



**The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 - Penalty Charge Notices**

**SUMMARY**

- 1.1 This Order makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme.
- 1.2 There are three government approved redress schemes. Each scheme publishes a list of members on their respective websites.
- 1.3 The Council can impose a penalty charge notice of up to £5,000 where it is satisfied, that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined. It is proposed that agents and property managers upon discovery that they are not a member of an approved scheme are given a grace period of 7 days in which to join.
- 1.4 Government guidance [*DCLG Guidance for Local Authorities - The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014*] suggests that the penalty charge of £5000 should be the norm unless there are extenuating circumstances.
- 1.5 The Council must serve a 'notice of intent' prior to imposing the penalty charge. Representations can be made at this stage after which the Council must decide whether to impose the maximum penalty of £5000, reduce the amount or withdraw the notice completely. If they continue with a penalty of whatever sum, they must serve a 'final notice' demanding payment within 28 days. An appeal can be made against this notice to a First-tier Tribunal.

**RECOMMENDATION**

- 2.1 To endorse the Government's guidance and in circumstances where letting agents or property managers have failed to join a redress scheme within a 7 day grace period, approve the imposition of a fine of £5,000 unless there are extenuating circumstances, in which case a lower fine will be considered.

## REASONS FOR RECOMMENDATION

- 3.1 The central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter letting agents and property managers from contravening regulatory requirements.
- 3.2 The level of the penalty must be sufficiently high to have the appropriate impact. It should incentivise the letting agent or property manager to change their conduct and join a scheme. The level of the penalty should be high enough that the letting agent or property manager recognises that it is not more profitable for them to break the law and pay the consequences, than it is to comply with the law in the first instance. The level of the fine should discourage bad conduct and encourage good practices amongst letting agents and property managers.

## SUPPORTING INFORMATION

- 4.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 - Penalty Charge Notices makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme. The requirement has been in force since 1 October 2014. This means that 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 can complain to an independent person about the service received. This will make it easier for tenants and landlords to complain about bad service and prevent disputes escalating.
- 4.2 There are three government approved redress schemes. Each scheme publishes a list of members on their respective websites so it is possible to check whether a lettings agent or property manager has joined one of the schemes.
- 4.3 The Council can impose a fine by way of a penalty charge notice of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined.
- 4.4 Government guidance is that a £5,000 fine should be considered the normal fine to impose and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It is up to the authority to decide what circumstances might be relevant on a case by case basis, taking into account any representations that may be put forward.
- 4.5 It is proposed that agents and property managers upon discovery that they are not a member of an approved scheme are given a grace period of 7 days in which to join.
- 4.6 If after that period an agent or property manager is still not a member, a written notice of the Council's intention to impose a penalty will be given. This notice is known as a 'notice of intent'. The person who the notice of intent is served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the Council in relation to the proposed fine.

- 4.7 If a written representation or objection to the ‘notice of intent’ is received, the Case Officer, Team Leader and Head of Service will meet to decide whether to impose the fine or whether to reduce it from the £5,000. The Head of Service shall make the final decision.
- 4.8 If it is decided that a fine will be imposed, at least 28 days must be given for payment to be made.
- 4.9 When imposing a fine, the Council must issue a ‘final notice’ in writing. The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.
- 4.10 An appeal against the ‘final notice’ can be made to a First Tier Tribunal. If an appeal is lodged, the fine cannot be enforced until the appeal is disposed of. The First Tier Tribunal may agree with the Council’s notice to issue a penalty or may decide to quash or vary the notice and fine.
- 4.11 If the lettings agent or property manager does not pay the fine within the period specified, 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.
- 4.12 The Council has a duty to enforce this Order and Officers in the Housing Standards Team have been authorised by the Director of Communities Environment and Regulatory Services to take action against letting agents and property managers as and when necessary.

<b>OTHER OPTION CONSIDERED</b>
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5.1 Not applicable.

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> Human Resources officer Estates/Property officer <b>Service Director</b> Other(s)	Lucie Keeler Amanda Fletcher  Michael Kay
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<b>Background papers:</b>	DCLG Guidance for Local Authorities - The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
<b>List of appendices:</b>	Appendix 1 – Implications

**IMPLICATIONS****Financial and Value for Money**

- 1.1 Penalty charge receipts will be returned to the Housing Standards budget. It is anticipated that the need to serve penalty charge notices will be quite rare as letting agents and property managers have thus far responded when asked to join one of the redress schemes.

**Legal**

- 2.1 The support of legal services may be required in confirming that sufficient evidence is available before serving a 'notice of intent' and a 'final notice'. Their support will also be required in the event of an appeal to a First Tier Tribunal.

**Personnel**

- 3.1 None arising out of this report.

**IT**

- 4.1 None arising out of this report.

**Equalities Impact**

- 5.1 None arising out of this report.

**Health and Safety**

- 6.1 None arising out of this report.

**Environmental Sustainability**

- 7.1 None arising out of this report.

**Property and Asset Management**

- 8.1 None arising out of this report.

**Risk Management and Safeguarding**

- 9.1 None arising out of this report.

**Corporate objectives and priorities for change**

- 10.1 Enforcing this legislation will contribute to the Councils objective of protecting the health, safety and wellbeing of the public by ensuring safe and decent housing standards.