STROUD DISTRICT COUNCIL
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Redress Schemes for Lettings Agency Work and Property Management Work Policy

Introduction

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 schemes by 1 October 2014, which is required to publish a list of their members on their websites.

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 makes it easier for tenants and landlords to complain about bad service and prevent disputes escalating.

Stroud District Council is an enforcement authority under the Order with the power to act.

LETTINGS AGENTS

'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.

In the Act, lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided; and
- providing a way for landlords or tenants to continue to communicate directly with each other.

All "high street" and web based letting agents, and other organisations, including charities, which carry out lettings agency or property management work in the course of a business are subject to the duty to belong to an approved redress scheme.

The following are excluded from the requirement to belong to a redress scheme:

- A local authority

- Employers who find homes for their employers or contractors
- Higher and further education establishments
- Legal professionals

PROPERTY MANAGEMENT

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.

It does not include things done by registered providers of social housing.

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

a) 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;
b) an assured tenancy under the Housing Act 1988; or
c) a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructed 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, corridors, stairwells etc.) that contains flats let under a long lease or let to assured or protected tenants.

The legislation applies to people who in the course of their business manage properties, for example, high street and web based agents, agents managing leasehold blocks and other organisations who manage property on behalf of the landlord or freeholder.

The following are excluded from the requirement to belong to a redress scheme;

- Managers of commonhold land even if one of the units is subsequently let on an assured tenancy.
- Managers of student accommodation
- Managers of refuge homes
- Receivers and insolvency practitioners
- Other authorities
- Right to Manage companies who have taken direct management of their block of flats from the landlord.
- Legal professionals
- Managers instructed by local authorities and social landlords
- Head tenant as a manager where a leaseholder receives a reduced service charge in exchange for maintenance work around the property for example gardening in a

block of flats, or cleaning and maintains common areas such as stairwells, car parks and corridors.

Landlords are not explicitly excluded by the Order but are not generally caught by the Enterprise and Regulatory Reform Act as they are not acting on instructions from another party.

Resident management companies are not explicitly excluded by the Order although, in many cases, these are not caught by the Enterprise and Regulatory Reform Act 2013. Resident management companies can arise in different circumstances, but where the residents' management company owns the freehold and manages the block itself there is no requirement for the company to join a redress scheme. This is because, under the definition in the Act, property management work only arises where one person instructs another person to manage the premises and, in this case, the person who owns the block (and is responsible for its management) and the person managing the block are one and the same.

Likewise, where a resident management company does not own the freehold but is set up and run by the residents and manages the premises on behalf of the residents this would also be excluded as the work is only in respect of the residents' own premises and would not be operating in the normal course of business.

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'. The requirement 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. Some examples of 'informal arrangements' which would not come under the definition of 'in the course of business' are set out below:

- someone looking after the letting or management of a rented property or properties on behalf of a family member or friend who owns the property/properties, where the person is helping out and doesn't get paid or only gets a small thank you gift of minimal value;
- a friend who helps a landlord with the maintenance or decoration of their rented properties on an ad hoc basis;
- a person who works as a handyman or decorator who is employed by a landlord to repair or decorate their rented property or properties when needed;
- a landlord who occasionally looks after a friend's property or properties whilst they are away and doesn't get paid for it;
- a joint landlord who manages the property or properties on behalf of the other joint landlords.

When deciding what could be considered an 'informal arrangement' is whether the person doing the letting or property management work is offering their services to genuinely helping out a friend or acquaintance, instead of being paid for their services.

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 which 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 this service it is likely that the charity could argue that is not operating in the course of a business and therefore be excluded from the duty.

ENFORCEMENT

The enforcement authority for the purposes of this Order includes a district council, this does not limit the enforcing role to housing officers. Where Trading Standards services sit within one of these enforcing authorities, trading standards officers will be able to enforce the regulations and issue the penalty notices, as well as housing officers.

For failure to publish prices on a website, the enforcement authority will be the local authority in whose area the head office of the lettings agent or property manager who has not complied with the requirement.

Penalty for breach of requirement to belong to a redress scheme

The enforcement authority can impose a fine 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.

The two government approved redress schemes are:

Property Redress Scheme (www.theprs.co.uk/)

The Property Ombudsman (www.tpos.co.uk)

Each scheme will publish a list of members on their respective websites so it will be possible to check whether a lettings agent or property manager has joined one of the schemes.

Because this requirement has now been in place for a number of years and to reflect the fact that all Lettings and Managing Agents are expected to be aware of their obligations, the applicable fine will be £5,000. A lower fine will only be charged if the Head of Environmental Health is satisfied that there are extenuating circumstances. It is up to the Head of Environmental Health to decide what such circumstances might be, taking 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. It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.

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.

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

Where an enforcement authority intends to impose a penalty they must follow the process set out below.

Enforcement process:

Step 1: **Notice of Intent**

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

i) the reasons for the penalty;
ii) the amount of the penalty; and
iii) 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 written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate). It is up to each local authority to decide who should serve the notice.

1. The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 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 of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the enforcement authority must 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. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

i) why the fine is being imposed;
ii) the amount to be paid;
iii) how payment may be made;
iv) the consequences of failing to pay;
v) 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 enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

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

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Step 5: Recovery of the penalty

If the lettings agent or property manager does not pay the fine within the period specified, the authority 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 enforcement authority'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.