	<b>Housing Committee</b> <b>7 February 2018</b>
<b>Title</b>	<b>Proposed monetary penalties for offences related to letting and property management agents.</b>
<b>Report of</b>	Councillor Tom Davey
<b>Wards</b>	ALL
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	Yes
<b>Enclosures</b>	
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## Summary

This report seeks approval to impose monetary penalties for offences related to letting agents who fail to display their fees and other relevant information and for property management and letting agents who fail to join a redress scheme.

## Officers Recommendations

1. That the Committee approve the London Borough of Barnet trading standards team to impose monetary penalties in relation to the Consumer Rights Act and The Redress Schemes for Lettings Agency Work and Property Management Work Requirement to Belong to a Scheme etc) (England) Order 2014.
2. That the Committee agree that any monetary penalties received in connection with the above offences be used to fund the cost of enforcing the legislation.

3. That the Trading Standards department be tasked to create a policy to be followed in relation to these penalties, in consultation with the Deputy Chief Executive and Chairman of this Committee'

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 Under Chapter 3 of the Consumer Rights Act 2015 it is now a legal requirement for all letting and managing agents in England and Wales to publicise details of their fees and other relevant information. The intention is that there should be full transparency to deter double charging to both the landlord and the tenant to enable tenants and landlords to shop around for the best deal.
- 1.2 The list of fees must be displayed in each of the agent's premises where they meet clients face to face, where it is likely to be seen by such persons. The information must also be published on the agent's website, if they have one.
- 1.3 It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Act. The penalty for breaching the requirement is a monetary penalty, imposed by the enforcement authority, which must not exceed £5,000.
- 1.4 The Redress Schemes for Lettings Agency Work and Property Management Work Requirement to Belong to a Scheme etc) (England) Order 2014, came into force on 1 October 2014 requiring all letting and property management agents (subject to certain exclusions) to join one of three Government approved 'redress schemes'.
- 1.5 The Order has been made as part of the Government's proposals for improving standards in the private rented sector and is directly linked with Part 6 of the Enterprise and Regulatory Reform Act 2013.
- 1.6 Local Authorities are the enforcement authority for this order and have a duty to enforce it. The penalty for breaching the requirement to belong to a redress scheme is a monetary penalty, imposed by the enforcement authority, which must not exceed £5,000. Appendix 1 sets out the process for issuing the penalty. The recipient has a right of appeal in relation to this.
- 1.7 Government guidance states that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcing authority is satisfied that there are extenuating circumstances. It says it is up to the enforcing authority to decide what such circumstances might be, taking into account any representations received.
- 1.8 The trading standards team have been undertaking a number of projects in this area to ensure compliance with the above legislation. In most cases the relevant trader has become compliant with the requirements shortly after being contacted by the trading standards Team. However, this is not always the case and there are circumstances where the team are now required to start the formal process to issue a monetary fine to ensure compliance. Appendix 2

outlines a summary of the work undertaken in relation to helping these traders achieve compliance in the past 2 years.

- 1.9 Approval is being sought to enable the London Borough of Barnet to impose monetary penalties in relation to this legislation and to agree that in the first instance the maximum fine of £5000 should be considered.
- 1.10 Letting agent fees remains a priority for Government and in November 2017 the Draft Tenant Fees Bill was published seeking to prevent letting agents from charging any fee to tenants. If this is adopted as it currently stands this will give further powers to Trading Standards in relation to this area.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 The London Borough of Barnet has a duty to enforce this legislation. The trading standard team has been working hard to bring all relevant traders into compliance. However there remain non-compliant traders in the Borough. Issuing notices in relation to monetary penalties will ensure that compliance is improved and non-compliance deterred.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The Committee could decide not to authorise the issuing of the penalties. In these circumstances the trading standards team will be unable to fully enforce the legislation for which they have a statutory duty.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 All trading standards officers will be authorised to issue these penalty notices. However before issuing any such notice, clearance must be sought from the senior officer for the team.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 Implementation of these penalties aims to raise standards in the Private Rented Sector, raising standards in turn increases sustainability. A sustainable and compliant private rental market will attract and retain economically active individuals and businesses.
- 5.1.2 Promoting compliance and tackling non-compliant behaviour by individuals and businesses contributes positively to creating places where people want to live, work and visit therefore supporting the objectives contained within the Corporate Plan. In particular, in relation to "Responsible Growth, Regeneration and Investment"

## **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.2.1 The cost of the additional enforcement will be met through the monetary penalties received where the legislation is breached.

## **5.3 Social Value**

- 5.3.1 Having a well regulated and well run letting and property management agents will benefit tenants. It will also provide a level playing field for businesses

## **5.4 Legal and Constitutional References**

- 5.4.1 The Local Authority has a duty to enforce both the Redress Schemes for Lettings Agency Work and Property Management Work Requirement to Belong to a Scheme etc) (England) Order 2014 and the Consumer Rights Act 2015. The relevant links to the legislation are found in the Background papers at the end of the report.

## **5.5 Risk Management**

- 5.5.1 The trading standards team will work closely with HB Law other local authorities trading standards teams to develop best practice around these penalties to reduce the likelihood of a recipient successfully appealing their penalty.

## **5.6 Equalities and Diversity**

- 5.6.1 Implementation of this legislation aims to protect and support vulnerable groups/families.

## **5.7 Corporate Parenting**

- 5.7.1 N/A

## **5.8 Consultation and Engagement**

- 5.8.1 Appendix 2 outlines the work that has already been undertaken in this area which has involved considerable engagement with the sectors involved.

## **5.8 Insight**

- 5.8.1 None

# **6. BACKGROUND PAPERS**

Consumer Rights Act 2015 - [Consumer Rights Act 2015](#)

Enterprise and Regulatory Reform Act 2013 - [Enterprise and Regulatory Reform Act 2013](#)

Statutory Instruments 2014 No. 2359 Housing, England, The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 - [The Redress Schemes for Lettings Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc\) \(England\) Order 2014](#)

Department for Communities and Local Government (DCLG) guidance for Local Authorities on The Redress Schemes for Lettings Agency Work and Property Management -

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/269451/The\\_Redress\\_Schemes\\_for\\_Lettings\\_Agency\\_work\\_and\\_Property\\_management\\_work.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269451/The_Redress_Schemes_for_Lettings_Agency_work_and_Property_management_work.pdf)

## **The Redress Schemes for Lettings Agency Work and Property Management 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. 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 require the penalty to be paid within 28 days, from the day after the day on which the final notice was sent. 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.

It is up to each local authority to decide who should serve 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.

### **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**

The penalty fines received by the enforcement authority may be used by the authority for any of its functions. If the lettings agent does not pay the fine within the 28 day period the authority can recover the fine on the order of the county 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.

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## Appendix 2

### Summary of work undertaken in relation to Letting Agents in 2016/17 and 17/18 to date

In 2016/17 Letting Agents was identified as an emerging issue within Barnet.

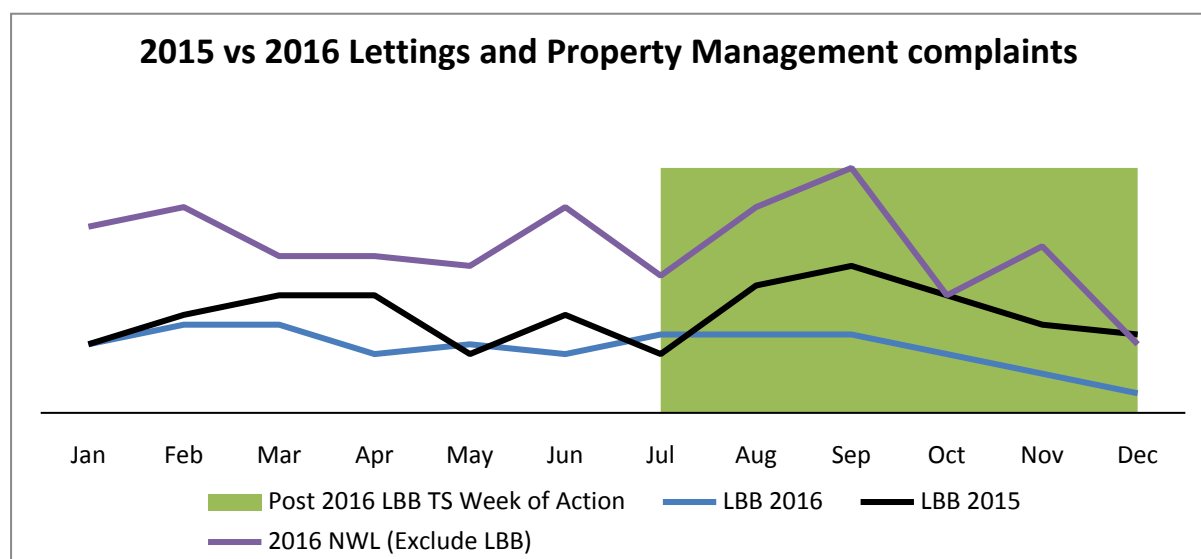
To tackle the increasing complaints the London Borough of Barnet trading standards team undertook a week long dedicated programme of targeted visits to letting agents at the end of June 2016.

The week coincided with the sentencing of Martin Marcus. Mr Marcus was prosecuted by the trading standards team for fraud related to his numerous letting agency companies. He was sentenced to 4 ½ years in prison.

The week of action achieved 100% compliance in relation to membership of redress scheme and fee information. This was one of the highest compliance rates seen across London. Prior to visiting a mail shot was sent to the traders advising them of their obligations and stating they would be visited in June.

The officers then made the initial visit and reiterated advice on how to become compliant, this was followed up with letters of increasing formality until the traders became compliant.

The week of action significantly impacted on levels of complaints. Particularity when compared with the previous years complaints and the rest of North West London<sup>1</sup>.



The work on letting agents has continued into 2017. With any new letting agents that the team becomes aware of, being visited in the same way.



The difficulty facing the trading standards team is that some of these traders are ignoring the continual requests to become compliant, despite numerous attempts to engage they are not joining the redress scheme and or displaying their fees. Therefore there is substantial amounts of deposit money that is at risk as it is not being protected in the prescribed manner. Furthermore, by failing to display their fees the traders are preventing the consumers from making a fully informed transactional decision.

Therefore, the Trading Standards team are seeking approval to utilise the monetary penalties to be used as a last resort when continual attempts to achieve compliance have failed.

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<sup>i</sup> North West London Boroughs are Enfield, Brent, Harrow, Haringey, Hillingdon and Ealing.