**Havant Borough Council**

**The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.**

**Statement of Principles for Determining Fixed Penalty Notice.**

**September 2024**

**Purpose of statement**

This statement is to define the principles that will be applied by Havant Borough Council (“the authority”) when determining the sum of financial penalty under Article 8 of The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (“the Order”).

**Legal background**

**Duties placed upon relevant lettings and managing agents.**

Article 3(1) of the Order requires:

A person who engages in lettings agency work must be a member of a redress scheme for dealing with complaints in connection with that work.

Article 5(1) of the Order requires:

A person who engages in property management work must be a member of a redress scheme for dealing with complaints in connection with that work.

**Enforcement**

Article 7(1) makes it the duty of every enforcement authority to enforce the Order.

**Penalty**

Where an enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme under article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work), the authority may by notice require the person to pay the authority a monetary penalty (a “monetary penalty”) of such amount as the authority may determine.

The amount of the financial penalty must not exceed £5,000.

Where a local authority decides to impose a financial penalty, the authority must serve notice of that fact on the relevant agent.

**Principles**

The authority believes it good practice to prepare and publish a statement of principles which it proposes to follow in determining the amount of a financial penalty in relation to the Order.

**Principles for service of financial penalty**

The purpose of a financial penalty is:

1. To ensure relevant agents gain no financial advantage from non-compliance with the regulations.
2. To improve protection of the public by acting as a deterrent to relevant agents.
3. To reduce the likelihood of future non-compliance.
4. Influence behaviour of relevant agents.
5. To fulfil the Local Authority’s duty.
6. To reclaim the Authority’s expenses to ensure tax payers are not unfairly penalised.

**Principles in judgement of breach of duty**

A Team Leader in Environmental Health (or equivalent in the event of change of title) shall review the evidence and determine whether in their opinion a breach of the requirement under article 3 and/or article 5 of the Order has been perpetrated or not based on the balance of probability.

In doing so that person may make any reasonable request for information from the investigating officer’s case file or question the officer as they consider necessary in order to form an opinion.

**Principles in determining sum**

The authority **will** impose a financial penalty on a relevant agent who breaches the requirement to belong to a redress scheme under article 3 and/or 5 of the Order.

The sum of the financial penalty shall be in accordance with table 1 below.

**Table 1.**

|  |  |  |
| --- | --- | --- |
|  | Penalty sum | Early payment reduction |
| Breach of requirement to belong to a redress scheme. | £5,000.00 | 25% |

An early payment reduction of 25% shall apply if paid within 14 days.

**Procedure of enforcement**

**Service of notice of intention to impose a financial penalty**

Where satisfied, that a relevant agent has failed to comply with article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work), a Team Leader in Environmental Health (or equivalent in the event of change of title) who has reviewed the evidence of that breach of the requirement will serve the notice of intention to impose a financial penalty within six months.

The authority will include in the notice of intent all that which is required in accordance with the Schedule; paragraph 1(3) of the Order.

**Representations and review**

A person on whom a notice of intent is served may within 28 days beginning with the day after the date on which the notice was sent make written representations and objections to the enforcement authority in relation to the proposed imposition of a monetary penalty.

The authority will review its decision based on the information provided in the relevant agents representations. All reviews will be conducted by the manager responsible for Environmental Health or alternatively a manager above that level in the cooperate hierarchy.

Where the person making representation can show on the balance of probabilities that the sum of the fixed penalty will cause unreasonable hardship to them or their family the reviewer may use discretion to extend the allowable payment period by varying the penalty notice. In extreme cases a senior manager may use their discretion to reduce or waive the penalty but must have consideration of the capital and rental value of the subject premises in doing so.

**Imposition of Financial Penalty – Final Notice**

After the end of the period of 28 days in which time representations may be made, the Authority willdecide within 28 days whether to impose a financial penalty or not and, if so, the amount of that penalty.

Where the Authority decides to impose a financial penalty, it will serve a “Final Notice” on the relevant agent imposing that penalty. The final notice will require the financial penalty be paid within the period of 28 days from date of service except in cases where discretion is used for problems of hardship where such other time period will be determined by the manager who reviewed the representations.

The authority will include in the Final Notice all that which is required in accordance with the Schedule; paragraph 3(3) of the Order.

A relevant agent may appeal the decision of the authority’s review to the First-Tier Tribunal.

**Revision of statement**

The authority may revise this statement of principles at any time and, where it does so, it will publish the revised statement.