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**Decision Session - Executive Leader  
(incorporating Housing and Safer  
Neighbourhoods)**

**17 October 2016**

Report of the Assistant Director – Housing & Community Safety

**Update on the Laws relating to Private Rented Sector Housing (PRS)**

**Summary**

1. To provide an update report to the Executive Leader regarding the implementation of new laws introduced last year. Details of further changes have not been released by the government and a further report will be required when these are available.

**Recommendations:**

2. The Executive Leader (incorporating Housing and Safer Neighbourhoods) is asked to:
  - a) Note the findings of the officers and confirm that the fixed penalty fines remain at the maximum level in line with guidance to ensure that the laws introduced last year to deter poor practice within the sector and
  - b) Note that further changes to the law relating to the Private Rented Sector (PRS) are due to be introduced sometime in 2017 due to the provisions of the Housing and Planning Act 2016

Reason: To continue to impose the maximum monetary penalty will send out the right message to agents/landlords who need to ensure that they are providing transparency when setting fees and continue to improve the management/safety of the properties they let.

**Background**

- 3 Last August the Executive Member considered a report about three new laws affecting the PRS, namely

- a) The Redress Schemes for Lettings Agents and Property Management Work<sup>1</sup>
- b) Duty of Letting Agents to Publicise Fees<sup>2</sup>
- c) The installation of Smoke and Carbon Monoxide Detectors<sup>3</sup>

The Executive Member agreed the approach outlined in the paper as to how the council would implement the new laws, having regard to the attached policy but asked that an update report be brought back in 12 months time.

#### Laws affecting Letting and Property Agents Redress Scheme and Publicising Fees

- 4 The first two laws were aimed at Letting and Property Agents and had been in place for a few months prior to the council adopting the new policy. Therefore the approach was to write to the 77 agents operating in the city reminding them about the laws and the financial penalties for not joining a redress scheme/publicising fees and enquiring what steps they had taken to be compliant. The letter was accompanied by a form which the agents were asked to complete. Initially 36 agents didn't complete the form but a follow up letter further reduced this to 9 non-responding agents, requiring an officer visit. We were able to establish that all known agents at that stage were compliant. However it maybe worth noting that some agents were more overt in their compliance e.g. displaying of fees varied from a large handwritten notice board to much smaller A4 typed small font sheets of fees displayed on the office wall, both of which are acceptable to the law but obviously the larger notice board was more transparent to their customers.
5. During the period since the introduction of the legislation we have received two complaints about agents not belonging to a redress scheme or not displaying fees and when investigated these were found to be fully compliant.
6. In June this year we carried out a random sample survey (10%) with an officer visiting 6 letting agents' premises in the city to see if they were displaying their fees. We found 4 letting agents to be fully compliant with copies of the fees etc on display and the agent belonging to an appropriate redress scheme. However 2 agents were found not to be

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<sup>1</sup> The Enterprise and Regulatory Reform Act 2013 and The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

<sup>2</sup> The Consumer Rights Act 2015 Chapter 3

<sup>3</sup> The Smoke and Carbon monoxide Alarm ( England) Regulations 2015

compliant regarding the requirement to advertise their fees at their premises. One had no tenants' fees displayed and the other had no fees displayed at all, requiring the penalty notice procedure to be invoked in both cases. Although this was only a small sample we were significantly concerned that 2 out of 6 letting agents who had told us that they were complying with the law were found to be failing in their duty to do so. We are now planning to visit the other agent's premises in the city to determine if they are complying with the laws and will take appropriate action. This intention will also be to risk assess the agents compliance which will determine the frequency of future visits to their premises i.e. where there are breaches in the law found we will be visiting annually, those who are compliant will be visited every 2 to 3 years.

### Smoke and Carbon Monoxide Detectors

7. This piece of legislation affected landlords and came in to effect on the 1<sup>st</sup> October 2015. It became a requirement for all private rented properties, regardless of type or number of tenants, to have a smoke alarm fitted on each storey of a property where there is a room used wholly or partly as living accommodation. In addition, the law required carbon monoxide alarms to be fitted in any room which is used wholly or partly as living accommodation and which contains a solid fuel burning combustion appliance. Also, from this date, landlords need to ensure that each alarm is in proper working order on the day that a new tenancy begins.
8. The aim of the policy was to ensure that the new law was widely publicised to landlords, including letting agents, to ensure that they were aware of the new law. Working with North Yorkshire Fire and Rescue we publicised the law via press releases, our website and landlord events. In particular we used the opportunity of holding a series of smoke alarm "giveaway" sessions where landlords attended the session and received information about the changes to the law and other advice. More than 260 free fire alarms were provided to landlords to fit in their properties.
9. We also took the opportunity to promote the change in the law to tenants. Since then we have received 3 complaints to investigate properties lacking in alarms. The law provides a landlord with 28 days to fit any missing required alarms, before a penalty notice is served. To date the council has not served any penalty notices regarding the law as all landlords have responded to the initial contact by the council and revisits to the properties have ensured that the alarm has been fitted

## Proposed new laws

10. The Housing and Planning Act 2016 received royal assent in May 2016 and amongst many provisions relating to changes to social housing there are a package of measures aimed at tackling rogue landlords in the private rented sector. These include:
  - a) Allowing council's to apply for a banning order to prevent landlords /letting agents from continuing to operate where they have committed certain housing offences;
  - b) To create a national database of rogue landlords/letting agents;
  - c) Allowing tenants or councils to apply for rent repayment orders where a landlord has committed certain offences, for example to continue to operate when they are subject to a banning offence, and
  - d) Extension of civil penalties
  - e) Tougher fit and proper person test for landlords
  - f) Tenancy deposit Protection Scheme data sharing
  - g) Introducing provisions relating to regular electrical safety checks.
11. The above changes won't impact the private rented sector until 2017 as they require secondary legislation to be introduced in the form of Regulations. We have been advised that these will be consulted upon later this year prior to their implementation. We will provide a further report when we have more detail about the impact to the sector and service delivery.

### **Consultation**

12. When the government provides clarity there will be a requirement to consult on the implementation of the Housing and Planning Act 2016.

### **Options**

13. There are two options being put forward:

Option 1- to continue with the adopted policy and level of fixed penalty fees to continue to raise awareness of the laws and to bring back a paper with details of the new Housing and Planning Act 2016 when they are known.

Option 2 - to continue with the adopted policy but seek to amend and lower the maximum fixed penalty fees and to bring back a paper with details of the new Housing and Planning Act 2016 when they are known.

## Analysis

14. **Option 1** -. There is no discretion as to whether a council takes action where they become aware of non-compliance. We have, through our sample survey, found agents who have not complied fully with the law. In addition just the introduction of the three new pieces of legislation has provided helpful tools to raise awareness and improve safety and management standards in the sector. The maximum penalty should be imposed in all normal cases to send a clear message to the sector that transparency and safety matters. There are already provisions for the Housing Services Manager to lower the penalty if there are extenuating circumstances.
15. **Option 2** - Imposing a reduced fine may send out the wrong message and in turn may make it a more cost effective option to risk the fine rather than joining a scheme, providing adequate information or installing a detector. Again the policy already provides for the Housing Services Manager to lower the penalty if there are extenuating circumstances.

## Council Plan

16. Enforcing these new laws supports and contributes towards the three council priorities
  - A prosperous city for all
  - A focus on frontline services
  - A council that listens to residents

## Implications

17. The implications arising directly from this report are:
  - **Financial** –None
  - **Procurement** – None
  - **Human Resources** –None
  - **Equalities Implications** – Attached is the Community Impact Assessment (Appendix B)
  - **Legal Implications** – As discussed above the Council is under a duty to enforce this legislation in line with its enforcement policy. However there is discretion as to the amount of monetary penalty to be imposed for non- compliance. It is a legitimate position to adopt

to set a normal penalty at the £5,000 maximum level but the council must not fetter its discretion and therefore the power to impose a lower figure in suitable cases should be delegated to the person serving the Final Notice (see Appendix A)

## Risk Management

18. The Council must make arrangements for the enforcement of these regulations as without doing so it will be in breach of the legislation.

## Contact Details

<b>Authors:</b>	<b>Chief Officer</b>		
<b>Ruth Abbott</b> Housing Standards and Adaptations Manager 554092	<b>Responsible for the report:</b>		
	<b>Steve Waddington</b> Assistant Director - Housing & Community Safety.		
	<b>Report Approved</b>	✓	<b>Date</b> 6 September 2016
<b>Wards Affected:</b> <i>All</i>			
For further information please contact the authors of the report			

## Background Reports

None

## Appendices

Appendix A – Redress Scheme

Appendix B – Community Impact Assessment

## Abbreviations

PRS - Private Rented Sector (Housing)