.gov.uk/ukdsi/2014/9780111116821/contents)