

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 1st 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)

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 so will therefore not 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

Appeals will be heard by the General Regulatory Chamber. The first-tier tribunal may 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 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.