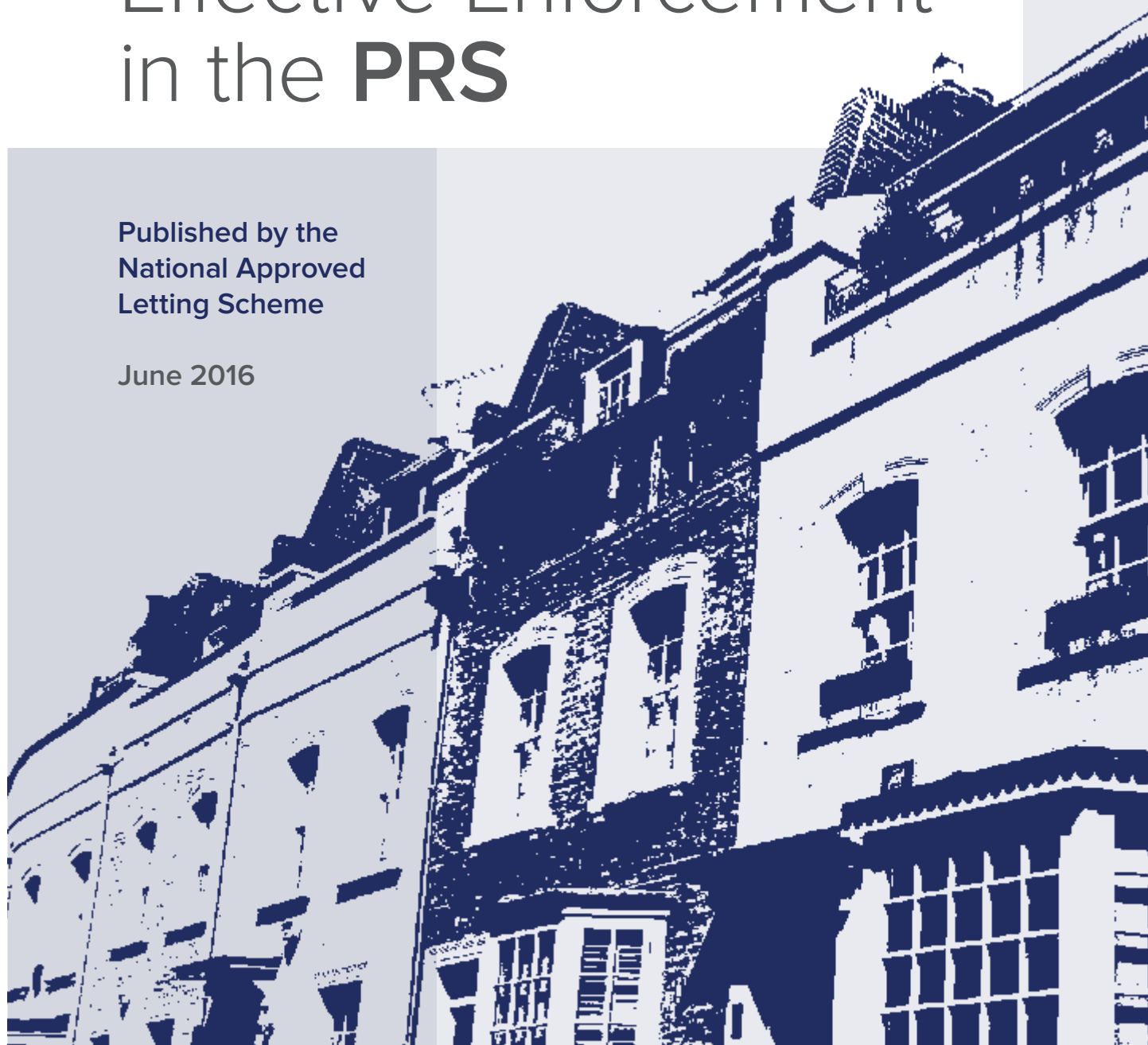


Effective Enforcement in the **PRS**

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Support. Protection. Reassurance. NALS.

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1. Objective

This toolkit is designed to assist local authority enforcement officers to take effective action to tackle rogue letting agents that fail to comply with the law. In particular, it explores the requirement for letting agents to belong to a government approved redress scheme and to display their fees, redress scheme membership and client money protection status.

By enforcing these requirements effectively, it will help to improve the professionalism of the industry and drive up consumer protection for tenants and landlords alike.

We would like to thank officers from the following local authorities who have provided helpful information, advice and examples of good practice that have all contributed to the development of this toolkit:

- **Bristol City Council**
- **Enfield Council**
- **Islington Council**
- **Newham Council**
- **Powys County Council (National Trading Standards Estate Agency Team)**
- **Sheffield City Council**
- **Westminster City Council**
- **York City Council**

Plus a personal thanks to Richard Tacagni www.londonpropertylicensing.co.uk for his invaluable input and also Fiona Exley, London Trading Standards www.londontradingstandards.org.uk

2. Foreword by the Chief Executive of NALS

More and more of us are choosing to live in privately rented housing. However, the public's opinion of the Private Rented Sector remains mixed. At NALS, our aim is to ensure that the professional standards of lettings and management agents meet the reasonable expectations of both tenants and landlords. Only by raising standards across the sector can we start to tackle the small minority whose rogue activities tarnish our reputation.



When an agent's service is not up to scratch, landlords and tenants have every right to complain. All NALS firms are required to have a proper complaints procedure and we welcome the government's decision to make membership of a redress scheme compulsory. We are also pleased that all agents are now required to be more open and transparent, about their fees and whether or not they safeguard clients' money.

This toolkit is designed to be of assistance to Local Authorities. They are, after all, in the enforcement front line. We are confident that the vast majority of agents and landlords will be supportive of Local Authorities' implementation of these measures. Working together, we help to make living in the Private Rented Sector a positive experience.

Isobel Thomson, NALS CEO

3. Summary of the legislation

3.1. Redress Scheme Membership

On 1 October 2014, new legislation came into force making it a requirement for all lettings agents and property managers in England to belong to a Government approved redress scheme. These schemes provide a mechanism for complaints to be investigated and determined by an independent person.

Further redress scheme guidance is contained in Annex C of the Department for Communities and Local Government (DCLG) ‘Improving the Private Rented Sector and Tackling Bad Practice - A Guide for Local Authorities’. You will find a link to the document in [Appendix 5](#).

The terms ‘letting agency work’ and ‘property management work’ are defined in sections 83 to 88 of the Enterprise and Regulatory Reform Act 2013. There are certain exemptions listed in articles 4 and 6 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (hereafter referred to as the ‘Redress Scheme Order’).

In general terms, letting agency work is described as things done by any person in the course of a business in response to instructions received from:

- (a) a person seeking to find another person wishing to rent a home in England under an assured tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”); or
- (b) a person seeking to find a home in England to rent under an assured tenancy and, having found such a home, to obtain such a tenancy of it (“a prospective tenant”).

In general terms, property management work is described as things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where:

- (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C’s behalf, and
- (b) the premises consist of or include a home let under a relevant tenancy.

Where appropriate, council officers should refer back to the legislation and DCLG guidance to study the full definitions and exemptions as we have only included a brief summary. For the purpose of this guidance, we have referred to people carrying out letting agency or property management work as ‘agents’.

For the purposes of the legislation, the government has approved three redress schemes under Section 87 of the Enterprise and Regulatory Reform Act 2013. They are:

- [Ombudsman Services Property](#)
- [Property Redress Scheme](#)
- [The Property Ombudsman](#)

Full contact details for the three scheme providers are included in Appendix 2.

If consumers are unhappy with the service provided, they can report their concerns in writing to their agent. If the matter is not satisfactorily resolved within 8 weeks, the consumer (landlord or tenant) can take their complaint to the redress scheme that the agent belongs to. The adjudicator may then carry out an independent investigation. This marks an important step forward in improving consumer protection.

Failure to join a redress scheme is dealt with by way of a financial penalty and the enforcing authority can determine the level of penalty up to a maximum of £5,000. For the purposes of this guidance, we have referred to the process of serving a financial penalty as the Penalty Charge Notice (PCN) procedure.

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

The guidance goes on to state that in the early days of the requirement coming into force, lack of awareness could be considered. Nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction.

Another issue that could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. The onus should be on the agent to provide documentary evidence if they cite this as justification for a lower penalty, following service of a Notice of Intent. This could include submission of the company's audited accounts for the last two years.

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 enforcing authority can impose further penalties if an agent continues to fail to join a redress scheme despite having previously had a penalty imposed.

Whilst the DCLG guidance is not statutory guidance, the advice it contains has been referred to and upheld in some First-tier Tribunal appeal hearings.

3.2 Display of fees, etc.

On 27 May 2015, new legislation came into force making it a requirement for all agents in England and Wales to publicise their relevant fees. The same requirement was extended to Wales on 21 October 2015 by virtue of the Consumer Rights Act 2015 (Commencement No. 2) (Wales) Order 2015. Section 83 to 88 of the [Consumer Rights Act 2015](#) (the CRA2015) contains further guidance about exactly which fees must be displayed.

- (a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed (as the case may be);
- (b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house; and
- (c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.

Further guidance on the display of Prescribed Information is contained in Annex D of the DCLG guidance ‘Improving the Private Rented Sector and Tackling Bad Practice - A Guide for Local Authorities’. You will find a link to the document in Appendix 5.

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 (Section 83(2)).

According to DCLG guidance, someone walking into an agent’s office should be able to see the list without having to ask for it and if someone does ask it should be clearly on view and not hidden, for example in a drawer. So displaying the fees in a staff-only area, or only providing the fees list on request will not comply with the requirements.

The information must also be published on the agent’s website, if they have one (Section 83(3)).

Within England, alongside the list of fees the agent must also display a statement saying whether they belong to a client money protection scheme, if they hold any money as part of their agency service (Section 83(6)). For example:

“# are not members of a client money protection scheme”; or

“# are members of a client money protection scheme operated by ##’.

Most organisations that operate client money protection schemes will provide window stickers, logos and other promotional material to help publicise that the agent is a member.

A client money protection scheme is a scheme that enables a person on whose behalf an agent holds money to be reimbursed according to the scope and limits of the scheme if all or part of that money is not repaid to that person.

SAFEagent is a government-endorsed kite mark denoting agents that belong to such a scheme. It is referenced in the [DCLG How to Rent Booklet](#). It is not a scheme in its own right but recognises client money protection schemes operated by the Association of Residential Letting Agents (ARLA), the Law Society, the National Approved Letting Scheme (NALS), the Royal Institution of Chartered Surveyors (RICS) and the UK Association of Letting Agents (UKALA).

These schemes are all run by recognised industry bodies or organisations that operate in the private rented sector to provide accreditation and/or regulation. They are completely independent from the letting agent and they do not act on behalf of the participating firm.

There are other client money protection schemes operated by commercial organisations, but which are not part of the SAFEagent kite mark. Membership of any client money protection scheme will satisfy the legislation and for the purposes of this guidance, it is not possible to provide a definitive list of all of them.

Within England, alongside the list of fees, agents must also display a statement saying which redress scheme they belong to. For example:

“# are members of a redress scheme operated by the Ombudsman Services Property, Property Redress Scheme, or the Property Ombudsman” **[delete as appropriate]**

The three redress schemes will provide window stickers, logos and other promotional material to help publicise that the agent is a member.

While the CRA2015 only requires agents to display information on their websites and in premises that prospective clients can visit, it can be argued that agents should also display which redress scheme they have joined when they advertise on property portals (where possible), to avoid the risk of committing an offence of omitting material information under the Consumer Protection from Unfair Trading Regulations 2008.

Where appropriate, council officers should refer back to the legislation and DCLG guidance for the full definitions and exemptions as we have only included a brief summary. For the purpose of this guidance, we have referred to the requirement to display relevant fees, redress scheme membership and client money protection status as ‘Prescribed Information’.

Failure to display Prescribed Information is dealt with by way of a financial penalty and the enforcing authority can determine the level of penalty up to a maximum of £5,000. Only one PCN can be imposed on the same agent in respect of the same breach (Section 87(6)).

DCLG guidance states that 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 the lettings agent or property manager makes during the 28 day period following the authority’s notice of intention to issue a fine.

The guidance goes on to state that in the early days of the requirement coming into force, lack of awareness could be considered. Nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction.

Another issue that could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. The onus should be on the agent to provide documentary evidence if they cite this as justification for a lower penalty, following service of a Notice of Intent. This could include submission of the company’s audited accounts for the last two years.

It is open to the authority to give the agent a grace period in which to comply rather than impose a fine. The authority may choose to adopt a more lenient approach to a minor technical breach as opposed to a general failure to display any of the Prescribed Information.

The enforcing authority can impose further penalties if an agent continues to fail to comply despite having previously had a penalty imposed.

4. The enforcing authority

It is important to note that the enforcing authority has been defined in different terms under each piece of legislation. This does make matters more confusing and so we have summarised the different arrangements for each piece of legislation.

If you are still unsure, you may wish to contact the council's legal or constitutional service team for advice.

4.1 Redress Scheme Enforcement

Under the Redress Scheme Order (Article 2), the enforcing authority is defined as a district council, a London borough council, the Common Council of the City of London, or the Council of Isles of Scilly.

We understand the definition of enforcing authority includes city councils and metropolitan borough councils as they are district councils that have acquired the status of boroughs or cities.

County councils are not included within the enforcing authority definition, although unitary councils, where a local authority exercises both the powers of a county and a district council, can enforce the Order.

Where necessary, council officers may wish to obtain legal advice as we are unable to provide a definitive interpretation of the law.

Whilst there is no specific mention of unitary authorities, city councils or metropolitan borough councils, it could not possibly have been the intention of Parliament to exclude certain parts or councils in England without expressly stating so. As such, we suspect 'district council' can be interpreted widely, although councils may wish to take legal advice on this point if unsure.

The Order places a duty on every enforcing authority to enforce the Order within their local area (Article 7). So this is something that each council must strive to do. It is not optional.

4.2 Display of Prescribed Information Enforcement

Under Section 87 of the CRA2015, the enforcing authority is defined as the local weights and measures authority in England and Wales i.e. Trading Standards.

In London boroughs and single-tier authorities, these arrangements give the council more flexibility in how they enforce the legislation. So for example, at Nottingham City Council, the private sector housing team is responsible for enforcing the redress scheme although intelligence is also gathered by Trading Standards. Whilst at Newham Council they have adopted a partnership approach where Trading Standards enforce the redress scheme with oversight and management from the private sector housing team.

In two-tier authorities, the situation is more complicated as the enforcing authority for the redress scheme is the district council whereas the enforcing authority for the display of Prescribed Information is the county council. This requires close partnership working and information sharing between the two councils.

The DCLG guidance states that generally, the enforcing authority will be the local authority in whose area the letting agent who has not complied with the requirement is based. So for a national letting agent who has not published their fees and other details, they can be liable for a fine for each and every office where the information is not published.

When it comes to enforcement against a web-based company offering services across the country, DCLG guidance states that local authorities will need to agree which authority will issue the penalty notice, as multiple fines cannot be imposed for the same breach of the requirement. In such cases, DCLG guidance suggests that the local authority with the registered head office, or where the website is registered, could potentially take the lead.

When enforcing the requirement to display Prescribed Information on the agent's website, attention is drawn to section 87(2) of the CRA2015. In these circumstances, it states that the enforcing authority is the Trading Standards service for the area where the dwelling house to which the fees relate is located and not where the agent's office is based. Depending on the area the agent covers, this could mean that breaches involving failure to display Prescribed Information occur across multiple council areas and empower numerous Trading Standards teams to take enforcement action.

When considering enforcement issues, regard should be had to whether the agent has entered into a primary authority partnership agreement with a particular local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance. Further information can be found at: <https://primaryauthorityregister.info>.

5. Promotional activity

Whilst the lettings industry wants to see these laws effectively enforced, we also want councils to actively promote the new requirements amongst agents, landlords and tenants. It is in the interests of consumer protection that all parties understand their rights and responsibilities.

After all, what better way to empower tenants to exercise their rights and reduce the need for council intervention in routine property disputes? If tenants are signposted away from non-compliant agents and understand their rights under the redress schemes, it can help to reduce council service requests and make best use of limited resources.

With council budgets under more pressure than ever, we recognise that the likelihood of councils undertaking paid advertising is slim. But with careful thought, initiative and innovation, much can be done to reach out to tenants, landlords and agents at minimal cost.

It is important for enforcement officers to engage with the council's communications or media team at the earliest opportunity. After all, whilst enforcement officers are very capable when it comes to enforcing the law, they are not always best placed when it comes to developing an effective communications plan.

To help save time and energy, we have provided some examples of promotional activity already carried out by councils across the country. After all, it is much easier to learn from existing good practice than keep reinventing the wheel.

5.1 Council Website

The council's website provides a powerful tool to reach out to residents and businesses in the local area.

For private tenants, the website usually contains housing advice and guidance on finding private rented accommodation. This creates a great opportunity to signpost tenants to letting agents that are members of a government approved redress scheme, whilst highlighting the need for agents to display fees and other information. Thus, tenants can become the eyes and ears of the council and provide feedback if the rules are not complied with.

Islington Council have produced an excellent private tenant guide that includes information on agents' fees ([here](#)) – it is listed under 'Useful documents'.

For private landlords, the website usually has information about housing standards, property licensing and other relevant issues. Landlords can be advised about the dangers of placing their valuable asset in the hands of an agent that does not belong to a redress scheme and is not displaying the Prescribed Information. After all, if they are failing to follow these simple steps, what other legal requirements are they failing to comply with and will they still be trading in a few months time?

For agents, the website can remind them about the new legislation and the consequences of getting things wrong. We came across some good examples on Newcastle City Council's website ([here](#)) and Islington Council's website ([here](#)). The Islington website contains a well-designed factsheet for businesses on agent fees that can be downloaded from their website.

5.2 Press Release

Press releases provide a great opportunity to promote news stories through the local media and trade press. This is particularly the case if the council are promoting robust enforcement activity against rogue letting agents – an issue everyone will support.

From our experience, the best press releases emanate from a joint enterprise between the council's media team and the private sector housing or Trading Standards team.

To generate interest, the press release needs a good focus. For example, the first £5,000 civil penalty served; or ‘crackdown on rogue letting agents to protect vulnerable tenants’. Press coverage can be enhanced by offering eye-catching photos to accompany the story online and in hard copy publications.

The press release will usually contain a quote from the Council Leader, Mayor or Cabinet Member, which helps to demonstrate the council’s commitment to consumer protection and raising standards in the private rented sector.

For inspiration on drafting a press release, see recent examples from Croydon Council ([here](#)), Islington Council ([here](#)) and Sheffield Council ([here](#)), all of which achieved good media coverage.

5.3 Landlord & Letting Agent Forums

Most councils have a landlord and agent forum to discuss local issues and improve engagement. They might be organised directly by the council or run by a landlord association on their behalf. If you don’t yet have an active forum in your area, perhaps now is a good time to start!

There may also be other privately run landlord and property investor forums taking place in your area. We’ve come across many such groups operating across the country, often with very little local authority engagement. For example, there are networking groups organised through Facebook, MeetUp (www.meetup.com) and various other online forums and websites.

Once you have tracked them down, why not ask for an invite to network with attendees and perhaps after that, you could request a speaking slot on the agenda.

Giving a presentation on the new requirements will be useful for landlords and agents alike. It will help to raise awareness whilst explaining what the council are doing to enforce the law. From our research, a number of councils including Bristol City Council, Leicester City Council, Leeds City Council and London Borough of Barking & Dagenham have already followed this approach.

5.4 Landlord Newsletter

Articles in landlord newsletters can be really useful to help raise awareness. With most now being produced as e-bulletins and distributed online, this helps to minimise printing and postage costs.

We've seen some great articles published by Bristol City Council in their quarterly 'Landlord News', including a front-page feature in the Winter 2014 edition.

5.5 Housing Advice Centre

With a shortage of affordable housing, many tenants visit their council's housing advice centre to seek help and advice. Some councils provide leaflets, advice sheets and landlord / agent lists to help people find their own accommodation.

It is important to check that all this information is up to date and reflects the new legislation. After all, imagine the reputational damage if a local council referred tenants to an unregistered agent, or used their services to procure temporary accommodation for homeless families. It wouldn't look good.

5.6 Social Media

Over the last few years, social media has become an increasingly important means of communication for everyone involved in the property industry – be it landlords and agents advertising their properties or prospective tenants looking for somewhere to live. There are also numerous online discussion forums where landlords and agents discuss issues and share information.

Most councils now have Twitter and Facebook accounts and some have many thousands of followers or page-likes. Whilst enforcement officers are not often allowed to post their own updates, the council's media team are usually looking out for interesting content to share.

Whilst one tweet or Facebook post won't change the world, a series of timely updates will help to improve engagement and let people know about their rights and responsibilities when it comes to renting from a private landlord or agent.



5.7 Business Advice

It goes without saying, but one of the simplest steps will be to send advisory letters to all agents based in the local area. Whilst this can be done by post, a quicker and more cost effective approach might be to send information by email.

Westminster City Council reported that sending advisory letters by email had worked well and produced fast results, particularly when liaising with independent agents and web-based companies working from a virtual office.

The first step in the process will be to compile a list of agents operating within the local area. This in itself is no simple task, although by interrogating various information sources, a central list can be developed and the list can evolve over time.

Useful sources of information can include:

- **Agents already known to the private sector housing, homelessness and trading standards teams;**
- **Asking housing enforcement officers to identify agents when responding to housing service requests from tenants;**
- **Mandatory HMO, additional and selective licensing under which the applicant must disclose both the landlord and the person or company managing the property, if different;**
- **Liaison with the accommodation office at the local university or college;**
- **Agents advertising properties through property portals;**
- **Agents advertising properties for rent in the local press; and**
- **Street surveys to identify agents that operate from a local business premises.**

Once you have your list of agents, we have produced some example letters in Appendix 6 that you might want to customise and use locally.

Whilst advisory letters followed by spot-checks on the three redress scheme websites should help to identify any agents that have failed to join, the process for checking the display of Prescribed Information may need to be more hands-on.

After all, without visiting the agent's premises, how can you be sure that all the required information is being displayed? Visits can be programmed in on an area-by-area basis over a period of time. Prior to visiting the agent's premises, their website can also be checked. That way, any deficiencies in information displayed online can be discussed with the manager during the site visit.

This approach really does work. For example, in August 2015, Enfield Council told us they had identified 202 letting agents in the borough and checked whether each agent was a member of the 3 redress schemes. Of the 202 agents 30 were found not to belong to a redress scheme and so visits were made to these premises to inform them of their legal obligations and to advise them how to comply. They told us that all but one agent is now compliant. This is a great example for other councils to follow.

6. Penalty Charge Notice (PCN) Procedure

So you have carried out promotional activity but find there are still a small minority of agents who have failed to comply with the requirements. What next? Before rushing in and serving your first penalty, it is important to check that you have got all the building blocks in place to ensure the process runs smoothly and to minimise the risk of appeal.

6.1. Cabinet Report

An important first step in the process will be to prepare a Cabinet report or similar (depending on the council's constitution) to give council officers delegated authority to implement the new arrangements and to approve the level of monetary penalties. It will normally be necessary for the report to be lodged on the council's 'Forward Plan' in advance of the Cabinet meeting.

The monetary penalty under both statutory provisions is a civil penalty of up to £5,000. Department of Communities and Local Government (DCLG) guidance to local authorities says that:

"The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority 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".

The DCLG guidance goes on to say that in the early days, lack of awareness could be considered and also whether the £5,000 fine would be disproportionate to the turnover of the business or would lead to the company going out of business.

We would encourage councils to adopt the maximum penalty in line with DCLG guidance as the default option, whilst retaining council officer's flexibility to reduce the amount in extenuating circumstances, in order to avoid fettering the council's discretion. Providing this flexibility will also reduce the likely number of appeals.

We realise that preparing the cabinet report can be a time consuming process. Given the content of each council's report is likely to be very similar, it would seem sensible to save time by checking what other councils have already done. Whilst not endorsing or recommending a particular report, we have included links to reports recently approved by Hammersmith & Fulham Council ([here](#)), Lewisham Council ([here](#)), Sheffield City Council ([here](#)) and York City Council ([here](#)).

Whilst the PCN procedure is very similar for both statutory provisions, there are a couple of differences that local authorities need to be aware of. Where the process varies, we have highlighted this in the section below.

6.2 Warning Letter

Whilst there is no legal requirement to send the agent a warning letter, it is good practice and will add to your burden of proof to show that the council has acted reasonably. It may also reduce the number of cases discontinued following a Notice of Intent, by clarifying any misunderstanding at an early stage in the process.

The fact that a warning or reminder letter has been sent and can be evidenced by the council has been a supporting factor in some First-tier Tribunal appeals.

The warning letter could set down a deadline by which the requirements must be complied with, to avoid the PCN being served.

To make your life easier we have included an example warning letter in Appendix 6 that you may wish to customise for local use.

6.3 Notice of Intent

The first stage of the formal PCN process is to serve a 'Notice of Intent' on the agent. It must be served within 6 months of the date on which the enforcing authority has sufficient evidence of the agent's breach.

The Notice of Intent must set out:

- **the amount of the proposed penalty;**
- **the reasons for proposing to impose the penalty; and**
- **information about the right to make representations and objections within 28 days beginning the day after the date on which the notice of intention was sent.**

If an agent has failed to join a government approved redress scheme and also failed to display the Prescribed Information, a separate Notice of Intent should be served under each statutory regime.

However, if the agent has failed to display their fees whilst also failing to display their client money protection scheme status, we believe that these two breaches of the CRA2015 should be dealt with on one Notice of Intent.

It is important that the enforcing authority has adequate processes and record keeping in place to collate all the key documentation, monitor time limits and record decision making, in order to provide a complete audit trail in the event of an appeal.

6.4 Final Notice

At the end of the 28-day period for making representations and objections, the enforcing authority must then decide whether to impose the penalty, with or without modification. The enforcing authority must be satisfied on the balance of probabilities that the agent has breached the regulations.

If the enforcing authority decides to impose a financial penalty, the Final Notice must set out:

- **the amount of the financial penalty;**
- **the reasons for imposing the penalty;**
- **information about how to pay the penalty;**

- the period in which the payment must be made (for redress scheme enforcement, this must not be less than 28 days. For display of fees enforcement, this must be 28 days beginning with the day after that on which the notice was sent);
- information about the rights of appeal; and
- the consequences of failing to comply with the notice.

At any stage in the process, the enforcing authority can withdraw a Notice of Intent or Final Notice, or reduce the monetary penalty specified, although this would need to be done in writing.

When dealing with issues of non-compliance involving agents, Trading Standards Officers should be encouraged to log issues on the national intelligence database as it helps to prioritise resources and identify trends using the national intelligence model.

6.5 Right of Appeal

Anyone served with a PCN has the right of appeal to the First-tier Tribunal in England, or to the Residential Property Tribunal if a local weights and measures authority in Wales has served the notice.

The grounds for appeal are that:

- the decision to impose a financial penalty was based on an error of fact;
- the decision was wrong in law;
- the amount of the monetary penalty is unreasonable; or
- the decision was unreasonable for any other reason.

In the event of an appeal, the PCN is suspended until the appeal has been determined or withdrawn. The Tribunal has the power to quash, confirm or vary the Final Notice.

The rules governing the appeals process before the General Regulatory Chamber of the First-tier Tribunal can be found in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. In the event of an appeal, it is important that council officers and their legal representatives study these rules carefully as it will help to ensure the smooth running of the case.

More information about the General Regulatory Chamber and their jurisdiction for hearing appeals regarding letting and managing agents can be found online at: www.gov.uk/guidance/appeal-against-a-fine-as-a-letting-or-managing-agent

In Appendix 4 you will find a summary of a recent First-tier Tribunal case involving Newham and Islington Councils.

In Appendix 7, we have included a template Statement of Truth kindly provided by Islington Council. This may assist councils in formatting their bundle of evidence for an appeal hearing.

6.6 Recovery of financial penalty

If there is no appeal, or the notice is upheld on appeal and the agent fails to pay the penalty in full, the enforcing authority can recover the penalty on the order of a court, as if payable under a court order. This is explained in more detail in Schedule 9, Paragraph 6 of the CRA2015 and Article 10 of the Redress Scheme Order.

Effective enforcement will be dependent on good partnership arrangements between enforcement officers and finance officers to ensure prompt follow-up action in cases of non-payment.

In proceedings for recovery in the County Court, a certificate which is signed by the chief finance officer of the local weights and measures authority which imposed the penalty, and states that the amount due has not been received by a date specified in the certificate is taken as conclusive evidence of that fact.

Following service of a Final Notice, the payment received by the council can be used for any of its functions. We would strongly suggest that the cabinet report includes a recommendation that this money is reinvested to support future housing enforcement activity undertaken by housing or trading standards teams.

6.7 National Trading Standards Estate Agency Team

Whilst not part of the PCN process, we understand that Powys County Council currently host the National Trading Standards Estate Agency Team and maintain an overview of all related enforcement activity.

If a PCN is served on an agent who is also acting as an estate agency, you may wish to bring this matter to their attention (www.powys.gov.uk/estateagency).

Many agents are involved in both sales and lettings, in which case it is important to check that they also belong to an approved estate agents redress scheme. If not, they can be issued with a further financial penalty for that offence. We would recommend you refer to the National Trading Standards Estate Agency Team toolkit for more information.

7. Collecting evidence

The failure to belong to a redress scheme is a civil offence that requires a lower burden of proof than a criminal prosecution. In order to serve a penalty notice, the enforcement authority must be satisfied that, on the balance of probabilities, a breach has been committed.

Given that the decision to serve a penalty notice may be challenged on appeal, we have set out below some of the evidential steps that could be taken to minimise the risk of a successful appeal.

7.1 Visit the letting agency

A sensible first step is to visit the agent's business premises to speak to the manager and discuss the issue face to face. This enables the investigating officer to see if the Prescribed Information has been displayed and to discuss any concerns. All evidence should be recorded in the officer's notebook to provide best quality evidence.

Photographs of the shop front, including close-up shots showing individual properties advertised for letting, could also be taken to provide evidence that the business is trading. Such photos can then be exhibited, if required.

Officers should have regard to Schedule 5, Paragraph 23 of the CRA2015 and the need to give two working days written notice if they are planning to make routine visits to agents. We understand that the Department of Business, Innovation and Skills (BIS) in their guidance to businesses on investigatory powers suggest a format for such a notice. It is important to remember however that there is no need to give such a notice in some circumstances including if a breach of the legislation is suspected or if it would defeat the purpose of the visit.

7.2 Establish the legal status of the letting agency

It is important to establish the nature of the letting agency business. For example, is it a sole trader, limited company, partnership, etc. Does the business have several branches and is it a franchise or is the whole business in single ownership. Or is it an online-only Agency with no branches but just a registered office. There are a number of ways to obtain this information.

The first will be to speak to the Branch Manager and clarify the situation with them. If they provide details of a head office, further enquiries can be made there.

The Companies Act 2006 and the Companies (Trading Disclosures) Regulations 2008 requires that the company's business name must be displayed at the premises, on official company stationery and on the company's website.

Internally, officers can obtain information from the Council's Business Rates Department, provided disclosure is permitted by satisfying one of the exemptions in the Data Protection Act.

The council can establish ownership of the agent's business premises by carrying out a [Land Registry](#) search. The cost of an electronic search is just £3 (correct as of August 2015).

For limited companies, details about the registered office, company directors and company accounts can be obtained from [Companies House](#).

Another option is to serve a Requisition for Information under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976. The local authority can serve this notice on anyone with an interest in land (i.e. a letting agency business). The notice can require the recipient to disclose full details of the occupiers and owners of the premises in order to carry out their enforcement functions under the relevant legislation.

Anyone served with such a notice is required to provide the information within 14 days. Failure to comply is a criminal offence that upon prosecution in the Magistrates Court could result in an unlimited fine. In October 2015, an agent was fined £5,000 after failing to respond to an information request from Southend Council ([read here](#)).

A further option may be to serve a notice on the agent under Schedule 5, Part 3, Paragraph 14 of the CRA2015. A local Weights and Measures authority may exercise the powers in this part of the schedule for a number of reasons including to enable that enforcer to exercise or consider whether to exercise any functions it has under Part 8 of the Enterprise Act 2002. Thus if such action is being considered the notice could require the recipient to disclose full details of the occupiers and owners of the premises in order to carry out their enforcement functions under the Enterprise Act (with respect to domestic infringements of the CRA2015).

If the agent failed to comply with the notice an application could be made to the County or High Court seeking an Order. The court can make an Order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with and may require the person to meet the costs or expenses of the application.

7.3 Correspondence

Copies of any letters or emails sent to the agent and any responses received should be retained and can be exhibited in the event of an appeal.

7.4 Verification

The investigating officer should conduct verification checks on the three redress scheme websites to confirm the agent's membership status, if any. All three checks should be carried out on the same day and properly recorded so that they can be incorporated into a statement of witness in the event of an appeal.

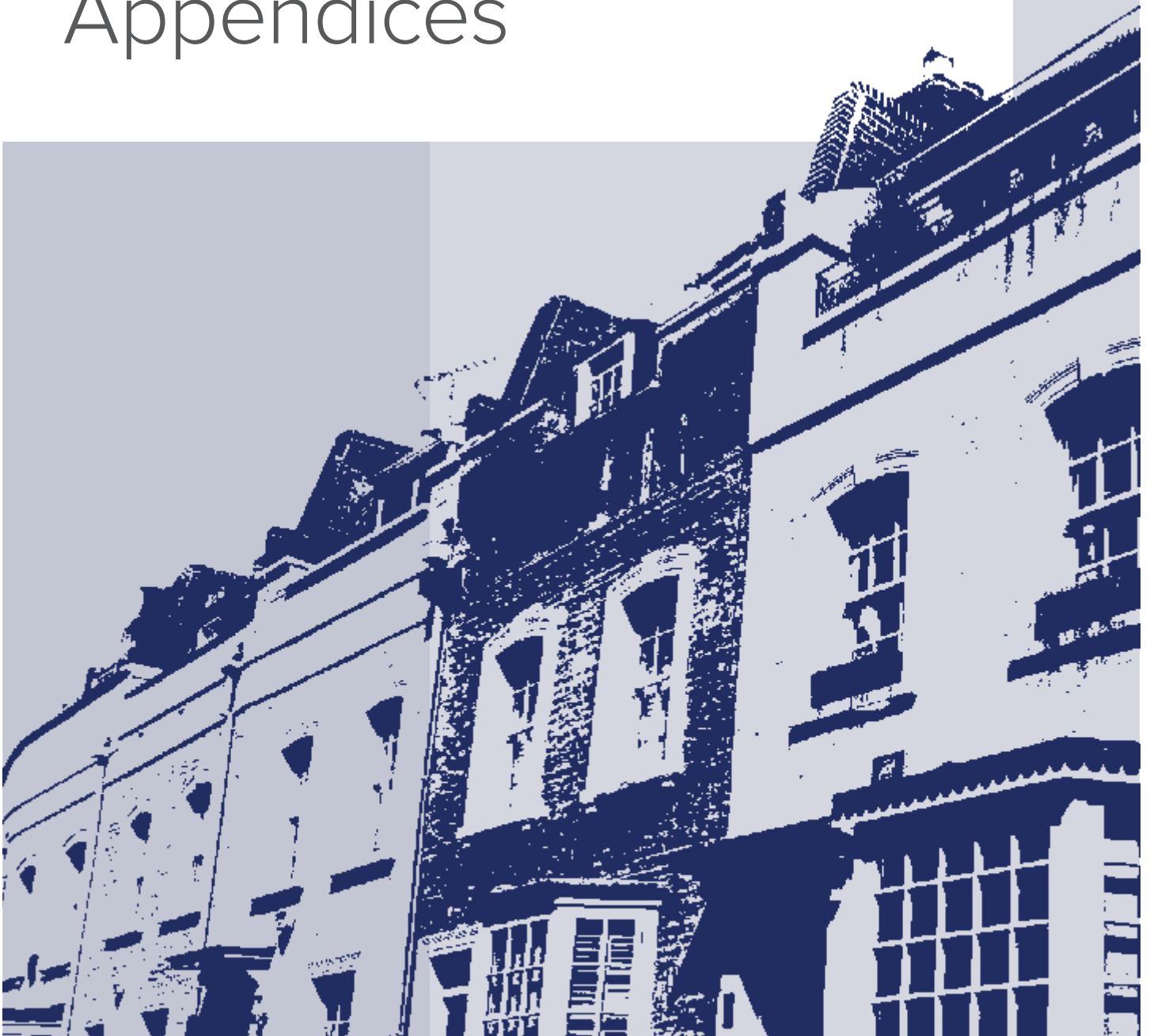
If there is any doubt about the Agent's membership of a redress scheme, it may be advisable to write to each redress scheme provider (see Appendix 2) to confirm whether a company is registered. We understand feedback from the scheme providers is that while they publish member information on their websites, they can only publish the address the agent allows them to, due to data protection (a PO box, for example). Each scheme should be able to provide this information following a written request from the enforcing authority.

At the same time, it would be advisable to visit the agent's website (if any) to check if the Prescribed Information has been displayed and to take screen shots to confirm that the business is trading and to indicate the number of properties being advertised for rent.

7.5 Advertisements

The investigating officer could retain copies of any recent newspaper advertisements placed by the agent, to help strengthen the evidence base.

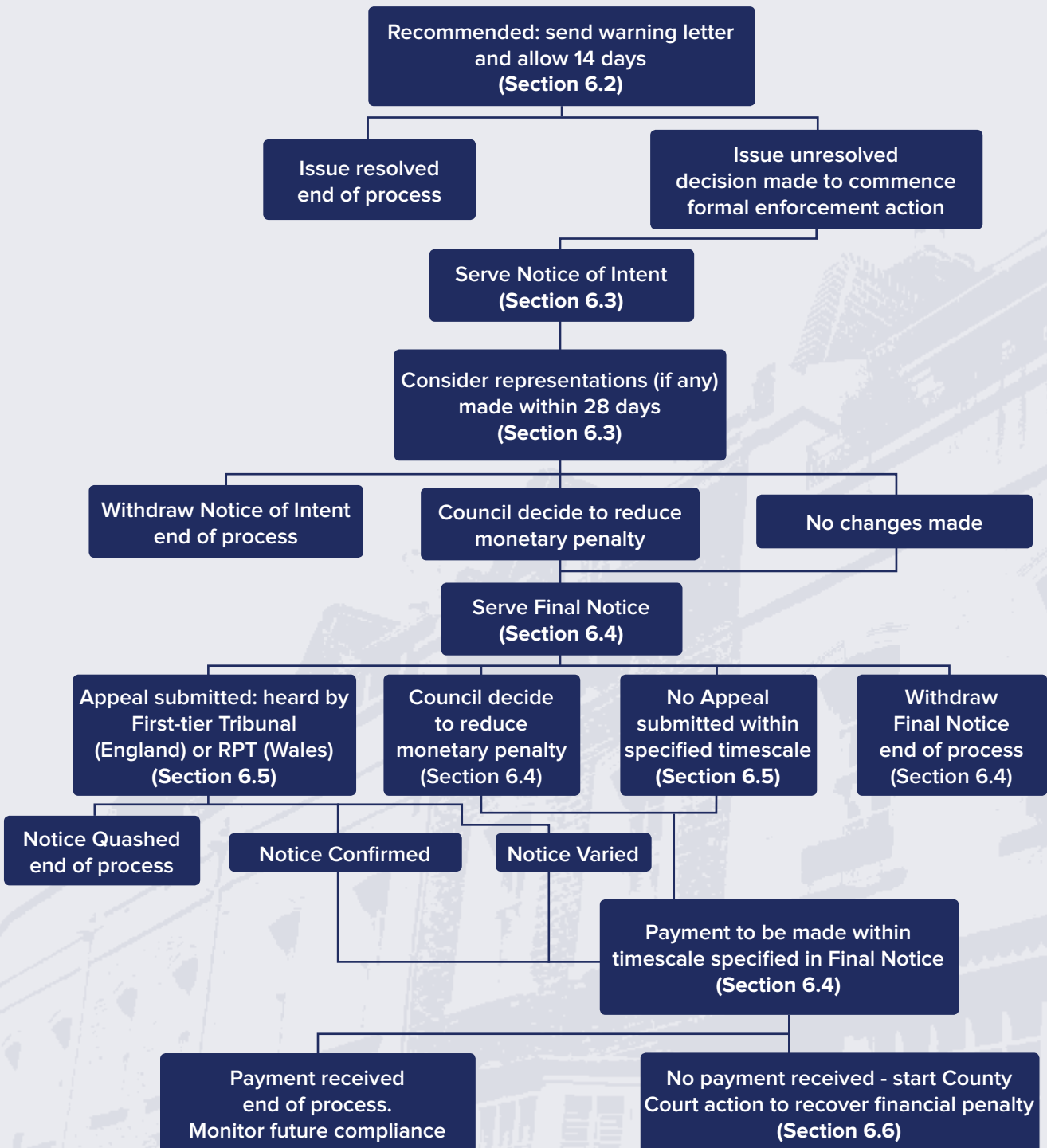
Appendices



Appendix 1

Enforcement Flowchart

Note: the Sections quoted in the flowchart refer to the relevant sections of the enforcement toolkit.



Appendix 2

The government-approved redress schemes

Ombudsman Services: Property

PO Box 1021
Warrington WA4 9FE
Telephone: 0330 440 1634

[Online contact form](#)

[Online membership search](#)

Property Redress Scheme

Premiere House
1st Floor
Elstree Way
Borehamwood WD6 1JH
Telephone: 0333 321 9418

Email: info@theprs.co.uk

[Online contact form](#)

[Online membership search](#)

The Property Ombudsman

Milford House
43-55 Milford Street
Salisbury
Wiltshire SP1 2BP
Telephone: 01722 333306

[Online contact form](#)

[Online membership search](#)

Appendix 3 – Case Studies

Sheffield becomes first northern city to act on new renting legislation

In June and July 2015, Sheffield City Council fined 11 letting agents a total of £37,000 for failing to belong to one of the three government approved redress schemes.

Sheffield City Council is believed to be the first authority outside London to use new legislation designed to boost the rights of millions of people living in rented accommodation. Around 16 per cent of households in Sheffield (35,000) now live in rented accommodation. This has doubled over the past ten years in line with the national picture.

Councillor Jayne Dunn, Cabinet Member for Housing, said: ***“We want the people of Sheffield to be able to live in good, safe housing, regardless of whether it’s rented or not.***

“More people are living in rented housing as the cost of buying their own home becomes increasingly unaffordable. And we need to protect their rights.

“We are committed to this and will use all new legislation to help us. Thankfully most letting agents and landlords in Sheffield are very good and work with us really well. But we will take firm action on the small minority that do not follow the new measures designed to give tenants a fair deal.”

There are approximately 200 agents in Sheffield who charge property owners a fee to find tenants and manage thousands of privately rented homes on their behalf. The overwhelming majority have joined one of the redress schemes and complied with the new regulations.

Islington Council steps up action against rogue letting agents

In June 2015, Islington Council issued a press release urging letting agents to make sure they were aware of their legal responsibilities, after it fined a local firm £5,000 for failing to sign up to a complaints redress scheme.

Before the new rules came in, Islington Council's trading standards team and the Property Ombudsman wrote to letting agents in Islington advising them to sign up to a scheme or risk a fine.

Almost all of Islington's 150 letting agents signed up, but APS Estates Ltd of Caledonian Road, London N1 did not. Trading standards followed up the letter with a visit and further reminders.

On 10 December 2014, Islington's trading standards team issued a notice saying they intended to impose a fine of £5,000 for failing to sign up.

APS Estates Ltd appealed the decision, but on 5 June 2015, the First-tier tribunal found in favour of Islington's trading standards team and that the fine should remain at £5,000. APS has since joined

a redress scheme.

Following further change in the law, Islington Council again wrote to letting agents explaining it was now a legal requirement for them to display the fees they charged to tenants and landlords, both on their website and in their premises. Agents were reminded that failure to display fees and required information could incur a penalty of up to £5,000.

Cllr James Murray, Islington Council's executive member for housing and development, said:

"More and more people in Islington rent privately, and we want to make sure they are treated well and not ripped off."

"The vast majority of local lettings agents signed up to a redress scheme in good time, but we took action against the small number that did not. It's important that tenants and landlords can get independent adjudication if they have a complaint."

"It's also important that letting agents follow the rules about displaying fees - we'll be encouraging them to do so now, so that they avoid the possibility of a fine."

Appendix 4 – First-tier Tribunal decisions

In this section we have included a summary of several recent Tribunal decisions that council officers may find useful as a point of reference. In due course, we anticipate that the First-tier Tribunal will publish all such decisions online.

Rosewood Residence Ltd v London Borough of Newham

Ref: PR/2014/0001

Date: 10/08/2015

The appellant was a letting agent operating in Newham. Warning letters had been sent and a follow up visit carried out explaining the requirement to belong to a redress scheme.

The appellant was warned that they would receive a penalty notice if they did not join a scheme by 29 October 2014. Following discussion, the deadline was extended to 3 November. They did not meet the deadline and a £5,000 final notice was served on 6 November.

The appellant became a scheme member on 7 November and Newham Council used their discretion to halve the penalty to £2,500. An appeal was submitted and the appellant pleaded financial hardship. The Tribunal gave directions for the most recent two sets of annual accounts to be produced. The Tribunal concluded that the Final Notice was correctly served and that the £2,500 penalty was reasonable in the circumstances and would not drive the agency out of business. The appeal was dismissed.

ETB Property Services Ltd v London Borough of Islington

Ref: PR/2015/0004

Date: 23/07/2015

The appellant was a letting agent operating in Islington. Letters had been sent to the agent on 21 May and 18 November 2014 and they subsequently joined a redress scheme on 22 December 2014, before ceasing trading at its Holloway Road premises in February 2015.

A notice of intend was served on 10 December 2014 and a final notice served on 21 January 2015. The appellant argued that the letters were neither addressed to them nor delivered and that the £5,000 penalty was unreasonable.

The Council responded that it was under no legal obligation to remind the appellant they must join a redress scheme, although a signed witness statement from a council officer did confirm such a letter was sent. A visit was also carried out to the business premises on 10 December 2014, when the appellant was unable to prove they had joined a redress scheme.

The Tribunal found, on the balance of probability, that the reminder letter was sent but also agreed with the Council that there was no legal requirement on it to send such letters to letting agents. The Tribunal stated, "Those agents, as professionals, can be expected to be aware of the law, as it directly impacts upon their businesses".

The Tribunal felt that although the DCLG guidance does not have the force of law, it was, in all the circumstances, reasonable for the Council to adhere to it.

Thus, the Tribunal ruled that the penalty was not based on an error of fact or wrong in law and that it was not unreasonable. The appeal was dismissed.

APS Estates Ltd v London Borough of Islington

Ref: PR/2015/0003

Date: 05/06/2015

The appellant was a letting agent operating in Islington. A visit had been made to the business premises in October 2014 to advise about the requirement to join a redress scheme and further reminder letters were sent on 6 and 20 November 2014.

A notice of intent was served on 10 December 2014 at which point the letting agent indicated they were joining a redress scheme. However, membership did not occur until 23 January 2015.

The council issued a final notice with the date of breach as 10 December 2014, and awarded a monetary penalty of £5,000.

Regarding the level of penalty, the Tribunal took account of the fact that the guidance issued by the DCLG is non-statutory. However, the Tribunal felt it was a useful indicator of whether, in all the circumstances, the amount of the penalty can be said to be unreasonable. They agreed with the Council that the appellant should have been aware of the legal requirements and that there was nothing to suggest, having regard to the appellant's turnover (which had not been disclosed) the imposition of the maximum penalty would be disproportionate.

Interesting, the Tribunal commented that it might be appropriate to reduce the penalty based on lack of awareness, business turnover, illness or other incapacity of a sole proprietor around the time of required compliance, but did not think any of these factors applied here.

Thus, the Tribunal ruled that the penalty was not unreasonable and the appeal was dismissed.

Regarding court costs, Islington Council did make an application although the Tribunal explained that its powers to award costs are limited and so no costs order was made.

Appendix 5

Legislation and key reference documents

Relevant legislation includes:

Local Government (Miscellaneous Provisions) Act 1976, section 16 ([here](#))

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

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 ([SI 2014 No. 2359](#))

Consumer Rights Act 2015, Part 3, Chapter 3 ([here](#)) and Schedule 9 ([here](#))

Consumer Rights Act 2015 (Commencement No. 2) (Wales) Order 2015 ([here](#))

The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ([SI 2009 No. 1976](#))

Key reference documents include:

Letting Agents and Property Managers – which government approved redress scheme do you belong to? DCLG, October 2014 ([here](#))

Improving the Private Rented Sector and Tackling Bad Practice – A Guide for Local Authorities. DCLG, March 2015 ([here](#))

Estate Agents Enforcement Toolkit produced by the National Trading Standards Estate Agency Team at Powys County Council (www.powys.gov.uk/estateagency)

Appendix 6

Example letters and notices

Example advisory letter to letting agent

Dear

**Property Management Work / Letting Agency Work,
Requirement to belong to a redress scheme and display certain prescribed information**

I am writing to draw your attention to new legislation that will impact on the way you operate your business.

Since 1 October 2014, it has been a requirement for persons who are engaged in property management work or letting agency work (subject to certain exceptions) to belong to a government approved redress scheme for dealing with complaints in connection with that work.

The government has approved three redress schemes for this purpose:

Ombudsman Services: Property
PO Box 1021
Warrington WA4 9FE
Telephone: 0330 440 1634
Website: www.ombudsman-services.org/property

Property Redress Scheme
Premiere House
1st Floor
Elstree Way
Borehamwood WD6 1JH
Telephone: 0333 321 9418
Website: www.theprs.co.uk

The Property Ombudsman
Milford House
43-55 Milford Street
Salisbury
Wiltshire SP1 2BP
Telephone: 01722 333306
Website: www.tpos.co.uk

It is a legal requirement that your business is registered with one of these schemes and failure to comply could result in a penalty of up to £5,000.

I would also draw your attention to new laws introduced in May 2015 that require you to display certain information in every business premises where you meet clients face to face.

You are required to display:

- A list of all relevant landlord and tenant fees;
- A statement saying which redress scheme you belong to; and
- A statement saying whether you belong to a client money protection scheme.

The information must be clearly displayed where it is likely to be seen by clients who visit your business premises. It is not sufficient to display the information in staff only areas, or to only provide the information on request.

This information must also be displayed on your company website, if you have one.

Failure to display this information both in-store and on your company website could result in a penalty of up to £5,000.

I would ask that you carry out all necessary checks to ensure you are complying with these new legal requirements as we are committed to ensuring these laws are properly enforced in the interests in consumer protection.

Should you require any further information or advice, please do not hesitate to contact me.

Yours

Example warning letter to letting agent

Dear

Property Management Work / Letting Agency Work

Requirement to belong to a redress scheme and display certain prescribed information

I recently wrote to draw your attention to new legislation that will impact on the way you operate your business.

I am concerned that you may still be in breach of the legislation and so it is important that you address this matter forthwith in order to avoid the risk of legal action.

Since 1 October 2014, it has been a requirement for persons who are engaged in property management work or letting agency work (subject to certain exceptions) to belong to a government approved redress scheme for dealing with complaints in connection with that work.

The government has approved three redress schemes for this purpose:

Ombudsman Services: Property
PO Box 1021
Warrington WA4 9FE
Telephone: 0330 440 1634
Website: www.ombudsman-services.org/property

Property Redress Scheme
Premiere House
1st Floor
Elstree Way
Borehamwood WD6 1JH
Telephone: 0333 321 9418
Website: www.theprs.co.uk

The Property Ombudsman
Milford House
43-55 Milford Street
Salisbury
Wiltshire SP1 2BP
Telephone: 01722 333306
Website: www.tpos.co.uk

It is a legal requirement that your business is registered with one of these schemes.

I would also draw your attention to new laws introduced in May 2015 that require you to display certain information in every business premises where you meet clients face to face.

You are required to display:

- **A list of all relevant landlord and tenant fees;**
- **A statement saying which redress scheme you belong to; and**
- **A statement saying whether you belong to a client money protection scheme.**

The information must be clearly displayed where it is likely to be seen by clients who visit your business premises. It is not sufficient to display the information in staff only areas, or to only provide the information on request.

This information must also be displayed on your company website, if you have one.

It is important that you carry out all necessary checks to ensure you are complying with these new legal requirements as we are committed to ensuring these laws are properly enforced in the interests in consumer protection.

I would also ask that you complete and return the attached form so we can update our records and confirm that your business is now compliant.

Should you fail to comply with the new requirements by **[insert date 14 days ahead]**, it is my intention to start formal legal action that could result in a financial penalty of up to £5,000.

Should you require any further information or advice, please do not hesitate to contact me.

Yours

Letting Agent Enquiry Form

Name of letting agent	
Full Address including postcode	
Telephone	
Email	
Name of person completing the form	
Position in the company	

Which government approved redress scheme do you belong to?

	Tick	Membership No.	Date joined
Ombudsman Services: Property	<input type="checkbox"/>		
Property Redress Scheme	<input type="checkbox"/>		
Property Ombudsman	<input type="checkbox"/>		

Is all the following information clearly displayed in-house so that it is easily accessible to clients who visit your premises?

	Tick	Where displayed?
All relevant landlord and tenant fees	<input type="checkbox"/>	
Client money protection status	<input type="checkbox"/>	
Redress scheme membership	<input type="checkbox"/>	

Is all the information mentioned in item 2 also displayed on your company website?

yes	<input type="checkbox"/>	no	<input type="checkbox"/>	We don't have a website	<input type="checkbox"/>
Webpage where information located:					

Please return this form within 14 days from the date on the letter to:
[insert name and address]



Example Notice of Intent (Redress Scheme Membership) (England)

The Enterprise and Regulatory Reform Act 2013 s83 – 88

The Redress Schemes for Letting Agencies Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Notice of Intent

To: Name

Address

It is a requirement under the above regulations for persons who are engaged in property management work or letting agency work to belong to a government approved redress scheme for dealing with complaints in connection with that work.

The Council is satisfied, on the balance of probabilities that you are or have been engaged in property management and/or letting agency work whilst not a member of a government approved redress scheme [or you were not a member of a government designated redress scheme at a time when you were required to be] and you have therefore failed to comply with the above regulations.

The Council therefore intends to issue you with a Final Notice imposing a monetary penalty of £5,000 [or such lesser amount as specified].

Before a Final Notice is served, you have a right to make written representations and objections in relation to the proposed imposition of a monetary penalty within 28 days beginning the day after the date on which the notice of intent was sent.

Any representations should be sent to [insert name, title and address]

Dated this [#] day of [##] 20##

Signed:

Officer Name
Post title

Example Notice of Intent (Display of Prescribed Information) (England)

The Consumer Rights Act 2015, s83 – 88 & Schedule 9

Notice of Intent

To: Name

Address

It is a requirement under the above Act for letting agents to publish a list of the agent's relevant fees at each of the agent's premises at which the agent deals face to face with persons using or proposing to use services to which the fees relate, and to display the list of fees where it is likely to be seen by such persons.

The list of fees must include:

- (a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed (as the case may be);
- (b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house; and
- (c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.

If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the agent must also publish with the list of fees, a statement of whether the agent is a member of a client money protection scheme.

The agent must also publish with the list of fees, a statement that indicates that the agent is a member of a redress scheme and that gives the name of the redress scheme.

This information must also be published on the agent's website, if it has one.

The Council is satisfied, on the balance of probabilities that you are or have been engaged in letting agency work whilst not complying with this requirement. The precise nature of the breach is that:

For example:

“You have failed in your duty to publish a full list of all your relevant landlord fees on your website”

and you have therefore failed to comply with the requirements specified in Section 83 of the above Act.

The Council therefore intends to issue you with a Final Notice imposing a monetary penalty of £5,000 [or such lesser amount as specified].

Before a Final Notice is served, you have a right to make written representations in relation to the proposed imposition of a monetary penalty within 28 days beginning the day after that on which the notice of intent was sent.

Any representations should be sent to [insert name, title and address]

Dated this [#] day of [##] 20##

Signed:

Officer Name

Post title

Example Notice of Intent (Display of Prescribed Information) (Wales)

The Consumer Rights Act 2015, s83 – 88 & Schedule 9

Notice of Intent

To: Name

Address

It is a requirement under the above Act for letting agents to publish a list of the agent's relevant fees at each of the agent's premises at which the agent deals face to face with persons using or proposing to use services to which the fees relate, and to display the list of fees where it is likely to be seen by such persons.

The list of fees must include:

- (a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed (as the case may be);
- (b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house; and
- (c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.

This information must also be published on the agent's website, if it has one.

The Council is satisfied, on the balance of probabilities that you are or have been engaged in letting agency work whilst not complying with this requirement. The precise nature of the breach is that:

and you have therefore failed to comply with the requirements specified in Section 83 of the above Act.

The Council therefore intends to issue you with a Final Notice imposing a monetary penalty of £5,000 [or such lesser amount as specified].

Before a Final Notice is served, you have a right to make written representations in relation to the proposed imposition of a monetary penalty within 28 days beginning the day after that on which the notice of intent was sent.

Any representations should be sent to [insert name, title and address]

Dated this [#] day of [##] 20##

Signed:

Officer Name

Post title

Example Final Notice (Redress Scheme Membership)

The Enterprise and Regulatory Reform Act 2013 s83 - 88

The Redress Schemes for Letting Agencies Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Final Notice

To: Name

Address

It is a requirement under the above regulations for persons who are engaged in property management work or letting agency work to belong to a government approved redress scheme for dealing with complaints in connection with that work.

The Council is satisfied, on the balance of probabilities that on **[insert date]** you were engaged in property management and/or letting agency work and that you were not a member of a government approved redress scheme and you have therefore failed to comply with the above regulations.

In reaching a decision, the Council has had regard to any representations received in response to the Notice of Intent, or No representations were received following service of the Notice of Intent **[delete as applicable]**.

The Council is therefore imposing a monetary penalty of £5,000 **[or such lesser amount as specified]**. You are required to pay this amount to the Council within 30 days of the date of this Notice unless you appeal against the Notice, in which case the Notice is suspended until the appeal is finally determined or withdrawn. Details of how to pay are listed on the reverse of this notice.

You can appeal against this Notice to the First-tier Tribunal (General Regulatory Chamber) within 28 days beginning the day after the date on which this notice was sent. The grounds for appeal are 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 Tribunal may quash the final notice, confirm the final notice or, vary the final notice. You can contact the First-tier Tribunal (General Regulatory Chamber) at:

General Regulatory Chamber
HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ
Email: grc@hmcts.gsi.gov.uk
Telephone: 0300 123 4504

If you do not pay the amount of the monetary penalty as directed above, and you do not appeal, then the Council may recover the monetary penalty on the order of a court, as if payable under a court order.

This means that the Council may, for example, get an order to:

- **send bailiffs**
- **obtain attachment of earnings order**
- **take money that you are owed by someone else from your bank account (a third party debt order)**
- **secure the debt against any property you own (a charging order).**

Dated this [#] day of [##] 20##

Signed:

Officer Name
Post title

Example Final Notice (Display of Prescribed Information) (England)

The Consumer Rights Act 2015, s83 – 88 & Schedule 9

Final Notice

To: Name

Address

It is a requirement under the above Act for letting agents to publish a list of the agent's relevant fees at each of the agent's premises at which the agent deals face to face with persons using or proposing to use services to which the fees relate, and to display the list of fees where it is likely to be seen by such persons.

If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the agent must also publish with the list of fees, a statement of whether the agent is a member of a client money protection scheme.

The agent must also publish with the list of fees, a statement that indicates that the agent is a member of a redress scheme and that gives the name of the redress scheme.

This information must also be published on the agent's website, if it has one.

The Council is satisfied, on the balance of probabilities that on **[insert date]** you were engaged in letting agency work and that you have failed to comply with the above regulations. In particular, you have:

Failed to publish a list of the agent's relevant fees, a statement saying whether you belong to a client money protection scheme and which redress scheme you belong to **[delete as appropriate]** at **[insert premises name and address]** where you deal face to face with persons using or proposing to use services to which the fees relate and you have failed to display all the information where it is likely to be seen by such persons; and/or

Failed to publish a list of the agent's relevant fees, a statement saying whether you belong to a client money protection scheme and which redress scheme you belong to **[delete as appropriate]** on the company's website at **[insert website url]**.

In reaching a decision, the Council has had regard to any representations received in response to the Notice of Intent, or No representations were received following service of the Notice of Intent **[delete as applicable]**.

You can appeal against this Notice to the First-tier Tribunal (General Regulatory Chamber) within 28 days beginning with the day after that on which this notice was sent. The grounds for appeal are that:

- (e) the decision to impose a monetary penalty was based on an error of fact;
- (f) the decision was wrong in law;
- (g) the amount of the monetary penalty is unreasonable;
- (h) the decision was unreasonable for any other reason.

The Tribunal may quash the final notice, confirm the final notice or, vary the final notice. You can contact the First-tier Tribunal (General Regulatory Chamber) at:

General Regulatory Chamber
HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ
Email: grc@hmcts.gsi.gov.uk
Telephone: 0300 123 4504

If you do not pay the amount of the monetary penalty as directed above, and you do not appeal, then the Council may recover the monetary penalty on the order of a court, as if payable under a court order.

This means that the Council may, for example, get an order to:

- **send bailiffs**
- **obtain attachment of earnings order**
- **take money that you are owed by someone else from your bank account (a third party debt order)**
- **secure the debt against any property you own (a charging order).**

Dated this [#] day of [##] 20##

Signed:

Officer Name
Post title

Example Final Notice (Display of Prescribed Information) (Wales)

The Consumer Rights Act 2015, s83 – 88 & Schedule 9

Final Notice

To: Name

Address

It is a requirement under the above Act for letting agents to publish a list of the agent's relevant fees at each of the agent's premises at which the agent deals face to face with persons using or proposing to use services to which the fees relate, and to display the list of fees where it is likely to be seen by such persons.

This information must also be published on the agent's website, if it has one.

The Council is satisfied, on the balance of probabilities that on **[insert date]** you were engaged in letting agency work and that you have failed to comply with the above regulations. In particular, you have:

Failed to publish a list of the agent's relevant fees at **[insert premises name and address]** where you deal face to face with persons using or proposing to use services to which the fees relate and you have failed to display the information where it is likely to be seen by such persons; and/or

Failed to publish a list of the agent's relevant fees on the company's website at **[insert website url]**.

In reaching a decision, the Council has had regard to any representations received in response to the Notice of Intent, or No representations were received following service of the Notice of Intent **[delete as applicable]**.

The Council is therefore imposing a monetary penalty of £5,000 **[or such lesser amount as specified]**. You are required to pay this amount to the Council within 28 days beginning with the day after that on which this Notice was sent, unless you appeal against the Notice, in which case the Notice is suspended until the appeal is finally determined or withdrawn. Details of how to pay are listed on the reverse of this notice.

You can appeal against this Notice to the Residential Property Tribunal within 28 days beginning with the day after that on which this notice was sent. The grounds for appeal are that:

- (i) the decision to impose a monetary penalty was based on an error of fact;
- (j) the decision was wrong in law;
- (k) the amount of the monetary penalty is unreasonable;
- (l) the decision was unreasonable for any other reason.

The Tribunal may quash the final notice, confirm the final notice or, vary the final notice. You can contact the Residential Property Tribunal at:

The Residential Property Tribunal Wales
1st Floor, West Wing
Southgate House
Wood Street
Cardiff CF10 1EW
Email: rpt@wales.gsi.gov.uk
Telephone: 029 2092 2777

If you do not pay the amount of the monetary penalty as directed above, and you do not appeal, then the Council may recover the monetary penalty on the order of a court, as if payable under a court order.

This means that the Council may, for example, get an order to:

- **send bailiffs**
- **obtain attachment of earnings order**
- **take money that you are owed by someone else from your bank account (a third party debt order)**
- **secure the debt against any property you own (a charging order).**

Dated this [#] day of [##] 20##

Signed:

Officer Name
Post title

Appendix 7

Example Statement of Truth

Witness Statement of
AB for the Respondent.
Statement made on [enter date] and consists of x pages

REF NO: PR

IN THE FIRST TIER TRIBUNAL GENERAL REGULATORY CHAMBER BETWEEN

XXX
-and-
THE LONDON BOROUGH OF YYY

Appellant

Respondent

WITNESS STATEMENT OF AB

I [AB], make this statement in the knowledge that it will be placed before the First-tier Tribunal as my evidence and that the contents of this statement are true to the best of my knowledge and belief. Except where the contrary is indicated I make this statement from matters which are personally known to me.

1. [YYY Council] is authorised to enforce the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 and the Trading Standards team has delegated responsibility for the enforcement of this Order.

2. I am the [add position] of the Trading Standards team and as part of that role, I have delegated authority to determine whether it is appropriate to impose a monetary penalty on a person who, on the balance of probabilities, has failed to join a redress scheme under Article 3 of that Order, and also to determine the amount of that penalty.

3. In October 2014 the Department for Communities and Local Government issued guidance on the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014. Section 3 of that guidance states

“The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority 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. In the early days of the requirement coming into force, lack of awareness could be considered; nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. 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.” I attach a copy of this guidance as **Exhibit 1**.

4. On [add date] I considered information provided by [xxxx] Trading Standards Officer regarding [xxx Business]. From this information, I was satisfied on the balance of probabilities that on [add date] [xxx Business] had not joined a redress scheme as required by the Order. I therefore considered that it was appropriate to issue a monetary penalty. Furthermore, I took into account representation received from [xxx Business] together with information received from [xxx officer] and considered that it was appropriate to impose the monetary penalty of £5000.00 [or less].

5. In considering this penalty I took the following factors into account; [List relevant factors e.g.]

- [xxx Business] had been given advice by this service about the requirement to join a scheme,
- [xxx Business] were not a new business,
- The Director of [xxx Business] was also a Director of a sister company and this company was registered with TPOS under the scheme.

In taking these factors into account, I concluded that lack of awareness of the scheme could not be considered a factor. Furthermore, there was nothing in the representation from [xxx Business] that indicated that a [£000] fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.

I believe that the facts stated in this witness statement are true.

Signed

Date

Appendix 8 - Disclaimer

In preparing this guidance, the National Approved Letting Scheme wish to make it clear that legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.

Only the Courts, the First-tier (Property) Tribunal or the Upper Tribunal can interpret statutory legislation with any authority. This advice is not intended to be a definitive guide to, nor a substitute for the relevant law. Council officers are advised to contact their legal department to ensure that all their policies and procedures fully comply with the relevant law.



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