

Decision Maker: PUBLIC PROTECTION AND ENFORCEMENT POLICY
DEVELOPMENT AND SCRUTINY COMMITTEE

Date: 26th June 2019

Decision Type: Non-Urgent Non-Executive Non-Key

Title: LETTING AGENTS ENFORCEMENT

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

Ward: All Wards

1. Reason for report

- 1.1 This report is an update on report ES18068 presented to the Public Protection and Enforcement Policy Development and Scrutiny Committee on 27th September 2018, for pre decision scrutiny seeking approval of the planned enforcement of legislation which regulates to the agent and property management sector in the Borough.
 - 1.2 The report went to the Executive on 17th October 2018 setting out the proposal to carry out this work and they requested that an additional report be presented back to the Public Protection and Enforcement PDS Committee no later than the first quarter of 2019 to demonstrate the effectiveness of the scheme.
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2. **RECOMMENDATION(S)**

- 2.1 Members of the Public Protection and Safety Policy Development and Scrutiny Committee are asked to note the content of the report.

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: N/A
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Trading Standards
 4. Total current budget for this head: N/A
 5. Source of funding: N/A
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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. NA.
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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: NA

3. COMMENTARY

- 3.1 The Report ES18068 presented to the Public Protection and Enforcement Policy Development and Scrutiny Committee on 27th September 2018, set out the legislation in detail with regards to Compulsory Membership of a Government Approved Redress Scheme and Compulsory Display of Prescribed Information.
- 3.2 The purpose of the project was to ensure all letting agents within the Borough are fully compliant with the requirements of the legislation. In particular with regard to:-
- Display of fees and Client Money Protection statement both on premises and website
 - Membership of a redress scheme
- 3.3 In addition there are two new pieces of legislation coming into force in 2019 around fees and client money protection and the intention was to ensure awareness and future compliance with the new rules.

BACKGROUND

- 3.4 At the start, the number of businesses and level of compliance was largely unknown. A number of complaints had been received in the period leading up to the project, however most of the businesses involved appeared to have ceased trading. Part of the project therefore was to establish the size of the industry and level of compliance.
- 3.5 The legislation in question does not refer to specific offences, instead it relates to breaches of the legislation, for which a financial penalty notice can be served. The legislation contains conditions that must be met in order to serve the notice and provisions for representations and appeals to be made against the notice.
- 3.6 As such documents and procedures were produced to ensure compliance with the legal requirements. Agreements have also been put in place with the legal and debt recovery teams in the case of appeals or non-payment of penalties. This ensures that the Council is ready for future enforcement projects of this and the upcoming legislation.

FINDINGS

- 3.7 From information provided by the redress schemes and the traders listed on the LBB database, there were around 250 possible letting agent businesses. A significant number, around 95, have either ceased trading or are not affected by the legislation e.g. sales only, commercial only etc.
- 3.8 150 letters including business advice in the form of trader guidance notes have been sent out.
- 3.9 A number of estate agents visited have said that whilst they used to deal with lettings, the market and legislation has changed significantly and it is no longer worthwhile. These businesses were all advised of the current and upcoming legislation should they decide to deal in lettings again in the future.
- 3.10 Of the remaining businesses all were members of a redress scheme; however 49% were non-compliant at the first visit. Whilst many of these were related to minor issues such as VAT inclusive fees etc., 23 warnings were issued.

SUMMARY

Objective	Outcome
• No. of traders identified	185
• No. of traders visited / investigated	150
• No. of traders actively dealing with lettings	51
• No. of traders brought into compliance	25
• No. of warning letters/ emails sent	23
• No. of Penalty Notices Issued	0
• No. non-compliant traders at point of first visit	25
• Amount of money received from the issue of Penalty Notices	0
• No. of outstanding Penalty Notices at end of project and the total monetary value of these notices	0
• No. of businesses visited non-compliant at end of project.	0

3.11 Whilst most of the letting agents were aware of the legislation, there was inconsistency in the interpretation and application of the requirements. Very few businesses were aware of the recent case law from upper tier tribunal cases. Most of the businesses were co-operative and were keen to learn how to apply best practice for displaying fees and other information.

3.12 Most of the letting agents were aware that there were imminent changes to the law but many were unsure if or how it would affect their business. In particular, many businesses were unaware of the mandatory requirement to belong to a client money protection scheme until they received advice from the service.

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 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 deciding whether or not to engage the series of letting agents/property managers when assisting people who are experiencing housing difficulties.

6. FINANCIAL IMPLICATIONS

- 6.1 The temporary post was originally going to be funded from the Proceeds of Crime Act prosecution as part of the under the Asset Recovery Incentivisation Scheme (ARIS), however it was actually funded from underspends elsewhere in the service. This enabled the ARIS funding of £48.1k to be carried forward to 2019/20.

7. LEGAL IMPLICATIONS

- 7.1 Section 83 of the Consumer Rights Act 2015 requires letting and management agents to display a list of 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 referred 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 Letting Agency Work and Property Management Work (Requirements to belong to a Scheme etc) (England) Order 2014, made under the Enterprise And Regulatory Reform Act 2013.

Non-Applicable Sections:	PERSONNEL PROCUREMENT
Background Documents: (Access via Contact Officer)	Report ES18068