



Telford & Wrekin
C O U N C I L

Telford and Wrekin **Council**

Letting Agents Redress Scheme

Procedure and policy for
enforcement of the regulations
together with a statement of
principles for determination of a
monetary penalty

January 2019

Telford and Wrekin Council

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013

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Please note that you must take your own legal advice if you wish to check any aspect of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013. This document is only intended to be a guide as to how Telford and Wrekin Council will investigate any possible breach of the regulations.

1. Introduction and the legislation

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, made under the Enterprise and Regulatory Reform Act 2013, introduced the legal requirement that from the 1st October 2014 all lettings agents and property managers in England must have joined one of three Government established and approved redress schemes, for dealing with complaints in connection with that work.

The Order can be found at the link below:-

<http://www.legislation.gov.uk/uksi/2014/2359/contents/made>

Most letting agents and managing agents should be aware of these schemes and are likely to have joined, as good practice, before 1 October 2014. Membership of the schemes is subject to annual renewal. Telford & Wrekin Council is the enforcing authority for this legislation, and so is responsible for ensuring that all applicable agents and property managers within the borough have complied with the new rules and joined an approved scheme.

Definitions of “lettings agency” and “property managers” are contained within the legislation, and Government guidance.

2. Enforcement Procedure

2.1 Identify a breach of the Order

During the course of investigating a suspected breach of the regulations, an officer of the Council will identify the failure to join a redress scheme by searching the established registers.

The two Government approved redress schemes are:

- Property Redress Scheme www.theprs.co.uk
- The Property Ombudsman www.tpos.co.uk

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.

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. This requirement will mean that tenants and landlords, with agents in the private rented sector, and leaseholders and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received, and prevent disputes from escalating.

The decision made by a redress scheme is binding on all parties.

The requirements apply to those engaged in Letting Agency Works

'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 (see Section 2 below), 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

The intention is that 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 will be subject to the duty to belong to an approved redress scheme. Any charity that is operating not as a business will already be exempt from the requirement. Where charitable organisations are operating in the course of a business and especially where they are dealing with the most vulnerable, that those most in need of support are not denied the opportunity to seek redress where things have gone wrong

'Property Management Work'

In the Enterprise and Regulatory Reform Act 2013, property management work is defined as 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.

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 will apply to people who in the course of their business (see Section 2 below) 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 regulations do not require the enforcing authority to enter property let and/or managed by the agent to prove non-compliance. This is intelligence led enforcement of the regulations.

Officers may also make this discovery during the course of other investigations.

Those excluded from the scope of the regulation are outlined in Appendix A.

2.2 Enforcement

Telford & Wrekin Council, as the enforcement authority, can impose a monetary penalty of up to £5,000 where it is satisfied, on the balance of probabilities 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 expectation contained in Government guidance is that a £5,000 penalty should be considered the norm, and that a lower penalty should only be given if the enforcement authority is satisfied that there are extenuating circumstances.

The authority will give written notice of their intention to impose a penalty, setting out the reasons and the amount of the penalty to the person or company who has not complied with the legislation.

The lettings agent or property manager will have 28 days to make written representations or objections.

At the end of the 28 day period the Council must decide, having taken into account any representations received, whether to impose a penalty, and if so, issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made.

It will be up to the enforcement authority to decide what the extenuating circumstances might be, taking into account any representations the lettings agent or property manager makes, which would deem that no penalty or a lesser penalty would be appropriate.

Details on how Telford & Wrekin Council will consider each case is given in the Statement of Principles for Determining the Amount of a Monetary Penalty, see Section 3 of this document.

An appeal may be made to the First Tier Property Tribunal following issue of the final notice. The contact details for this are;

The contact details for the purpose of appeal are:-
First-Tier Tribunal (Property Chamber - Residential Property)
15th Floor, Centre City Tower,
5 – 7 Hill Street, Birmingham
B5 4UU
Tel: 0121 600 6270 Fax: 01264 785 122
Email: rpmidland@hmcts.gsi.gov.uk

If an appeal is lodged the monetary penalty cannot be enforced until the appeal is disposed of.

Appeals can be made on the grounds that:

- (a) the decision to impose a monetary penalty was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the amount of the monetary penalty is unreasonable;
- (d) 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 penalty.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

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.

2.3 Recovery of the penalty

As detailed in Article 10 of the Order, the Council may recover the monetary penalty on the order of a court, as if payable under a court order. In proceedings for the recovery of the amount due, a certificate which is – (a) signed by the enforcement authority's chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989(1)); and (b) states that the amount due has not been received by a date specified in that certificate, is conclusive evidence of that fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.

Sums received by the Borough of Telford & Wrekin under a monetary penalty may be used by the authority for any of its functions.

3. Statement of principles for determination a monetary penalty under the Regulations

3.1 Statement of Principles

This statement sets out the principles that the Council will apply in exercising its powers to require a relevant agent to pay a monetary penalty.

The Council will have regard to satisfying the balance of probabilities that the agent / property manager has failed to join a redress scheme as required by the regulations.

This statement sets out the principles which the Council will apply and will have regard to when exercising its powers under Article 8 of the Order. These state that:

“Where an enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme under article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work), the authority may by notice require the person to pay the authority a monetary penalty (a “monetary penalty”) of such amount as the authority may determine. The amount of the monetary penalty must not exceed £5,000”

3.2 Applicable principles

3.2.1 The purpose of imposing a financial penalty

The primary purpose of the Council’s exercise of its regulatory powers is to protect the interests of the public, although they may have a punitive effect.

The primary aims of financial penalties will be to:

- change the behaviour of the landlord
- aim to deter future non-compliance, and that of other agents/managers
- eliminate any financial gain or benefit from non-compliance with the regulations.

3.2.2 Criteria for the imposition of a financial penalty

By virtue of Article 8, a failure to comply with the requirements of the regulations allows the Council to require payment of a monetary penalty.

In considering the imposition of a penalty the Council will have regard to the evidence of a breach of the requirement.

In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration.

3.2.3 Criteria for determining the quantum of a financial penalty

Article 8(2) states the amount of the monetary penalty must not exceed £5,000.

The expectation is that a £5,000 penalty should be considered the normal level and that a lower penalty should only be given if the enforcement authority is satisfied that there are extenuating circumstances.

Telford and Wrekin Council will take 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 monetary penalty.

It has been a requirement to join a scheme since 2014, so lack of awareness cannot be considered;

The council will consider upon evidence provided to it, based on the turnover/scale of the business, if such a level of penalty is disproportionate would lead to an organisation going out of business.

Extenuating circumstances will be taken into account.

Payment will be required within 28 days beginning with the day on which the final monetary penalty notice was served. Payment of the monetary penalty will be accepted by cheque, made payable to Telford and Wrekin Council or by credit or debit card which can be accepted over the telephone or at Darby House, Addenbrooke House or Wellington Civic Centre. The monetary penalty will be credited against [R9109 DEAF DE59 Z99](#)

3.2.4 Procedural matters

The Order imposes a number of procedural steps which must be taken before the Council can impose a financial penalty and all agents and property managers must familiarise themselves with the contents of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 and / or seek legal advice. The procedure undertaken by the Council is detailed at the start of this document and in the schedule to the legislation <http://www.legislation.gov.uk/ukxi/2014/2359/schedule/made>

When imposing a monetary penalty, the enforcement authority must issue a final notice in writing which explains:

- (a) the reasons for imposing the monetary penalty;
- (b) information about the amount to be paid;
- (c) information about how payment may be paid;
- (d) information about the period in which the payment must be made, which must not be less than 28 days;
- (e) information about rights of appeal; and
- (f) information about the consequences of failing to comply with the notice.

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

Appendix A – Those excluded from the scope of the regulations

A1 - Exclusions from the requirement to belong to a redress scheme – lettings agency work

Exceptions to when a tenancy is issued under the Housing Act 1988 is 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.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector because a local authority is already a member of the Housing Ombudsman Scheme.

Employers who find homes for their employers or contractors:

Article 4(2) of the Order excludes things done by an employer where the prospective tenant is an employee, or a contractor. It excludes the person the prospective tenant provides work or services to where the prospective tenant is a worker, or a contractor, or is on secondment. It also excludes the hirer where the prospective tenant is an agency worker.

This is because an employer may either directly, or via a third party, help an employee find accommodation as a way to attract and then retain workers, especially in areas of high labour demand. This would fall within the definition of lettings work but, to avoid discouraging organisations from providing housing assistance to those who work or provide services for them, they have been exempted from the requirement to belong to a redress scheme.

Higher and further education establishments:

Article 4(3)(a) of the Order excludes higher and further education establishments. Universities, for example, often provide a service for their students to help them find property to rent. While this is lettings agency work as per the definition, the housing teams are not acting as independent agents and have a wider duty of care for the students at their institution. If an individual student feels that the housing teams have not provided a good service there are existing channels for students to complain to including the students union.

Legal professionals:

Article 4(3)(b) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. Legal professionals could be considered as carrying out lettings type work, for example, when they draft tenancy agreements. They are excluded from the duty as they are already heavily regulated and complaints about their services can be made to the Legal Ombudsman.

A2 - Exclusions from the requirement to belong to a redress scheme – property management work

The rules do not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme by Schedule 2 to the Housing Act 1996.

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.

Managers of commonhold land:

Article 6(2) of the Order excludes managers of commonhold land even if one of the units is subsequently let on an assured tenancy. This is to avoid the manager having to join a redress scheme if one of the units on the development was let under a relevant tenancy type, when this is not something they are likely to be aware of. A relevant tenancy type means:

- a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;
- b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977; or
- c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies.

The exemption for managers of commonhold land only applies to the manager of the whole development- where an agent manages an individual dwelling-house in such a development, the duty to belong to a scheme will apply.

Managers of student accommodation:

Articles 6(3) to (7) of the Order exclude student accommodation; in particular, halls of residence (which may be run privately), accommodation provided to students by education authorities and charities; and accommodation provided by any landlord where the students are nominated by an educational establishment or charity. Educational institutions will often rent bed space from trusted private providers (frequently agreeing a certain number of beds for a number of years and hence guaranteeing a level of rental income for the private provider) and then give that provider a list of names (nominated students) who will actually take up residence each year.

The legislation is not aimed at university managed accommodation which is already well regulated and students have other mechanisms to complain, including through the students union.

Managers of refuge homes:

Articles 6(8) to 6(10) of the Order exempt organisations that provide accommodation (refuge homes) for people who are fleeing from actual, or threat of, violence or abuse including controlling, coercive or threatening behaviour, physical violence or abuse of any other description (including both physical and mental). Where those organisations are not operated on a commercial basis and the costs of operation are provided wholly or in part by a government department or agency, a local authority, or the organisation is managed by a voluntary organisation or charity then there is no requirement for the managers of the building to join a redress scheme. The management and letting of such properties goes significantly wider than property management per se and the person living in such a property will not be occupying it as their permanent residence.

Receivers and insolvency practitioners:

Article 6(11)(a) of the Order excludes work done by a person ("A") in the course of a business where the property is subject to a mortgage and A is the receiver of the income of it. When a borrower defaults on a mortgage the receiver is appointed as agent for the mortgagor and steps into their shoes. As such it would not be appropriate to treat the receiver as a managing agent and require them to join a redress scheme.

Other authorities:

Article 6(11)(b)(i) of the Order excludes authorities where Part 3 of the Local Government Act 1974 applies, as these authorities will already be subject to investigation by the Local Government Ombudsman. Such bodies include a local authority as not all local authorities are social landlords, a National Park authority, police and crime commissioners, or fire and rescue authorities etc. The requirement to belong to a scheme under this Order does not apply to work carried out by these authorities.

Right to Manage companies:

Article 6(11)(b)(ii) excludes Right to Manage companies who acquire the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002 as they are in effect long leaseholders who have taken direct management of their block of flats from the landlord.

Legal professionals:

Article 6(11)(b)(iii) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. This is because they are already heavily regulated and complaints by relevant persons about their services can already be made to the Legal Ombudsman. (Where a property management firm is part of a joint venture with a legal firm but is operating under its own identity and is carrying out property management work then it will have to join an approved or designated redress scheme as under these circumstances it will not be authorised or licensed under the Legal Services Act 2007.)

Managers instructed by local authorities and social landlords:

Article 6(12) of the Order excludes things done where a Local Authority or a social landlord have instructed the person undertaking the work. Again this is because local authorities and registered social providers are already heavily regulated and consumers already have guaranteed access to an Ombudsman.

If a person is exempt from the redress scheme as they are not operating in the course of a business but they are collecting rent they will still have legal responsibilities as “manager” where the property is a House in Multiple Occupation.

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. In such cases they are not required to be part of a redress scheme, as they are not doing the work in the normal course of business. In cases where the level of service is deemed to be sub-standard, other leaseholders can complain to the main agent or freeholder that their subcontractor is not up to standard.

A3 - Implicit exclusions from the requirement to belong to a redress scheme

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.