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## **Executive Member for Housing and Safer Neighbourhoods– Decision Session**

### **Report of the Assistant Director – Housing & Community Safety**

#### **New Legislation affecting the Private Rented Sector**

##### **Summary**

1. To inform the Executive Member how new and proposed legislation will affect the Private Rented Sector, 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>

To ask the Executive Member to adopt a policy to enforce the new laws which will affect both letting agents and landlords, imposing the maximum penalty in most circumstances and to note the impact on the council's services which regulate the sector.

##### **Recommendations:**

- 2 The Executive Member for Housing and Safer Communities is asked to
  - a) Note the new legislation.
  - b) Recommend to impose the maximum £5,000 penalty for all three pieces of legislation and to delegate to the Housing Services Manager the discretion to impose a lower penalty when there are extenuating circumstances.
  - c) Recommend to adopt the new policy, to have a targeted and balanced approach by actively enforcing the new legislation relating to letting agents and management agents. To improve the professionalism of the sector and to provide support to smaller

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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

landlords to understand the requirements of the regulations regarding smoke and carbon detectors by providing information/ advice and working with NYFR provide free detectors to landlords on first come first serve basis.

d) Agrees to the operational process of the scheme as set out in Appendix A.

Reason: Imposing the maximum monetary penalty will send out the right message to agents/landlords who need to improve their management/safety and will provide a sufficient threat to agents/landlords who may be undecided as to whether they should comply.

The Council recognises that the majority of managing and letting agents and landlords operate a good business and treat their tenants with respect and manage their properties professionally. However there are a minority who will always try to work below the standards expected. By targeting limited resources we aim to provide a balanced approach supporting and recognising good letting agents and landlords who want to provide safe well managed homes and penalising letting agents and landlords who don't comply.

## **Background**

### **Redress Scheme**

3. This came into force from the 1<sup>st</sup> October 2014 and means that all letting and management agents must now become a member of a redress scheme. The purpose of these schemes is to deal with complaints made by tenants or landlords about agents. Essentially these are Ombudsman Schemes.
4. There are three approved schemes available for managing or letting agencies to join and all are government backed. These are run by
  - The Property Ombudsman – [www.tpos.co.uk](http://www.tpos.co.uk)
  - The Ombudsman Services: Property- [www.ombudsman-services.org](http://www.ombudsman-services.org)
  - The Property Redress Scheme – [www.theprs.co.uk](http://www.theprs.co.uk)

Typical costs of joining a scheme is around £170 to £350 per annum. There are certain exemptions and these include an employer letting to an employee, universities, social landlords and lawyers.

## Publicising Fees

5. The Consumer Rights Act has made it a legal requirement for all lettings agents in England to display details of all fees and charges on websites and in offices from 27 May 2015. The list of fees must also include which redress scheme the Agent belongs to. The aim of the Act is to require full transparency of fees to deter double charging and enable tenants and landlords to shop around, encouraging letting tenants to offer competitive fees. Linking fees to the level of service provided enables landlords and tenants to make more informed choices. The requirement to advertise fees does not apply to landlords.
6. Agents will also need to display whether or not they are a member of a client money protection scheme. A holding deposits guide is available for agents and tenants to help explain when holding deposits may be taken, the process the agent should carry out, what information should be provided to the tenant and the fees the agent must justify if they are making a deduction from the holding deposit.
7. The Housing Standards and Adaptations team frequently sees examples of poor management and unlawful practices from people and organisations that set themselves up to operate as Property Managers or Estate Agents. Our recent consultation exercise identified that tenants were most concerned about letting agents
8. We have identified that there are potentially 80 agencies working within the city, however it should be noted that the home authority principle applies to the enforcement of the Redress Scheme provisions so the enforcing authority is the council where the registered home office is located. Currently no qualifications, experience or independent approval is needed to operate as a manager or agent, and bad practice can lead to frustration and an unpleasant experience for both landlords and tenants in the city. The introduction of this legislation is welcomed as it will help discourage incompetent property managers and agents, and those lacking the necessary knowledge and expertise, from operating within the city.
9. It will encourage the better managers and agents to be even more diligent, and will provide those tenants and landlords who do receive a poor service with a means of getting redress including compensation.

## **Smoke and Carbon Monoxide Detectors**

- 10 From 1st October 2015 these regulations will require landlords in the private rented sector to ensure that a smoke detector is fitted on every storey of their rented property when occupied and that a carbon monoxide alarm is fitted in any room which contains a solid fuel burning combustion appliance. They also require that alarms are in proper working order at the start of each new tenancy. An important exemption is that the regulations don't apply to licensed Houses in Multiple Occupation (HMO) as this is already a requirement of the HMO licensing regime.
- 11 We will have a duty to serve a remedial notice on the Landlord where they have reasonable grounds to believe that the landlord has not provided the smoke and/or carbon monoxide detectors or where the landlord has not ensured that they are in good working order at the beginning of the tenancy.
- 12 If the remedial notice is not complied with the council will be placed under a duty to arrange the remedial action. This may involve installing a prescribed alarm, or repairing a prescribed alarm checking a prescribed alarm is working
- 13 Typical costs of installing a smoke alarm are around £5 and £20 for a Carbon Monoxide detector. It has been estimated nationally that these regulations will prevent, in the case of smoke detectors, 231 deaths and 5860 injuries over 10 years providing benefits of £606.7million and for carbon detectors will result in 6-9 fewer fatalities and 306-460 fewer injuries and providing benefits of £16.8 million.
- 14 It is our recommendation to impose the maximum penalty in all cases unless there are extenuating circumstances. We believe that the relatively small cost of fitting alarms and the wider benefits to society compared to the fine will send a clear message to the sector that tenants' safety matters.
- 15 As part of a government initiative North Yorkshire Fire and Rescue Service (NYFR) has been provided with a number of smoke and carbon monoxide detectors to give free of charge. We are working with NYFR about how we can ensure that the landlords with small numbers of properties are made aware of these new regulations and can obtain them. We have estimated about that there are about 15000 properties in the sector and that about 75-80% of landlords in the city own 1-3 properties

- 16 We are the enforcing authority for these three statutory requirements and are required to take enforcement action where we are aware that a person engaged in letting agency or property management work is not registered with an approved redress scheme or has not fulfilled its duty to publish their fees or has not installed the relevant detectors. A financial penalty of up to £5,000 can be levied by the authority for non-compliance with each piece of legislation. There is obviously a financial incentive for agents to join a scheme and for landlords to install the relevant detectors.
- 17 It is recognised nationally that it will be the housing teams already dealing with the private rented sector that would take on this responsibility for enforcement. It is therefore proposed that the Council's Housing Standards and Adaptation team will take on the responsibility as the team is already responsible for regulating the private rented sector and are experts in this field. This report seeks approval as to how the council will exercise its enforcement duties in the way described in Appendix A including how we propose to deal with the financial penalties.

### **Options and Analysis**

- 18 There are two decisions being sought and there are options put forward for each decision
- A) The first is about the level of fine to impose
- B) The second is about the proposed policy and how we will implement the new changes

### **19 Decision A—level of fine**

Option 1 – to take action when there has been non-compliance and impose a monetary penalty of £5,000 (or lower in extenuating circumstances)

Option 2- to take action when there has been non-compliance and impose a reduce fine

Analysis of decision A

- 20 **Option 1** There is no discretion as to whether a council takes action where they become aware of non-compliance. The three new pieces of legislation will be helpful tools improving safety and management. The maximum penalty should be imposed in all normal cases to send a clear message to

the sector. Where extenuating circumstances exist the decision to impose a lower penalty should be delegated

- 21 **Option 2** –The council should enforce the legislation to improve safety and management of the sector. Imposing a reduced fine may send the wrong message out and in turn may make it a more cost effective option to risk the fine rather joining a scheme or providing adequate information or installing a detector.

### **Decision B–The council’s approach to implementing the regulations**

- 22 **Option 1** – To proactively implement the regulations relating to Letting Agents and Property Management Companies, ensuring that they are compliant with the regulations which have been in force for several months. To prepare Landlords, in particular those who own a few properties, for the new regulations regarding the implementation of smoke and carbon monoxide detectors across the wider rented sector (some 15,000+ properties).The approach will focus on having a significant media campaign with NYFR promoting the installation of the detectors within the sector and then advising tenants to contact the service where the landlord doesn’t make arrangements to install them.
- 23 **Option 2** –To provide a reactive service to complaints about Letting Agents and Property Management Companies and to complaints about the failure by Landlords to install the relevant detectors.

### **Analysis of decision B**

- 24 **Option 1** There is no discretion as to whether a council takes action where they become aware of non-compliance. However there is discretion about the approach they can adopt. This first option will mean that the council can target its limited enforcement resources at the letting agents and property management companies, the regulations have been in force some period and these larger organisations should have ensured that they are complying with the regulations. There has been significant discussion in the property press and so there shouldn’t be any reason for agencies to be unaware of the changes in the law.
- 25 However the new regulations regarding installation of detectors don’t come in to force until October 2015 and will affect a significant number of private rented properties. The change to the law hasn’t been widely publicised given that it received parliamentary approval just before Purdah. By having a policy

which aims to raise awareness of the regulations and encouraging tenants to complain if the property isn't adequately protected will mean that the limited council resources are used effectively. It should be noted that all three pieces of legislation were released without upfront funding and relies on the income from fines to cover the enforcement costs incurred by the council. It is envisaged given the relatively low cost of joining a scheme, publicising fee or installing a detector that where the council draws the attention through the notice process that the agent or the landlord will comply. Therefore it is prudent that the council takes a balanced approach to ensure the most effective enforcement within the sector.

- 26 **Option 2:** By having a purely reactive approach to the regulations and only dealing with complaints as they arise we will not be dealing with the part of the sector which has raised most concerns, namely letting agents. We recognise that most agents are professional and provide a valuable service for the sector. However we are also aware that there has been a proliferation of the sector and by having a more proactive approach it will help discourage incompetent property managers and agents, and those lacking the necessary knowledge and expertise, from operating within the city.
- 27 75-80% of landlords in the sector have fewer than 3 properties. If we didn't have a campaign smaller landlords would be unaware of their responsibilities and tenants would be unaware of their ability to contact the council where the law is being ignored.

### **Consultation**

- 28 As part of the consultation on the Private Rented Sector (September – October 2014) we did consult with a range of stakeholders, tenants, landlords and letting agents. The exercise raised some concerns about the standard of letting agents and their management practises within the city. We have consulted with other local authorities across North Yorkshire and can advise where they have set penalties that these are in line with our approach.

### **Council Plan**

- 29 Enforcing these new laws will support and contribute towards a number of the Administration's 12 point plan and draft council key priorities:
- A prosperous city for all
  - A focus on frontline services

- A council that listens to residents

The private rented sector forms a significant part of the housing offer to the City, enforcing these laws will help to drive up standards in the sector

It also meets with the specific strategic Aim 2 of the Draft York Private Sector Housing Strategy 2014-2019 to encourage and enable private landlords and agents to provide good quality, well managed properties

### **Financial and Procurement Implications**

- 30 The costs associated with enforcing the policy will be met from within existing budgets. Under the legislation any fine income received can be used by the council as it sees fit. The number of fines issued is likely to be very low as membership of a scheme costs little. Any income is likely to be one – off in nature and on that basis it would not be prudent for the council to consider income to its budgets

### **Human Resources Implications**

- 31 None

### **Equalities Implications:**

- 32 The new legislation will provide a recognised and independent route through which tenants can complain about unfair practises including discriminatory behaviour.

### **Legal Implications:**

- 33 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 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**

- 34 The Council must make arrangements for the enforcements of these regulations without doing so it will breach of the legislation.



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	<b>Report Approved</b>	✓	<b>Date</b> 10 August 2015
<b>Wards Affected:</b> <i>All</i>			
For further information please contact the authors of the report			

**Abbreviations:**

(NYFR) - North Yorkshire Fire and Rescue Service

(HMO) - Houses in Multiple Occupation

**Appendix A: New Legislation for the Private Rented Sector**