

Decision Maker: EXECUTIVE

**FOR PRE DECISION SCRUTINY BY PUBLIC PROTECTION
AND ENFORCEMENT POLICY DEVELOPMENT & SCRUTINY
COMMITTEE**

Date: Thursday 27 September 2018

Decision Type: Non-Urgent Executive Non-Key

Title: **PLANNED ENFORCEMENT OF LEGISLATION WHICH
REGULATES THE LETTING AGENTS AND PROPERTY
MANAGEMENT SECTOR**

Contact Officer: Rob Vale, Head of Trading Standards & Community Safety
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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

1. Reason for report

- 1.1 This report is presented to seek the approval to use the planned enforcement of legislation which regulates the letting agent and property management sector in the Borough.
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2. **RECOMMENDATIONS**

- 2.1 **Members of the Scrutiny Committee are asked to note and comment on the content of this report.**

The Executive is asked to: -

- 2.2 **Delegate authority to enforce the Enterprise and Regulatory Reform Act 2013 to the Executive Director of Environment and Community Services.**
- 2.3 **To agree that the monetary penalty for non-compliance with the legislation be set at the maximum sum of £5,000 per failure in line with many local authorities across London.**
- 2.4 **To authorise the Head of Trading Standards and Community Safety to make amendments to the amount of the monetary penalty, where the enforcement authority is satisfied that there are extenuating circumstances taking into account any representations made by**

the lettings agent or property manager during the 28 day period, following the authority's notice of intention to issue a fine.

- 2.5 To agree to the uploading of compliance failures by letting agents and property managers to the Rogue Landlord and Agent Checker administrated by the Mayor of London and London Assembly (<https://www.london.gov.uk/rogue-landlord-checker>).

Impact on Vulnerable Adults and Children

1. Summary of Impact: See section 4
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Safe Bromley :
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Financial

1. Cost of proposal: Estimated Cost: £18k
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Trading Standards
 4. Total current budget for this head: £48,125.
 5. Source of funding: Asset Recovery Incentivisation Scheme (ARIS)
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Personnel

1. Number of staff (current and additional): One
 2. If from existing staff resources, number of staff hours: NA
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Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Applicable:
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Procurement

1. Summary of Procurement Implications: Not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents and visitors to the borough
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not applicable

3. COMMENTARY

Compulsory Membership of a Government Approved Redress Scheme

- 3.1 All letting agents and property management operators in England are required to join a Government approved redress scheme under 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.
- 3.2 In August 2018 the number approved schemes reduced down from three to two. They are the Property Redress Scheme (www.theprs.co.uk) and The Property Ombudsman (www.tpos.co.uk)
- 3.3 The effect of the Order is that tenants and landlords dealing with letting agents and property management operators in the residential sector can complain to an independent body about the service they have received.

Compulsory Display of Prescribed Information

- 3.4 One of the first new provisions brought into force by the passing of the Consumer Rights Act 2015 relate to requirements for accommodation letting agents and property management businesses to display their fees and charges to clients.
- 3.5 Information prescribed by sections 83-88 and Schedule 9 of Consumer Rights Act 2015 must be displayed by letting agents and property managers' at their premises where it can be seen without asking. The information must also be shown on their websites
- 3.6 The prescribed information includes the fees charged and a statement saying with which redress scheme they have membership. If the agent holds clients' money, they must also display a statement saying whether or not they belong to a client money protection scheme.
- 3.7 Failure to satisfy any of these statutory requirements can lead to a maximum penalty of £5,000 per failure. These penalties are imposed using a Penalty Charge Notice. They are issued by the enforcement authority where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and has failed to comply in one or more of their duties.
- 3.8 The level of penalty is to be determined by the enforcement authority. Other London Authorities which are already enforcing this legislation usually levy the maximum penalty of £5,000 per failure.
- 3.9 There are strict procedures and a series of mandatory stages to follow before a penalty may be imposed. At any time, the authority may give notice to reduce or revoke a fine.

LBB enforcement

- 3.10 This is a new area of enforcement for the Trading Standards team in Bromley. The intention is to create a new temporary post for up to 3 months to establish the level of compliance in the Borough and when necessary follow up any failures with appropriate enforcement action, which may include the use of Penalty Charge Notices. It is estimated that the temporary post will cost £18k and will be funded from the £48,125 carried forward from the Asset Incentivisation Scheme.
- 3.11 LBB Public Protection has agreed, along with every other London Borough, to participate in the online Rogue Landlord and Agent Checker administrated by the Mayor of London and London

Assembly (<https://www.london.gov.uk/rogue-landlord-checker>). The website publicly displays information about private landlords and letting agents who have been prosecuted or fined for housing related matters. It also includes a secure area for the enforcement community's reference. It is anticipated that compliance failures identified in LBB will be held on this database.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 Children living in bad housing are more likely to suffer from poorer general health, respiratory health problems and asthma – with children living in private rented housing more likely to have poorer general health and wheezing problems. Working-age adults living in bad housing are disproportionately at greater risk of poorer general health, low mental wellbeing and respiratory problems including asthma and breathlessness.

5. POLICY IMPLICATIONS

- 5.1 The outcomes contribute to the guiding principles of Building a Better Bromley, notably Supporting Independence and a Safe Bromley. Protecting consumers through regulating the letting agent and property management sector by enhancing the clarity of their experience when using these businesses will assist Bromley residents who are searching for solutions to housing needs. The work may also assist the Authority in discerning whether or not to engage the services of letting agents/property managers when assisting people who are experiencing housing difficulties.

6. FINANCIAL IMPLICATIONS

- 6.1 This report is proposing to employ a temporary member of staff for 3 months at an estimated cost of £18k, to undertake compliance checks and enforcement actions. Recent confiscations of monies obtained through the Asset Recovery Incentivisation Scheme (ARIS) will fund this project. A sum of £48,125 was carried forward to 2018/19.
- 6.2 Officers expect to spend a further £10k on financial abuse/scams work. It is therefore likely that Officers will request that the remaining unspent balance of £20k is carried forward to 2019/20.
- 6.3 At this stage it is not known how many, if any, non-compliant letting agents there are in the borough, and therefore any potential income that may be generated from issuing the FPNs cannot be quantified.

7. LEGAL IMPLICATIONS

- 7.1 Section 83 of the Consumer Rights Act 2015 requires letting and management agents to display a list of all fees, charges or penalties (however expressed) payable by landlords and tenants for any letting agency or property management service. This includes any additional fees, charges or penalties which may be incurred during a tenancy as well as fees, charges and penalties which are referenced in Tenancy Agreements and in Terms of Business. The local authority has a duty to enforce the provisions of the Consumer Rights Act 2015.
- 7.2 There is a duty under section 7 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.

8. PROCUREMENT IMPLICATIONS

Not applicable

Non-Applicable Sections:	PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	