

# Enforcement Policy

## 1.0 Legal Requirement

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 made it a legal requirement for all lettings agents and property managers in England to join a Government approved redress scheme by 1<sup>st</sup> October 2014.

The redress schemes give tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector the opportunity to complain to an independent body about the service received.

The three government approved redress schemes are:

- Ombudsman Services - Property ([www.ombudsman-services.org/property.html](http://www.ombudsman-services.org/property.html))
- Property Redress Scheme ([www.theprs.co.uk](http://www.theprs.co.uk))
- The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk))

### 1.1 *What is meant by 'lettings agency work'?*

'Lettings agency work' is defined in the Enterprise and Regulatory Reform Act 2013 as things done by an agent in the course of a business in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 except where the landlord is a private registered provider of social housing or the tenancy is a long lease. It does not apply to local authorities, employers who find homes for their employees or contractors, higher and further education establishments, and legal professionals.

### 1.2 *What is meant by 'property manager's work'?*

In the Enterprise and Regulatory Reform Act 2013, property management work means things done by a person in the course of a business in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

For there to be property management work, the premises must consist of, or contain:

- a dwelling-house let under a long lease - "long lease" includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases;
- an assured tenancy under the Housing Act 1988; or
- a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructs an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas) that contains flats let under a long lease or let to assured or protected tenants.

It does not include managers of commonhold land, managers of student accommodation, managers of refuge homes, receivers and insolvency practitioners, right to manage companies, legal professionals, housing associations, local authorities (including managers instructed by local authorities and social landlords), landlords, and resident management companies, and where head tenants are managers.

Charities - the Order does not exclude charitable organisations because any charity that is not operating as a business will already be exempt from the requirement. Charities that find accommodation for homeless people in the private rented sector often deliberately mirror the activities of a letting agent but only work with homeless people. Unless they are charging a fee for the service, the charity could argue that is not operating in the course of a business and therefore be excluded from the duty.

### *1.3 What is meant by 'in the course of business'?*

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work 'in the course of business' so will therefore not apply to 'informal' arrangements where a person is helping out rather than being paid for a role which is their usual line of work.

## **2.0 Enforcement Process**

The Council is the enforcing authority where the head office of the lettings agent or property manager is based in Crawley. However the Council may enforce the duty outside the borough providing another authority does not impose fines for the same breach. Where two authorities are involved, they must agree which will issue the notice and subsequently keep the fine.

### *2.1 Notice of Intent*

Written notice of intention to impose a penalty is to be served on the agent/manager, setting out:

- the reasons for the penalty;
- the amount of the penalty; and
- that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This must be served within 6 months of having gathered sufficient evidence and being satisfied that a fine is appropriate. The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

## 2.2 *Representations and Objections*

The person who the notice of intent was served on has 28 days starting from the day after the date the notice was sent to make written representations and objections. The Council will consider all representations on their own merit. In particular the following may be considered relevant when deciding the final level of fine:

- Internal failed preventative measures – in cases of national agents that have other branches registered but due to internal processes failing the local office is unregistered, reduce fine by up to 20%.
- Good attitude and cooperation with the Council – in cases where the agent has cooperated fully with the Council in investigating the breach of the Order, reduce fine by up to 20%.
- Immediate and voluntary remediation – when the breach was brought to the attention of the agent they immediately joined a relevant scheme, reduce fine by up to 20%.
- No previous history of non-compliance with other housing legislation – if this is a first breach of any housing related legislation, reduce fine by up to 20%.
- Any relevant personal circumstances. Reduce fine by up to 20%.
- Undue financial hardship – if the fine would cause the agent undue financial hardship such that it might not be able to continue to operate, reduce fine by up to 20%.

## 2.3 *Final Notice*

At the end of the 28 day period the Council will decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. A final notice must also be issued in writing which explains:

- why the fine is being imposed;
- the amount to be paid;
- how payment may be made;
- the consequences of failing to pay;
- that there is a right to appeal against the penalty to the first-tier tribunal and that any appeal must be made within 28 days after the imposition of the fine.

The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

## 2.4 *Appeals*

If an appeal is lodged the fine cannot be enforced until the appeal has been completed. Appeals can be made on the grounds that:

- the decision to impose a fine was based on a factual error or was wrong in law;
- the amount of the fine is unreasonable; or
- that the decision was unreasonable for any other reason.

Appeals will be heard by the General Regulatory Chamber. The first-tier tribunal may agree with the authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

## *2.5 Recovery of the penalty*

Guidance states that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the Council is satisfied that there are extenuating circumstances (as outlined earlier).

If the lettings agent or property manager does not pay the fine within the 28 day period the Council can recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the Council's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.