Effective Enforcement in the Private Rented Sector

(Third Edition)

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1. Objectives

This toolkit is designed to assist local authority enforcement officers to take effective action to tackle letting agents that fail to comply with the law. In particular, it explores the requirement for letting agents to belong to government approved redress and client money protection schemes and to display prescribed information.

The requirement for agents that hold client money to belong to a client money protection scheme came into force on 1 April 2019. 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.

The toolkit was first published in June 2016 and was well received. The second edition was published in November 2018. It was updated in conjunction with London Trading Standards to apply the knowledge and learning from operational experience and relevant tribunal decisions. This third edition has been further updated to reflect the requirement to belong to a client money protection scheme if an agent holds client money.

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

- Barking & Dagenham Council
- Brent Council
- Bristol City Council
- Chartered Trading Standards Institute
- Camden Council
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- Hertfordshire County Council
- Islington Council
- London Trading Standards
- Newham Council
- Powys County Council (National Trading Standards Estate Agency Team)
- Sheffield City Council
- Westminster City Council
- York City Council

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2. Foreword by the Chief Executive of safeagent

"

At **safeagent**, our aim is to create a better, safer Private Rented Sector (PRS) for all – tenants, landlords, and agents.

safeagent campaigned for many years for the introduction of Client Money Protection (CMP) legislation to ensure consumers in the PRS were protected and their money was safe. However, although the introduction of CMP legislation was a vital step, unfortunately we do not believe it is being enforced effectively which puts consumers – both landlords and tenants – at risk.

In order to stamp out the small minority of agents whose operate illegally without CMP and tarnish our sector's reputation, we must continue to raise standards and strongly enforce legislation. That's why we saw the need for the **safeagent** Effective Enforcement Toolkit. First published in 2016, and now in its third edition, the Toolkit provides a unique way to assist Local Authority enforcement officers to take effective action in tackling rogue letting agents who fail to comply with the law.

Legislation governing the PRS changes rapidly, which is reflected in this extensively updated edition of the Toolkit. Aware of the challenges Local Authorities face in carrying out their work in the PRS, the Toolkit now references over 100 Tribunal decisions from across England.

We hope that by providing easy access to this wealth of information it will help Enforcement Officers correctly interpret the legislation and provide a useful benchmark for assessing the appropriate level of penalties.

We would like to thank those Trading Standards officers from across the country and listed in the Toolkit who gave their time and expertise in developing the updated version to ensure their colleagues across England are fully equipped to enforce the important legislation that protects consumers in the PRS. "

Isobel Thomson, **safeagent** Chief Executive

3. Summary of the legislation

3.1. Redress Scheme Membership

On 1 October 2014, 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 Ministry for Housing and Local Government (MHCLG)* "Improving the Private Rented Sector and Tackling Bad Practice - A Guide for Local Authorities'. You will find a link to the document in Appendix 6.

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.

The definition of property management was explored in Ridgemoor Properties Limited and Reading Borough Council (PR/2017/0014). The company took on properties under a one to five year lease and then let out to tenants on assured shorthold tenancies. It was held they were not acting on instructions received from another person. Based on the specific circumstances in this case, the appeal was allowed and the notice quashed as it was held the company were not carrying out property management work.

In LETS4U and North Kesteven DC (PR/2017/0023), the appeal succeeded, and the notice was quashed. It was held that LETS4U was a partnership that only rented out properties belonging to the partners and so no breach occurred. They were not acting on instructions from another person.

In Samson Estates Ltd and London Borough of Newham (PR/2017/0023), a £3,000 penalty was quashed as they were a member of an approved redress scheme covering lettings and property management. However, the decision was overturned on appeal by the Upper Tribunal. Judge Levenson ruled that Article 5(1) required redress scheme membership to cover all property management activities undertaken by the company including residential leasehold management, which was not covered by their redress scheme membership. The judge found there had been an error of law and the £3,000 penalty was reinstated.

In G Crawford Management Services Ltd v London Borough of Tower Hamlets (MISC/2478/2018), the Upper Tribunal ruled that the company which was paid £10,000 per year to undertake administrative and office services for the head leaseholder in a leasehold block did require redress scheme membership. However, the penalty was reduced from £5,000 to £3,000 as the company was in the process of disengaging from those activities, there was genuine and reasonable doubt about the meaning of the legal requirements and that the penalty represented a considerable proportion of the company's annual turnover.

In Lifestyle Club Limited and London Borough of Islington (PR/2018/0040), the appellant argued they were a membership club and were not covered by the legislation. However, the set-up was referred to as a scam, the appeal was dismissed, and £5,000 penalty was confirmed.

*The Ministry for Housing and Local Government (MHCLG) was renamed as the Department for Levelling Up, Housing and Communities (DLUHC) on 19 September 2021.

Where appropriate, council officers should refer back to the legislation and MHCLG 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 two redress schemes under Section 87 of the Enterprise and Regulatory Reform Act 2013. They are:

- Property Redress Scheme
- The Property Ombudsman

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

Note: On 6 August 2018, Ombudsman Services Property ended their redress scheme. All letting agents and property managers that were previously a member of that scheme were required to join one of the other schemes by that date.

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.

The schedule to the regulations makes clear that the notice must be served within 6 months of the date when the enforcing authority is first satisfied that the person has failed to comply. This demonstrates the importance of accurate record keeping and prompt action by the enforcing authority to ensure that they are not out of time to take action.

MHCLG 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.

Experience has shown that First-tier Tribunals are having regard to government guidance in reaching their decision.

In doing so, they are generally accepting that the maximum penalty of £5,000 should be imposed unless there are any mitigating features.

In AG Camden Ltd and London Borough of Camden (PR/2015/0025), Meridian Relocations and City of Bradford MDC (PR/2016/0002), Centrepoint Property Limited and London Borough of Newham (PR/2016/0047/48/49) and Yasir & Co Ltd and London Borough of Newham (PR/2017/0031), the appeals were all rejected and a £5,000 penalty for failure to belong to a redress scheme was upheld.

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. As the requirement to belong to a redress scheme has been in force since October 2014, it is unlikely that lack of awareness would warrant a lower penalty.

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.

In Landmarc Estates Ltd and London Borough of Camden (PR/2015/0015), the appeal was allowed in part and the penalty was reduced from £5,000 to £2,500 due to difficult family circumstances and to avoid financial hardship as it was a small and only modestly profitable business.

In Lets Go (Leeds) Ltd and Leeds City Council (PR/2016/0018), the appeal was allowed in part and the penalty was reduced from £5,000 to £3,725 after company accounts produced to the First-tier Tribunal showed a small trading loss, albeit unaudited and not independently verified.

In Cherry Estate Agency Limited and London Borough of Newham (PR/2016/0032), the appeal was allowed in part and the penalty was reduced from £5,000 to £3,000 after company accounts showed only modest turnover and profitability, combined with steps to join a redress scheme once the matter was brought to their attention.

In the Upper Tribunal decision of Reading Borough Council v Ashley Charles Ltd (MISC/3568/2017), an appeal by the local authority against the First-tier Tribunal's decision to impose a nil penalty was unsuccessful. It was noted the DCLG guidance was not a legally binding statement of law or practice and it was appropriate to part from it in extenuating circumstances. The company were making a loss and had no funds, the last member of staff had left, they had tried to sell the business and were not taking on any new work, the company was due to be wound up and the breach was for just 3 weeks.

Another factor to consider is situations where there is a short gap in redress scheme membership caused by a delay in paying the annual renewal premium. In Mr Zulfikar Shakoor (T/a Homes 4U Direct) and London Borough of Newham (PR/2017/0032), the appeal was allowed in part and the penalty was reduced from £5,000 to £2,000 as the breach was only of short duration whilst the agent was out of the country. Scheme membership was renewed on his return.

It is open to the authority to allow a lettings agent or property manager an opportunity to join one of the redress schemes rather than impose a fine although this is only likely to be appropriate in exceptional circumstances, given that redress scheme membership has been a requirement for over 5 years.

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

Whilst the MHCLG guidance is not statutory guidance, the advice it contains has been referred to and upheld in many First-tier Tribunal appeal hearings, as demonstrated in decisions referenced in this section.

3.2 Display of fees, etc..

On 27 May 2015, legislation came into force making it a requirement for all agents in England 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.

The requirements are set out in sections 83 to 88 of the Consumer Rights Act 2015 (the CRA2015), as amended by sections 18 to 20 of the Tenant Fees Act 2019 (the TFA2019). Within this section we have highlighted the changes made by the TFA2019.

The list of fees displayed or published by a letting agent 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.

Further guidance on the display of Prescribed Information is contained in Annex D of the MHCLG 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 6.

In the Upper Tribunal decision of London Borough of Camden v Foxtons Limited (MISC/0156/2017), the Judge noted that the MHCLG guidance had been issued whilst the Act was still a Bill and did not appear to have been reissued or confirmed since the Bill became an Act. Thus, the Judge was unsure about the status of the guidance.

The same Upper Tribunal decision found that the term 'administration charge' or 'administration fee' is not acceptable unless accompanied by a sufficiently detailed description that enables someone to understand the service or cost that is covered by the fee or the purpose for which it is imposed. A case summary is contained in Appendix 5. It is important to note that the TFA2019 has dramatically reduced the ability to charge tenant fees.

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)).

In BNP Paribas Real Estate Advisory & Property Management UK Ltd t/a Strutt & Parker and Westminster City Council (PR/2019/0007), a penalty of £5,000 was upheld as the information was not display at the head office. The Appellant said clients did not attend the head office and information was displayed in their branches. The appeal was dismissed as evidence showed some client meetings took place at that office.

According to MHCLG 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. Displaying the fees in a staff-only area, or only providing the fees list on request will not comply with the requirements.

It is important the fees are always on display. In Abid Sukander (Trading as A S Properties) and London Borough of Newham (PR/2017/0006), a penalty of £5,000 was upheld as the list of fees had been removed from display and placed on the desk facing towards the manager for a period of at least four hours and was not on public view.

The information must also be published on the agent's website if they have one (Section 83(3)). If the agent advertises a property for rent in England on a third-party website, the agent must ensure a list of their fees is published on that third-party website. Alternatively, the third-party website must include a link to the list of fees of the agent's website. This requirement was added in section 18 of the TFA2019.

Within England, alongside the list of fees, if the agent holds client money, they must display a statement that indicates they are a member of a client money protection scheme and gives the name of the scheme. (Section 83(6) as amended by section 19 of the TFA2019).

In Ambi Investments Ltd T/A Primelodge Estates and London Borough of Barking and Dagenham (PR/2018/0089, 0090 & 0091), it was held section 83(6) only required publication of a CMP statement if an agent holds client money. There was no requirement to display the agent was not a member of a CMP scheme if they did not hold client money. They disagreed with the DCLG guidance which referred to the need to display this information 'whether or not' they held client money as this wording was not used in the legislation. However, the wording 'whether or not' was used in the explanatory note to this part CRA2015 at note 460.

Furthermore, later that year in the case of Ultra Estates (SJW) v Westminster City Council, Judge Levenson on 23 September 2019 in the Upper Tribunal in refusing permission to appeal decided on this matter of statutory construction that the wording of section 83(6) of the Act "clearly includes a requirement to state (if such be the case) that an agent is not a member of such a scheme." Following the introduction of compulsory CMP on 1 April 2019 and the subsequent amendments to the CRA2015 made by the TFA2019 this will no longer be an issue. While the cases above were heard after 1 July 2019 the notices that were the subject of the cases were served before CMP became compulsory under the old regime when 'whether or not' would still have been applicable.

A client money protection scheme is a scheme that enables a person on whose behalf an agent holds money to be reimbursed if all or part of that money is not repaid to that person. Since 1 April 2019, it has been a legal requirement for agents to belong to a government approved client money protection scheme if they hold client money. This is explored in more detail in section 3.3.

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 Property Redress Scheme, or the Property Ombudsman"
[delete as appropriate]

The 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 redress scheme and CMP 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 and which CMP scheme they belong to 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 MHCLG 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)).

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One issue that has caused confusion is deciding what constitutes a breach for which a single penalty of up to £5,000 can be imposed.

In the First-tier Tribunal decisions of Alexanders Property Consultants Ltd and London Borough of Camden (PR/2016/0009), Ringley Agency Ltd and London Borough of Camden (PR/2016/0012) and Oakford Estates Limited and London Borough of Camden (PR/2016/0021), it was held that failing to display relevant landlord fees and relevant tenant fees was a single breach under Section 83 for which a maximum penalty of £5,000 could be imposed.

Meanwhile, we understand that London Trading Standards Lettings Group (LTSLG) believe failing to display Prescribed Information in the agent's office is a separate breach to failing to display information on the letting agent's website and that separate penalties can be imposed for each breach.

In Homegain Limited and London Borough of Newham (PR/2017/0015), the appeal was dismissed and the First-tier Tribunal upheld two separate penalties of £3,750 (£7,500 in total) for failing to display Prescribed Information in the office and on the company's website. In Marcus James T/a Marcus James (UK) Limited and London Borough of Newham (PR/2017/0012), the appeal was dismissed and the First-tier Tribunal upheld two separate penalties of £5,000 (£10,000 in total) for failing to display Prescribed Information instore and on the company's website. A similar interpretation was adopted in Baker and Chase Ltd and London Borough of Enfield (PR/2018/0039) and 1st Choice Estates Ltd and London Borough of Lambeth (PR/2019/0037 & 0038).

There was much less consensus about whether failing to display (1) a list of all relevant landlord and tenant fees, (2) redress scheme membership and (3) client money protection information scheme is one breach or three.

In the First-tier Tribunal decision of Uxdale Ltd and London Borough of Islington (PR/2016/0008), Frognal Estates Limited and London Borough of Camden (PR/2017/0025), Up My Street Ltd and London Borough of Camden (PR/2018/0002), and K Hillside Ltd t/a Field and May and London Borough of Tower Hamlets (PR/2018/0006), it was held that final notices could include separate penalties for failing to display each part of the Prescribed Information. In the Uxdale case, a penalty of £8,000 was imposed for multiple breaches on one Final Notice and the appeal was dismissed. In the Frognal Estates case, a penalty of £15,000 was imposed for multiple breaches on one Final Notice and the appeal was dismissed. In the Hillside and Up My Street cases, penalties of £8,000 and £12,000 were imposed for failure to display prescribed information. In both cases, Judge Hamilton determined that the Foxtons Upper Tribunal decision clarified the ability to issue several penalties, although the issue addressed in that case was slightly different.

However, in the First-tier Tribunal decision of Metropole Properties Limited and Westminster City Council (PR/2016/0050), it was held that failure to display all relevant fees and client money protection information was a single breach for which only one penalty could be issued. Similar judgements were reached in Flavio Costa Properties Limited and London Borough of Newham (PR/2016/0037), Abid Sukander and London Borough of Newham (PR/2017/0006), M & M Europe Limited and London Borough of Newham (PR/2017/0007), Central Park Estates Limited and London Borough of Newham (PR/2017/0011), Anglowide Estates and Mortgages Ltd and London Borough of Barking & Dagenham (PR/2017/0020), Top Supports Estate Agents Limited and London Borough of Barking & Dagenham (PR/2017/0021), Samson Estates Ltd and London Borough of Newham (PR/2017/0023), Station Estates Ltd and London Borough of Newham (PR/2017/0024), Filtons Stratford Ltd and London Borough of Newham (PR/2017/0029), Hamilton (sales and Lettings) Limited and Westminster City Council (PR/2018/0001), Lancaster Estates (UK) Ltd t/a Cavendish Rowe and Westminster City Council (PR/2018/0035 & 36), Atco Estates Ltd and London Borough of Barking & Dagenham (PR/2018/0051, 0052 & 0053), Ambi Investments Limited T/A Primelodge Estates and London Borough of Barking and Dagenham (PR/2018/0089, 0090 & 0091) and Kaden Properties Limited and London Borough of Camden (PR/2019/0006).

In Atco Estates Ltd and London Borough of Barking & Dagenham (PR/2018/0051, 52 & 53), Judge Hinchliffe took particular account of the decision by Chamber President Judge KcKenna in PR/2018/0001 when deciding section 83(3) gives rise to a single breach.

On 28 January 2019, Mrs Heather Wheeler MP, Minister for Housing and Homelessness wrote to Lord Harris and National Trading Standards to address this issue. The Minister acknowledged there was ambiguity leading to inconsistent First-tier Tribunal decisions. She explained it was the government's policy position that failing to display any number of prescribed pieces of information at a single point in time should be treated as one breach and a maximum penalty of £5,000. She indicated this would be clarified in new statutory guidance.

Following the Minister's intervention, LTSLG is now of the view that there can be one breach (for display of Fees, CMP & Redress Information) in respect of the agent's website and one breach in respect of the agent's office, so a maximum of two breaches in total.

Most enforcement authorities appear to have adopted the Minister's approach outlined in her letter and we are not aware of new notices being issued for multiple breaches on the website or office. However, until there is amended government guidance or legislation or a binding Upper Tribunal decision, there will remain a lack of clarity on this point and each enforcing authority is advised to seek appropriate legal advice.

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MHCLG 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. As the requirement to display Prescribed Information has been in force since May 2015, it is unlikely that lack of awareness would now warrant a lower penalty.

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 and copies of bank statements.

Where a letting agent has cited financial hardship as part of the grounds for any appeal, it is open to the Tribunal to issue Directions requiring suitable audited company accounts to be provided.

It is open to the authority to give the agent a period in which to comply rather than impose a fine, although this is only likely to be appropriate in exceptional circumstances, given that it has been a requirement to display Prescribed Information for over five years. 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. An example of such a breach might be if all other fees and required information are displayed correctly on the website and in the agent's office except that the landlord fees state the % rates " plus VAT" instead of an inclusive with VAT figure.

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

3.3 Client Money Protection

On 1 April 2019, legislation came into force making it a requirement for property agents in England that hold client money to be a member of a government approved client money protection scheme. It is important to note that this is completely separate from government approved tenancy deposit protection schemes.

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc..) Regulations 2019 were made under the Housing and Planning Act 2016 (the H&PA2016) and were subsequently amended by the TFA2019.

Property agent is defined under section 133(4) of the H&PA2016 as a person who engages in letting agency or property management work within the meaning of section 54 and 55 of the Act. Whilst these definitions are similar to those that apply for the purposes of redress scheme membership, it is important to study the definitions carefully before commencing enforcement action.

For the purpose of the regulations, 'client' is defined as (Regulation 4(4)):

a. any person on whose behalf the agent holds client money;
b. any person not falling within sub-paragraph (a) on whose behalf the agent has an agreement to hold client money; and
c. any person not falling within sub-paragraph (a) or (b), from whom the agent is likely to receive client money on whose behalf the agent has an agreement to hold client money.

The duties placed on agents in relation to client money protection are split into two parts.

Under Regulation 3, there is a duty on the agent to be a member of an approved client money protection scheme if they hold client money. A separate requirement to ensure that scheme membership provides a level of compensation covering the maximum amount of client money that they may from time-to-time hold was removed by an amendment in section 23(3) of the TFA2019.

Whilst there was no transition period, the government initially allowed a grace period of one year (until 1 April 2020) for CMP schemes to insist that their members had separate client money bank accounts. This grace period was subsequently extended until 1 April 2021, in recognition of the difficulties being experienced by some agents in opening separate client accounts. The grace period ended on 1 April 2021.

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Under Regulation 4, there is a duty on the agent to:

- a. obtain a certificate confirming their membership of an approved client money protection scheme;
- b. display the certificate at each of their premises in England where they deal face to face with persons using or proposing to use their services as a property agent, where it is likely to be seen by such persons;
- c. publish a copy of the certificate on the company's website (if any); and
- d. produce a copy of the certificate to anyone who may reasonably require it, free of charge.

Following amendments in section 23(4) of the TFA2019, these duties only apply if the scheme administrator has provided a certificate to the agent. Enforcement of this provision may therefore necessitate obtaining a witness statement from the scheme administrator to prove that a certificate has been provided or failing that, by exhibiting any such confirmation in the investigating officer's statement.

There are further provisions that require an agent to notify their clients in writing within 14 days if their membership of a CMP scheme is revoked or if they cease to be a member of one scheme and become a member of a different scheme.

Whereas any agent that holds client money can commit an offence under Regulation 3, only agents that have joined an approved scheme can commit an offence under Regulation 4.

Under Regulation 5, it is the duty of every local Weights and Measures Authority in England to enforce the requirements. The responsibility for enforcement was transferred to local weights and measures authorities by an amendment in section 21(3) of the TFA2019. There is also a new lead enforcement authority that can participate in enforcement activity and this is explored in more detail section 4.4.

Scheme administrators are required to assist Trading Standards by providing information relating to an agent's membership as may be necessary in connection with their enforcement functions. **safeagent** is committed to supporting Trading Standards Officers in this regard and can be contacted by emailing info@safeagents.co.uk or calling 01242 581712.

A breach of the regulations is taken to have occurred in each local authority where the agent has premises or where housing is situated for which the agent undertakes letting agency or property management work (Regulation 5).

After serving the notice of intent, where a local authority is satisfied beyond reasonable doubt (the criminal burden of proof) that an agent has breached Regulation 3, they may serve a final notice imposing a financial penalty of such an amount determined by them, which must not exceed £30,000 (Regulation 6).

After serving the notice of intent, where a local authority is satisfied beyond reasonable doubt (the criminal burden of proof) that an agent has breached Regulation 4, they may serve a final notice imposing a financial penalty of such an amount determined by them, which must not exceed £5,000 (Regulation 7). There is no breach of failing to obtain, display, publish or produce a copy of the CMP certificate if the agent has taken all reasonable steps to obtain a copy and the scheme administrator has not provided it.

In May 2019, MHCLG published statutory guidance that local authorities must have regard to when exercising their powers. You can find a link to the guidance in Appendix 6.

On page 9 of the statutory guidance, it explains that any agent knowingly displaying or continuing to display a certificate where they do not hold scheme membership could be committing an offence under the Consumer Protection from Unfair Trading Regulations 2008.

On page 13 of the statutory guidance, it highlights the expectation that councils will develop and publish their own policy on determining the appropriate level of financial penalties and says "…the maximum amount to be reserved for the worst offenders". It says the actual amount levied in a particular case should be fair and proportionate reflecting the severity of the breach as well as taking into account the agent's previous record of non-compliance.

It lists four factors that should be taken into account:

1. Severity of the breach;
2. Deterring agents from breaching the requirements;
3. Aggravating and mitigating factors; and
4. Fairness and proportionality.

In Kensington Letting Company Limited and Royal Borough of Kensington and Chelsea (PR/2020/0003), the appeals were dismissed. Judge McKenna said she was mystified why a penalty of only £5,000 was imposed for not belonging to a CMP scheme when it could have been much higher (up to £30,000). The Judge considered, but decided against, increasing the penalty on appeal.

If the breach occurs outside the local authority's area, the enforcing authority must notify the relevant local authority of their intent to issue a financial penalty. When that happens, the relevant local authority is relieved of its duty to take action in relation to the breach (Regulation 8).

Only one penalty can be imposed on the same agent in relation to the same breach, unless the breach continues beyond the end of the relevant period (Regulation 9). The statutory guidance gives further guidance on this point. On page 10, it explains that failure to display a membership certificate across multiple offices (owned by the same entity) would constitute one breach and one financial penalty. It also explains that failure to display a membership certificate and failure to provide a copy of the certificate free of charge upon request would constitute two breaches and two financial penalties.

The statutory PCN procedure is outlined in the Schedule to the Regulations. It involves issuing a notice of intent to impose a financial penalty, allowing time to make written representations and considering those representations before deciding whether to impose a financial penalty and if so, the amount of the penalty.

The enforcing authority can at any time withdraw a notice of intent or final notice or reduce the amount payable by giving written notice.

It is important to study the Schedule to the Regulations carefully to ensure the correct procedure is followed. This will help to avoid penalties being withdrawn or quashed due to a procedural error.

The statutory guidance contains useful examples of what constitutes 'client money'. The list includes:

1. Rent.
2. Utility, council tax and communication service payments that are separate from the rent and are held in advance of the date of payment by a property agent for them to make the payment.
3. Repair and maintenance payments made to the agent in advance so they in turn can pay a contractor.
4. Maintenance floats held by the agent in case any repair or maintenance work is needed.
5. Miscellaneous payments made to the agent in advance so they can pay for any other professional work not covered under the above headings.
6. Tenancy deposits that are held unprotected for a short period before being placed in an authorised tenancy deposit scheme.
7. A holding deposit paid by a tenant.

It is worth noting that an amendment to the Regulations inserted by section 23(2) of the TFA2019 makes clear that client money does not include tenancy deposits that are held in an authorised tenancy deposit scheme.

The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 enable the government to approve suitable client money protection schemes that property agents must belong to.

Guidance for prospective client money protection schemes looking to obtain approval from the Secretary of State was published by MHCLG in July 2018 and you can find a link to the guidance in Appendix 6.

As of August 2021, six CMP schemes have been approved by MHCLG:

- CMprotect
- Moneyshield
- Propertymark
- RICS
- Safeagent (previously NALS)
- UKALA

This list is subject to change. MHCLG have committed to maintaining an up-to-date list of all approved schemes at: https://www.gov.uk/client-money-protection-scheme-property-agents

Contact details for all the current approved schemes is contained in Appendix 2.

3.4 Tenant fees ban

On 1 June 2019, the Tenant Fees Act 2019 (TFA2019) came into force in England. The Act bans most letting fees and caps tenancy deposits paid by tenants in the private rented sector.

The Government has published statutory guidance to assist local authorities in understanding and using their enforcement powers and you can find a link to the guidance in Appendix 6.

The government have also produced guidance for landlords, letting agents and tenants which may help to explain the requirements.

The implementation, interpretation and enforcement of the tenant fee ban falls outside the scope of this toolkit and all parties are encouraged to refer to the legislation and statutory guidance for further information. Local authorities may also wish to engage with the lead enforcement authority, as referenced in the next part of this guidance.

4. The enforcing authority

Before undertaking enforcement action, it is important to check that your council is the enforcing authority under the relevant legislation. We have summarised the arrangements below.

If you are still unsure, you may wish to speak to your Legal Services Department 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 unitary councils and metropolitan borough councils which can exercise any of the functions allocated to a district or council.

County councils are not included within the enforcing authority definition.

It is important the local authorities work closely together in enforcing the legislation. In relation to non-unitary local authorities, we understand that they can make arrangements under section 101 of the Local Government Act 1972 for any other authority to exercise their functions, unless there is express statutory provision that the function cannot be exercised in this way.

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

The Order places a duty on every enforcing authority to enforce the Order within their local area (Article 7). 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 MHCLG 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, MHCLG 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, MHCLG 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://primary-authority.beis.gov.uk/about

4.3 Requirement to belong to a client money protection scheme

The enforcing authority originally proposed under section 135(5) of the HPA2016 was amended by section 21(3) of the TFA2019. The responsibility now rests with local weights and measures authorities who are under a duty to enforce the CMP regulations.

In relation to investigatory powers, it has been pointed out that the CMP regulations are not listed in Schedule 5 of the Consumer Rights Act 2015. As a result, the enforcing authority does not have the same investigatory powers to investigate CMP breaches as they do with certain other lettings legislation. It is possible the CMP Regulations may be added to Schedule 5 in the future.

In the circumstances, there will be times when the enforcing authority obtains information about letting agents under CRA Schedule 5 powers in relation to other breaches (e.g. potential offences under the Consumer Protection from Unfair Trading Regulations 2008 ("CPUT")) or section 83-88 of the Consumer Rights Act 2015. In these circumstances it is possible that the local authority uses the information obtained in this way to support a notice under the CMP regulations. It is the duty of the enforcing authority to enforce breaches of the CMP Regulations where such breach it is brought to its attention. However, it would not be appropriate for the local authority to use Schedule 5 powers with the sole intention from the outset of a CMP investigation.

4.4 Lead enforcement authority

Changes made by sections 24 to 26 of the TFA2019 have led to the formation of a new lead enforcement authority.

Under the Act, the lead enforcement authority can be the Secretary of State or a local weights and measures authority appointed by the Secretary of State. When this guidance was prepared, Bristol City Council had been appointed as the lead enforcement authority for lettings in England, although this could be subject to change in the future.

Bristol City Council as lead authority for lettings agency work has been incorporated into The National Trading Standards Estate and Letting Agency Team which also incorporates Powys County Council (the lead enforcement authority for the purposes of the Estate Agents Act 1979).

More information can be found by visiting the council's website at:
https://www.bristol.gov.uk/web/ntselat/home

The lead enforcement authority oversees a range of letting agency legislation including the TFA2019, the duty to display prescribed information under Part 3, chapter 3 of the CRA2015, the requirement to belong to a redress scheme under the Enterprise and Regulatory Reform Act 2013 and the new client money protection rules under the Housing and Planning Act 2016.

The duties of the lead enforcement authority include:

- Overseeing and reviewing the operation of the relevant legislation;
- Issuing guidance; and
- Providing information to the relevant enforcing authorities and to the public.

The lead enforcement authority can enforce the relevant legislation itself where it considers it is necessary or expedient to do so. When taking on this function, it must notify the relevant local authority. It can also require the relevant local authority to provide assistance, or to report back on any enforcement activity they have undertaken.

As the lead enforcement agency for the Tenant Fees Act, Bristol City Council has adopted the following policy for financial penalties under the Tenant Fees Act and other 'relevant letting agency legislation'. You can find a link to the guidance in Appendix 6.

Bristol City Council published the policy at the end of 2019 and for the purposes of the guidance, relevant letting agency legislation includes:

1. The Tenant Fees Act 2019, "the TFA 2019"
2. Part 3, Chapter 3 of the Consumer Rights Act 2015
3. Section 83(1) and 84(1) of the Enterprise and Regulatory Reform Act 2013; and
4. Sections 133 – 135 of the Housing and Planning Act 2016

Other enforcement authorities may have different priorities and may choose to deviate from this guidance. Before adopting a different financial penalty notice policy, it is important to consider the local authority's constitution and get advice from legal services.

While the published policy is not statutory guidance, enforcement authorities in England must have regard to any guidance issued by the Secretary of State or the lead enforcement authority. Local enforcement authorities will therefore have to have regard to a number of factors if drafting their own policies including but not limited to Tribunal decisions / case law to date (particularly those of the Upper Tier and Higher Courts) as well as any statutory and non-statutory guidance. It is important to note that non statutory guidance is not binding on tribunals.

More information of the role of the lead enforcement authority can be found in Section 5 of the MHCLG Mandatory client money protection for property agents guidance, May 2019. You can find a link to the guidance in Appendix 6.

5. Promotional activity

Whilst the lettings industry wants to see these laws effectively enforced, we also want councils to actively promote these 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.

While it is acknowledged the requirement for redress scheme membership and the display of Prescribed Information have now been in place for a considerable period of time, authorities may consider active promotional activity to raise awareness about the requirement for client money protection scheme membership that came into force on 1 April 2019.

It is important for enforcement officers to engage with the council's communications or media team at the earliest opportunity. 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 council's 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.

A useful guide on the business companion website explains trading standards law (here). This could be signposted from council's website to help promote useful and consistent advice.

For private landlords, the council's 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 or client money protection 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?

5.2 Social Media

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 have active Twitter and Facebook accounts and some have many thousands of followers. Whilst enforcement officers may not be allowed to post their own updates, the council's media team are usually looking 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.

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5.3 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 civil penalty served for failure to join a client money protection scheme, 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 an example from London Trading Standards, published in September 2019: https://www.tradingstandards.uk/news-policy/news-room/2019/tenants-warned-to-beware-of-rogue-letting-agents-as-new-figures-show-more-than-46-don-t-comply-with-the-law

5.4 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 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 legal requirements for letting agents and property managers 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, London Borough of Barking & Dagenham and Westminster City Council have already followed this approach.

5.5 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 councils across the country.

5.6 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.

5.7 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 schemes where 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.

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Once you have your list of agents, we have produced some example letters in Appendix 7 that you might want to customise and use locally. You would also need to comply with the General Data Protection Regulations (GDPR) in relation to any information that falls within scope of the regulations.

Whilst advisory letters followed by spot-checks on the 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 a more hands-on approach.

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 a redress scheme. 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 had become compliant. This is a great example for other councils to follow.

6. Penalty Charge Notice (PCN) Procedure

Now 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 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 for failure to belong to a redress scheme or display prescribed information under the CRA2015 is a civil penalty of up to £5,000. Higher penalties of up to £30,000 can be imposed for breaching the client money protection regulations that came into force on 1 April 2019.

In relation to breaches of the redress scheme and display of prescribed information requirements, MHCLG guidance to local authorities 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".

The MHCLG 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 MHCLG 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.

The penalties for breaching the client money protection requirements are implemented somewhat differently. For example, there is no expectation that the maximum fine should be imposed. Instead, the regulations refer to imposing a penalty "...of such amount as the authority imposing it determines" up to the maximum amount permitted. MHCLG guidance says: "Enforcement authorities are expected to consider each breach on a case-by-case basis and for the maximum penalty to be reserved for the worst offenders".

It says the level of penalty should be set at a level having regard to the following factors:

- Severity of the breach;
- Deterring agents from breaching the regulations;
- Aggravating and mitigating factors; and
- Fairness and proportionately.

It is important that these factors are taken into account whilst having regard to other factors such as any applicable statutory and/or non-statutory guidance when developing or updating the council's civil penalty policy.

Whilst an authority is expected to develop and publish a policy to satisfy the statutory guidance, the absence of such a policy would not automatically preclude the authority from issuing a notice of intent or final notice. It is also unlikely it would render any such notice issued prior to publishing such policy defective or capable of successful challenge. The policy is intended to address how the amount of the financial penalty is determined as opposed to whether it would be appropriate to serve a notice.

If policy adoption is delayed, it may be more difficult for the local authority to justify the level of the financial penalty imposed, if challenged. However, this risk could be reduced if an authority can demonstrate that it determined the level of the financial penalty by reference to the factors identified in statutory guidance.

It may suffice for each authority to adopt a standard policy published by the lead authority, or in an area like London, for example to adopt an agreed London Trading Standards policy and to publish the same on the authority's website where the recipient of a relevant notice can reasonably be expected to find and gain access to it.

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

6.2 Advisory / Warning Letter

Whilst there is no legal requirement to send the agent a warning letter, it is an option to consider, particularly when new regulatory requirements are introduced. It can help to drive up compliance through low level intervention, thereby enabling enforcing authorities to focus their energy on more serious breaches.

Issuing warning or advisory letters may be most appropriate when undertaking a letting agency compliance project with respect to new legislation and seeking to educate and engage with letting agents in the local area. However, where requirements have been in force for a considerable period of time, ignorance of the law is no defence and the enforcing authority may decide to proceed directly to formal action. The Tribunal Judges have supported the view that there is no requirement for Trading Standards to send a warning or advisory letter before taking formal action. An example of this can be found in Noor Rashid (Let Belle Vue) and Darlington Borough Council (PR/2015/0020).

The fact that a warning or reminder letter has been sent and non-compliance continued thereafter can be evidenced by the council and included within the bundle of evidence in any subsequent First-tier Tribunal appeal.

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

We have included an example CMP advisory letter in Appendix 7 that the enforcing authority 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.

In relation to redress scheme membership, the Notice of Intent must be served within 6 months of the date on which the enforcing authority is first satisfied that an agent has failed to comply with the requirements.

In relation to the display prescribed information and client money protection requirements, the Notice of Intent must be served within 6 months of the date on which the enforcing authority has sufficient evidence of the agent's breach. It can also be served at any time when the breach is continuing or within 6 months beginning with the last day of which the breach occurred.

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 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, failed to display the Prescribed Information and failed to join a client money protection scheme, a separate Notice of Intent should be served under each statutory regime.

Following the Minister's letter (see section 3.2 above), if the agent has failed to display their fees, CMP and redress scheme information (or any combination of these) on their website or in their office, most authorities are now detailing one, two or all three aspects in one notice as a single breach.

Once a Notice of Intent has been prepared, it is good practice to get an experienced colleague or manager to check the notice for any errors. For example, to make sure the company name is shown in the correct format as a limited company, a partnership or a sole trader. By getting the notice checked, it can help to identify and correct any errors before the notice is served. This can reduce the instances where a notice needs to be withdrawn, or where an appeal is lost before the Tribunal.

For example, in Taren Lamba t/a Smart Move and London Borough of Enfield (PR/2019/0017), an appeal was allowed in part and the penalty reduced from £5,000 to £2,000 for failure to display prescribed information. Whereas the Notice of Intent only referred to a breach on the website, the Final Notice was found to be defective as it referred to breaches both in the office and on the website. The Notice of Intent must list all breaches that later appear on the Final Notice, to allow the opportunity to make representations.

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 Submission of Representations

Careful consideration should be given to the procedural arrangements for reviewing any representations that are received to ensure a fair, transparent and consistent decision-making process. The arrangements should be documented in local policies and procedures.

Neither the legislation nor MHCLG guidance imposes any restrictions on what constitutes a valid representation. As such, all representations that are received should be considered regardless of how minor or irrelevant they are considered to be. Otherwise, failure to properly consider a representation could result in the final notice being quashed on appeal.

In Cherry Estates Agency Limited and Newham Council (PR/2016/0032), it was held the Council were wrong to conclude the representation submitted was not a proper representation and that it should have been taken into account. As such, the First-tier Tribunal allowed the appeal in part and reduced the penalty from £5,000 to £3,000.

It is recommended that there is a clear separation of duties between the Investigating Officer/Officer in Charge (OIC) and the internal process for deciding whether a financial penalty should be imposed and the level of penalty. This helps to avoid any allegation of bias and ensures the process for reviewing representations is fair and impartial. The decision making process should be recorded in writing to help justify the reasoning for any decision in the event of an appeal.

For example, Newham, Islington and Westminster Councils have a panel of senior officers that consider any representations received in response to a Notice of Intent. The OIC presents the case and advises the panel on any mitigating or aggravating factors, but they are not involved in making the final decision.

The enforcing authority should adopt a local policy or guidelines to provide a framework within which the level of penalty will be assessed and the weight given to any aggravating or mitigating factors. However, in doing so, it is important for an authority not to fetter its discretion and to retain the flexibility to reach an appropriate decision in each case based on the facts.

If a formal panel is considered too resource intensive, an alternative option could be for the decision-making process to be overseen by a more senior officer who is independent of the investigation.

One of the issues considered in some Tribunal appeals has been the concept of a 'trajectory of compliance' i.e., steps taken to bring the agent into compliance once an issue has been highlighted. This is something the enforcing authority may wish to incorporate into their local policies and procedures, whilst also having regard to the length of time the agent has been in breach of the requirements.

In Pick N Move Properties Ltd and Kirklees Council (PR/2016/0017), the First-tier Tribunal allowed the appeal in part and reduced the penalty for failing to join a redress scheme from £5,000 to £4,000 as the agent had joined a redress scheme almost immediately after being contacted by the council. In Alliya Umer (Diverse Lettings Limited) and Kirklees Council (PR/2017/0027), the penalty was reduced on appeal from £5,000 to £4,500 for similar reasons.

In the Upper Tribunal decision London Borough of Camden v Foxtons Ltd [2017] UKUT 349 (AAC), Judge Levenson agreed it was appropriate to take account of a change in circumstances if steps were taken to achieve compliance between service of the Notice of Intent and Final Notice. This could result in a lower penalty being awarded. It is worth noting that these cases relate to Notices of Intent issued several years ago and the conduct between notices could therefore be heavily outweighed by the period of non-compliance, particularly if the agent has been non-compliant since the relevant legislation came into force.

If the agent is seeking a lower penalty on the grounds that the proposed penalty is unreasonable and will result in financial hardship, the enforcing authority could invite the agent to submit financial documentation. This could include full audited accounts over the last two or three years and six months of bank statements for each relevant account. It is worth noting that abbreviated accounts published on the Companies House website may lack sufficient detail and may not cover the relevant period for undertaking such an assessment.

An agent's profit and loss report can be useful in trying to establish the true health of the business – by mapping out all income and outgoings, including salaries, pension contributions, director loans and dividend payments, this can be much more informative than simply looking at net profit. If an agent declines the opportunity to provide full financial disclosure, this would strengthen the enforcing authority's reasons for imposing the maximum penalty and demonstrate that the authority had acted reasonably in their approach.

In Next Property Ltd and Westminster City Council (PR/2017/0048), the agent argued that the penalty would cause financial hardship but was unable to evidence the turnover or profitability of the business or demonstrate why a £5,000 penalty would be unaffordable. The appeal was dismissed.

Where the enforcing authority has used its discretion to reduce the penalty in response to representations received, there are several examples of the First-tier Tribunal upholding the decision on appeal.

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In V and V Properties Ltd and Islington Council (PR/2016/0005), a reduced penalty of £2,000 was imposed for failure to display Prescribed Information. The amount had been reduced to acknowledge partial compliance and the appeal was dismissed.

In Ghulan and Tahera Tahir and Leeds City Council (PR/2016/0019 & 0020), a reduced penalty of £2,500 was imposed for failure to belong to a redress scheme. The amount had been reduced to acknowledge action taken to achieve compliance and the appeal was dismissed.

6.5 Final Notice

At the end of the 28-day period for making representations, the enforcing authority must decide whether to impose a penalty, with or without modification, having regard to any representations received.

For the purposes of redress scheme membership and display of prescribed information, the enforcing authority must be satisfied on the balance of probabilities that the agent has breached the regulations.

For the purposes of client money protection requirements, the enforcing authority must be satisfied beyond reasonable doubt that the agent has breached the regulations. This requires a higher criminal standard of proof.

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 and client money protection enforcement, this must be 28 days beginning with the day after that on which the notice was sent (CRA2015) or served (CMP);
- information about the rights of appeal; and
- the consequences of failing to comply with the notice.

Within the Final Notice, it is important to specify how the penalty can be paid rather than saying an invoice will be sent separately. In Maya Residential London Ltd T/A Anistenhomes and London Borough of Redbridge (PR/2019/0018), the Final Notice was quashed as the Final Notice did not state how to pay the penalty. The standard template Final Notices in Appendix 7 have been updated to reinforce this requirement.

In Mulberry's Independent Estate Agents Ltd t/a Alpha Residential and Buckinghamshire & Surrey Trading Standards (PR/2019/0021), the Final Notice was quashed as it did not contain information about the right of appeal or the consequences of failing to comply. Whilst information about the right of appeal had been incorrectly stated on the notice of intent, it had directed the recipient to the County Court rather than the FTT.

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.

Within London, Final Notices can be recorded on the Mayor of London's 'Rogue Landlord and Agent Checker' which can be viewed here: www.london.gov.uk/rogue-landlord-checker

6.6 Dealing with an error or omission in the Notice

Careful attention must be paid when preparing a Notice of Intent or Final Notice to avoid any errors or omissions that could invalidate the notice.

In Roxflex Services Limited and London Borough of Newham (PR/2016/0036), an appeal was allowed and the Final Notice was quashed as it was held the Notice of Intent had been served at the wrong address.

In Paul Lawson T/a Howard Estates and Westminster City Council (PR/2016/0052 & 0053), the appeal was allowed and the notices were quashed as it was found the notices should have been served on a limited company which was the legal entity despite no limited company name being displayed on the agent's website.

In Countrywide Residential Services Ltd and London Borough of Barking & Dagenham (PR/2017/0018), it was accepted that failure to display client money protection information on the agent's website had been included on the Final Notice but not the Notice of Intent and so that breach was dropped from the proceedings.

In Uxdale Ltd and London Borough of Islington (PR/2016/0008), the agent's website was incorrectly described in the Final Notice as '.co.uk' and not '.net'. However, the First-tier Tribunal were satisfied with the officer's evidence that the correct website had been checked and the incorrect address was a slip and did not amount to a substantial error. As such, the appeal was dismissed.

In the event that there is a material error in a Notice of Intent or Final Notice, Schedule 9, para 4 CRA2015 enables the enforcing authority to withdraw the notice at any time. Depending on the circumstances, it may be appropriate to withdraw and reserve a new Notice of Intent provided the proceedings are still within time. Otherwise, the notice may be overturned on appeal.

Whilst relating to a different jurisdiction, the importance of errors or omissions in a legal notice was explored in the Upper Tribunal decision London Borough of Waltham Forest and Hasan Younis [2019] UKUT 0362 (LC). The case related to a notice of intent to impose a civil penalty under the Housing and Planning Act 2016. Whilst noting the notice was far from ideal, the Judge concluded the First-tier Tribunal were wrong to regard the notice of intent as defective or invalid as it stated the reasons for proposing to impose a penalty in such a way that they could be understood and responded to. The Judge indicated a concise statement of the facts outlining the offence would be preferable to the practice of providing particulars by means of a number of repetitive witness statements. The Judge referred to the Court of Appeal decision R v Mone Sec., Ex p Jeyeanthan [2001] 1 WLR 354 and concluded that even if the notice had been defective in some respect, that would not necessarily result in the notice being deemed invalid.

6.7 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.

For the purposes of redress scheme membership and display of prescribed information, 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.

For the purposes of client money protection requirements, a person can appeal against:

- the decision to impose a penalty; or
- the amount of the penalty.

Appeals relating to redress scheme and display of prescribed information penalties are dealt with by the General Regulatory Chamber of the First-tier Tribunal.

Whilst appeals relation to Tenant Fees Act penalties and applications by tenants to recover a prohibited payment or holding deposit fall outside the scope of the toolkit, they are dealt with the Property Chamber of the First-tier Tribunal: https://www.gov.uk/government/collections/residential-property-first-tier-tribunal-forms#tenant-fees-act-applications

At the time of publishing this toolkit, it remains unclear which Chamber will deal with appeals relating to client money protection penalties. It is understood this may be the General Regulatory Chamber. However, there is also a suggestion this might be the Property Chamber. We would encourage enforcement authorities to check with the lead enforcement authority and/or MHCLG before serving a final notice.

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.

Whilst relating to a different jurisdiction, the weighting given to the enforcing authority's policy and matrix of civil penalty charges was explored in the Upper Tribunal decision London Borough of Waltham Forest v (1) Marshall (2) Ustek [2020] UKUT 0035 (LC). The case related to civil penalties imposed on two landlords for failing to obtain a property licence. The FTT had reduced the penalties imposed. On appeal, both higher penalties were reinstated. The Judge held that the FTT was not the place to challenge the policy about financial penalties and must give such policies special weighting. Whilst the FTT could depart from it, it may only do so in certain circumstances.

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.

If an appeal is submitted out of time, the Tribunal can decide whether to grant an extension of time to hear the appeal. In the Flat Shop Limited and Plymouth City Council (PR/2016/0031), an application to appeal out of time was rejected.

In Xpress Link Limited and London Borough of Tower Hamlets (PR/2018/0020), the application to appeal was delayed by two and a half months as the agent said they had sent the appeal to the wrong address. The enforcing authority objected, the Tribunal refused to grant an extension of time and the appeal was dismissed.

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In reaching their decision in the Xpress Link case, the Tribunal cited the Upper Tribunal's decision Data Select Limited v HMRC [2012] UKUTR 187 which sets down five principles against which any application for an extension of time should be considered: (1) What is the purpose of the time limit? (2) How long was the delay? (3) Is there a good explanation for the delay? (4) What will be the consequences for the parties of an extension of time? and (5) What will be the consequences for the parties of a refusal to extend the time?

An enforcing authority may wish to make reference to this Upper Tribunal decision when responding to an appeal submitted out of time.

Once an appeal has been lodged, the Tribunal will issue Directions setting out a timescale for each party to prepare and submit their respective bundle of documents and to set a date for the hearing once witness availability has been confirmed.

The enforcing authority will need to decide who is best placed to prepare their bundle of documents. Whilst this could be done by the case officer who may have a better understanding of the issues, it is likely that the Legal Services Department may be best placed to do this as they should have more experience with preparing bundles in the correct format for tribunals. This will save the officer time and allow them to get on with issuing more notices. Consideration could also be given to the case officer preparing the bundle under the supervision of a more experienced officer or legal adviser.

The bundle should be prepared in line with the 'Hearing Bundles – Good Practice Guide 2016'. This will usually be supplied to both parties by the Tribunal once the appeal is received. The bundle of documents is usually prepared in lever arch files with a file index and numbered pages. The bundle is likely to comprise a statement of case, witness statements and relevant exhibits. The Directions will state how many copies must be provided to the Applicant and to the Tribunal and by when. It can be quite a short timescale and so it is important to start preparing the bundle as soon as there is any indication that an appeal has been submitted. During the pandemic, the Tribunal may insist that bundles are submitted electronically.

Whilst First-tier Tribunal decisions are not binding and set no precedence, they can be persuasive and help to achieve consistency in the decision-making process and in the Tribunals approach to legal principles. As such, relevant Tribunal decisions can be included within the Respondent's bundle. In Abid Sukander (T/a A S Property) and London Borough of Newham (PR/2017/0006), Judge McKenna commented that any Tribunal decisions being relied upon should be included within the bundle of documents. Furthermore, the good practice guide states that if a party wishes to rely on a court or tribunal decision, that party will provide one copy to the Tribunal and one to the other party.

The appeal can be dealt with by way of a paper determination or oral hearing. Both parties are given the opportunity to state their preference, although the Tribunal will decide which option is most appropriate having regard to the circumstances and complexity of each case. For more straightforward cases it is recommended that the Council elects a paper hearing to keep the costs down. If, however, it is felt the Judge may have questions that need fielding or need reassurance on a particular point then it may be better to request an oral hearing.

Paper determinations may not be appropriate for breaches of CMP regulations if the agent disputes that a breach occurred, as a criminal standard of proof applies. In Raza v Bradford Metropolitan District Council [2021] UKUT 39 (LC), the Upper Tribunal allowed three appeals and remitted the cases back to the FTT for a fresh hearing. Whilst the appeals concerned different housing legislation, the FTT had made findings of fact to a criminal standard of proof based on evidence that had not been tested in cross-examination. It was held this made the procedure unreliable. It was also unfair because it resulted in a finding that a criminal offence had been committed without giving the landlord the opportunity to cross-examine the witnesses who gave evidence against him or to respond, under cross-examination, to the case against him. For this reason, it would be advisable to request an oral hearing for CMP breaches where the agent disputes that a breach occurred to minimise the risk of a successful appeal.

Each party can decide whether they wish to appoint a solicitor or barrister to represent them in the proceedings although there is no requirement to have a representative who is legally qualified. Whether to use a representative who is legally qualified will depend on the length and complexity of the case and the knowledge and experience of the case officer or team manager who could otherwise take on the role. It is suggested that someone separate to the investigation presents the case if possible.

Once the appeal process has started, it is still possible for both parties to negotiate and agree a revised position that they both feel comfortable with, by way of a Consent Order. For example, this might involve agreeing a reduced financial penalty that takes into account information that was not previously available, or by addressing a procedural or factual error in the service of a notice which leads the enforcing authority to amend their position.

To reduce costs associated with a full hearing, both parties can request that the Tribunal make a Consent Order to dispose of the proceedings under Rule 37 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. If the Tribunal agree with this proposal, they may issue Directions requiring both parties to prepare and agree an appropriate Consent Order.

In Jeremy James and Co Limited and Westminster City Council (PR/2016/0055, 0056 & 0057), a Consent Order was agreed and the company was ordered to pay three penalties of £1,500, £5,000 and £2,500 as three instalments of £3,000 per month with the full amount to be paid within 3 months.

In relation to costs, it is usual practice for each party to pay their own costs. However, in exceptional circumstances, either party can apply for an order of costs under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. An order can only be made for wasted costs or if the Tribunal considers that either party has acted unreasonably in bringing, defending or conducting the proceedings. An application can be made at any time during the proceedings, but not later than 14 days after the Tribunal issue their decision or the appeal is withdrawn.

In deciding any order for costs, the Tribunal will usually have regard to the Upper Tribunal decision Willow Court Management Company (1985) v Alexander (2016) UKUT 0290 which sets out the principles for assessing such an application.

In London Corporate Apartments Ltd and London Borough of Tower Hamlets (PR/2016/0039), the Judge ruled that the company should pay £2,700 legal costs to the council after finding '…this attempt to circumvent the regulatory legislation under the 2015 Act is nothing more than a sham…' and had resulted in a significant waste of time and public resources.

In Silk Estates (Yorkshire) Ltd and Leeds City Council (PR/2017/0043), the appeal was rejected and whilst no costs award was made, the Tribunal increased the penalty from £2,500 to £3,000 to cover the legal costs incurred by the council.

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 5 we have included a summary of relevant First-tier and Upper Tribunal appeal decisions.

In Appendix 8, 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.

In Appendix 9, we have included a template Consent Order that has been developed with assistance from Westminster City Council.

6.8 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, Article 10 of the Redress Scheme Order and Regulation 6 of the Client Money Protection Regulations.

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.

It is important that the enforcing authority puts in place appropriate arrangements to recover the financial penalty in the event of non-payment. This will help to ensure that the enforcement intervention is taken seriously.

How the payment received by the council can be used varies according to the statutory provision. In relation to redress scheme membership and display of prescribed information, financial penalties can be used by the authority for any of its functions.

In relation to client money protection, financial penalties can be used by the authority to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. If not used in this way, the money must be paid into the Consolidated Fund.

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.

6.9 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. As explained in Section 4, Bristol City Council have been appointed as the lead enforcement authority for lettings in England.

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 https://en.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 or display Prescribed Information 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.

It is important to note that a higher criminal burden of proof applies to breaches of the client money protection requirements. In order to serve a penalty notice, the enforcement authority must be satisfied beyond reasonable doubt that a breach has occurred.

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

When issuing notices of intent in respect of website breaches it is useful 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 which may result in further notices being issued 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.

To prove the Prescribed Information was not on display, it is advisable to supplement the officer's handwritten notes with date stamped photographs and/or video footage showing the inside the letting agency to prove the information was not on display.

If the agent holds client money, the list of all relevant fees must include confirmation that they are a member of a client money protection scheme and give the name of the scheme. In addition, a copy of the CMP certificate must be displayed in a place where it is likely to be seen by persons using or proposing to use the agent's services.

An example safeagent CMP certificate is included in Appendix 10.

In M & M Europe Limited and London Borough of Newham (PR/2017/0007), video footage of the reception area was exhibited showing the Prescribed Information was not on display. In defence the agent argued the information was displayed in his private office which is kept locked when he is not there. The Tribunal found that this did not satisfy the requirement to display information at a place in the premises where it is likely to be seen. The video footage was referred to in the decision and appeared to be a key factor in proving the case.

If there is a notice on display but it lacks all the Prescribed Information or the landlord and tenant fees are not clearly described, the notice should be photographed in high resolution to show the precise wording.

In Station Estates Ltd and London Borough of Newham (PR/2017/0024), Judge Taylor found that a photo taken to prove client money protection information was not on display was not sufficiently clear to prove the offence. As such, the appeal was allowed in part and the penalty was reduced.

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 for Business, Energy and Industrial Strategy (BEIS) 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 Examining the agent's website

It is important to collect best evidence in order to prove the absence of Prescribed Information from the agent's website on the relevant dates to justify the service of the notice of intent and final notices. This requires careful examination of all pages on the agent's website to establish a complete picture of the relevant information that has and has not been published.

Displaying a CMP scheme logo is not sufficient. The regulations contain a requirement to publish a copy of the CMP certificate on the agent's website. An example **safeagent** CMP certificate is included in Appendix 10.

In Oliver Franklin Limited and London Borough of Tower Hamlets (PR/2017/0004), the council exhibited screen shots of the company website together with a hyper-cam video giving a tour of the website showing each of the relevant webpages on the date the Notices were served. As a result, the appeal was dismissed and the £5,000 penalty was upheld.

In Appendix 4, we have included Hypercam instructions that explain how this methodology can be used to gather evidence and record an agent's website.

It is also important to verify the website belongs to the agency. In AFM Express Properties-UK Ltd and London Borough of Brent (PR/2018/0054), three breaches associated with the company website were quashed after the appellant argued the website ending '.co.uk' belonged to a liquidated company and was not controlled by them.

In Ace Property Finder Ltd and London Borough of Newham (PR/2018/0038), Judge Hinchliffe considered whether a company page on Facebook met the definition of a website. It contained properties to let, client reviews, description of services provided and contact details. Whilst the decision is not binding, the Judge concluded this did amount to a website and the penalty was upheld for failure to display prescribed information.

7.3 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 September 2021).

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.

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.

7.4 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.

7.5 Verification

The investigating officer should conduct verification checks on the redress scheme and client money protection scheme websites to confirm the agent's membership status, if any. It is advisable to write to each scheme provider (see Appendix 2) to confirm whether the agent is registered just before serving a notice of intent. All checks should be carried out on the same day or for the same period and properly recorded so that they can be incorporated into a witness statement in the event of an appeal.

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.

In relation to client money protection, scheme administrators are required to assist Trading Standards by providing information relating to an agent's membership as may be necessary in connection with their enforcement functions. This is particularly important given the higher criminal standard of proof and the fact breaches involving CMP certificates only apply if the scheme administrator has provided a copy to the agent.

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.

In Campbell Property UK Ltd and Portsmouth City Council (PR/2017/0002), the agent appealed on the basis they were a member of the Property Redress Scheme at the relevant time. The council believed that the agent's membership did not include this particular branch. The Tribunal decided that whilst the issue of individual branch registration may alter the subscription fee, it did not amount to a breach of the Order. The appeal was allowed and the Final Notice was quashed.

In relation to client money protection, the absence of a CMP membership certificate is unlikely to be enough, on its own, to give reasonable cause to assume that an agent is handling client money. It is however, a "first signal" that they may be in breach and that further investigation may be warranted. The guidance does not go as far as to say an authority should check bank accounts, for example, before taking action. Rather it emphasises the importance of taking a pro-active approach and the importance of identifying non-compliance at an early enough stage so that corrective measures might be put in place.

The required level of proof can only be reached by an assessment of all of the evidence readily available to the authority, including, but not limited to: information displayed on the agent's website, evidence from the CMP scheme, evidence from tenants, landlords, the agent's premises, and the officer's own experiences. When all (or some) of the above are combined, the authority may have sufficient evidence to reach a tipping point where they are satisfied, beyond reasonable doubt, that a breach has been committed and may issue a final notice. Tenancy agreements showing the rent and/or deposit have been paid directly to the agent could help to build a compelling case. Likewise, if access can be obtained to the agent's bank accounts, it should be clear if client money is being handled.

Whilst one might expect an agent that is not handling client money to provide evidence of this upon receipt of the notice of intent, the onus is on the enforcing authority to prove the breach, rather than the agent to prove their innocence. The relevant authority must be satisfied beyond reasonable doubt that the agent has breached the CMP regulations. As more cases are decided by the Tribunal, guidance on achieving reasonable evidential requirements should become clear.

7.6 Advertisements

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

Another suggestion to find agents operating in the local area is to look for 'To Let' boards when officers are out conducting visits.

In Lets Go (Leeds) Ltd and Leeds City Council (PR/2016/0018), the council explained that officers had been tasked to look for 'To Let' boards when out of the office. As a result, a 'To Let' board was found belonging to the agent. The agent denied acting as a letting agent but accepted being involved in management. As such, the penalty was upheld but was reduced from £5,000 to £3,750 due to financial circumstances.

Appendices 1 – 11

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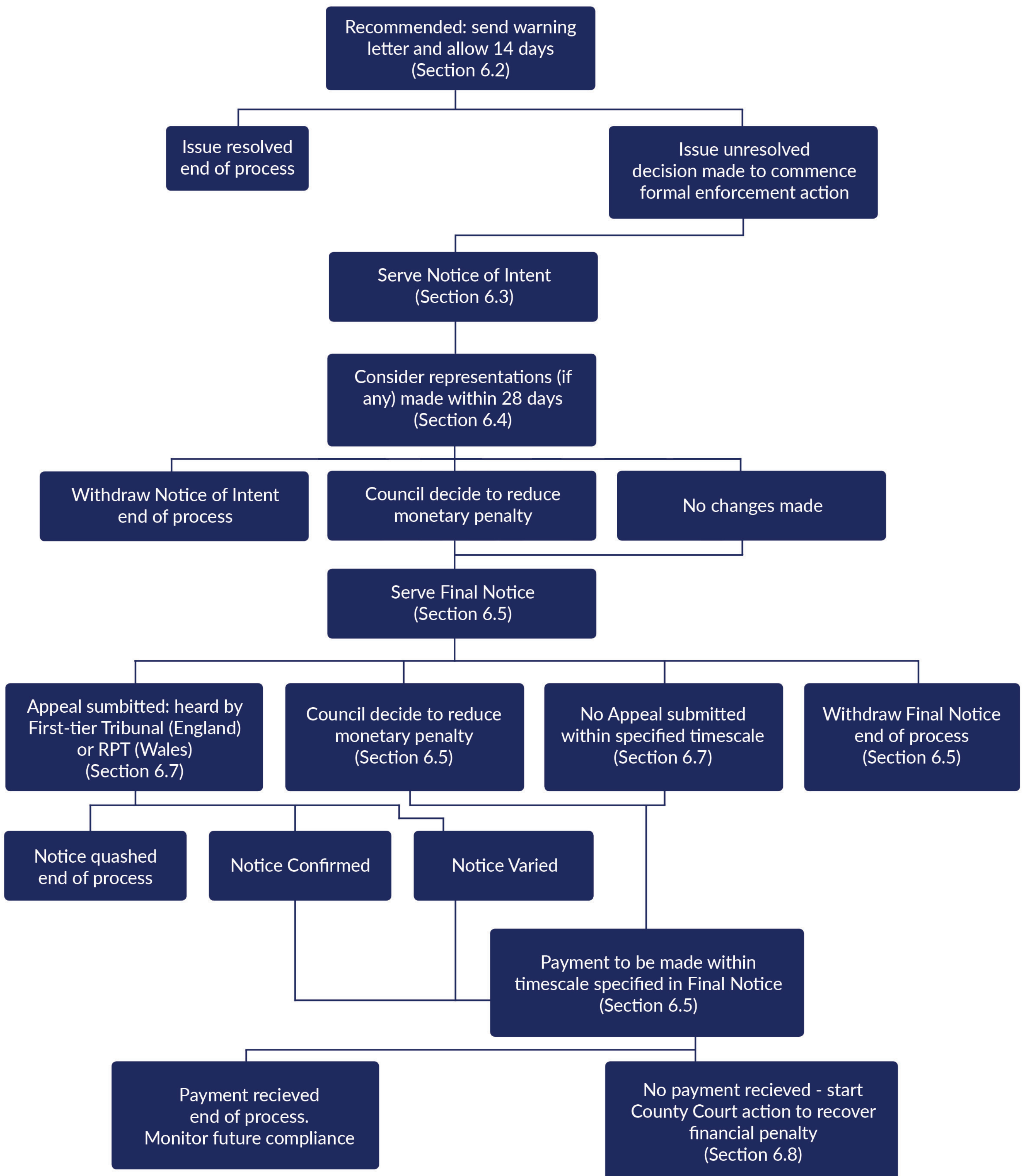
Appendix 1: Enforcement Flowchart

Note: the Sections quoted in the flowchart refer to the relevant sections of the Enforcement Toolkit.



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Appendix 2: The government-approved redress and client money protection schemes

Government approved redress schemes

Property Redress Scheme
Premiere House 1st Floor
Elstree Way Borehamwood WD6 1JH

Telephone: 0333 321 9418

Email: info@theprs.co.uk

Online membership search

The Property Ombudsman
Milford House
43-55 Milford Street Salisbury
Wiltshire SP1 2BP

Telephone: 01722 333306

Email: admin@tpos.co.uk

Online membership search

Government approved client money protection (CMP) schemes

safeagent (previously NALS)
Cheltenham Office Park
Hatherley Lane
Cheltenham
GL51 6SH

Telephone: 01242 581712

Email: info@safeagents.co.uk

Website: https://safeagents.co.uk/for-agents/client-money-protection/

CMprotect
Premiere House
1st Floor
Elstree Way Borehamwood
WD6 1JH

Telephone: 0333 321 9414

Email: info@clientmoneyprotect.co.uk

Website: www.clientmoneyprotect.co.uk

Moneyshield
Arbon House
6 Tournament Court
Edgehill Drive
Warwick
CV34 6LG

Telephone: 01926 417763

Email: help@money-shield.co.uk

Website: https://money-shield.co.uk

Propertymark
Arbon House
6 Tournament Court
Edgehill Drive
Warwick
CV34 6LG

Telephone: 01926 496 800

Email: help@propertymark.co.uk

Website: www.propertymark.co.uk/working-in-the-industry/member-requirements/client-money-protection.aspx

RICS
12 Great George Street
London
SW1P 3AD

Telephone: 02476 868555

Email: regulation@rics.org

Website: https://www.rics.org/uk/upholding-professional-standards/standards-of-conduct/client-money/

UKALA
Suite 2.03
20 Midtown
20 Proctor Street
London WC1V 6NX

Telephone: 03300 55 33 22

Email: info@ukala.org.uk

Website: https://www.ukala.org.uk/ukala-benefits/what-is-client-money-protection/

This list of CMP schemes is correct as of August 2021 and may be subject to change. The list of approved schemes can be viewed at: https://www.gov.uk/client-money-protection-scheme-property-agents

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."

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Appendix 4: Hypercam Instructions

Hypercam instructions – benefits, advantages and pitfalls

Hypercam is a useful way of capturing evidence of breaches on letting agent websites. It can be used instead of, or in addition to photocopies and screenshots. Hypercam captures the action from your screen and saves it to an AVI (Audio-Video Interleaved) movie file.

The reason for using Hypercam over other 'reaping' software is that software programs like 'Webreaper' do not always capture the whole site. With very sophisticated websites the designers usually put 'bots'* in place to stop you being able to capture it in its entirety.

Using Hypercam means that you can actually click into anything that is available on the website and search as if you are a potential tenant or landlord and it will record everything that is done on the screen. This will also show how certain information is hidden and how many clicks or scrolling it takes to find the information from the home page.

When using Hypercam, if your department has a standalone computer or forensic computer, this is the one that should be used. The first thing to do before starting any recording is to clear the cookies. This was brought up in the case of CH Peppiatt and London Borough of Camden 2017. The company said that by not clearing the cookies on the computer, the search brought up old web pages. There is a counter argument that a consumer wouldn't always clear the cookies on their computer or device before carrying out a search, but it is worth clearing them so that the argument does not arise. In order to do this, you would need to go to the 'start' menu and select the 'control panel'. Once this is selected, choose 'Network and Internet Options' then 'Delete browsing History and Cookies'.

If possible, it is also better to carry out the recording (with a microphone plugged in to your computer) and talk through it saying what you are looking for and why something isn't compliant. In the case of Vita Property Group and London Borough of Camden (PR/2017/0045) the Judge commented that the recording and the voiceover to the recording helped point out the exact issue with the fees.
This was Judge Peter Hinchliffe who is well versed in the legislation but still found the explanation on the voiceover of benefit. In this case there were no landlord fees and the tenant fees were vague. It is useful to be able to explain to the listener things that may be specifically missing from the tenant fees, which constitute a breach or that having a simple 'Admin Fee' which is not compliant, as many Judges are new to this legislation. It also means that you can actually say when a hyperlink doesn't work even though the pointer will change to suggest there is a hyperlink there, it doesn't actually click through.

Before you start recording on Hypercam, ensure that you have selected the region on the screen you are recording and ensure it is the entire screen as this will show everything you are seeing including the time and date at the bottom of the screen. Once you start recording type in the website address to take you to the home page of the agent's website you are recording.

It is necessary to click into every possible link on the website. Sometimes companies do hide the fact that they are not members of a client money protection scheme or their redress scheme membership in the 'company information' or somewhere obscure. This would still be regarded as a technical breach as it is not with the list of fees as stipulated by section 83(6) CRA2015. It may also highlight other potential breaches or offences under other legislation if material information is hidden.

It is also advisable to check the actual properties 'to let' to see if the fees hyperlink is there and what is specified. Letting agents occasionally have conflicting fees in different places. In addition to this, by recording the properties they have for rent and for sale and how many an agent may have is sometimes indicative of their size. Therefore, if when an agent makes representations, they state they cannot not pay the fine due to the fact they are struggling, if there are several properties advertised on their website that are high value this could indicate the opposite. Include the properties that are for sale as well, because again, this is evidence of how well the company is doing.

Having the Hypercam recording is also a benefit to the officer as they can return to the recording and check it, especially if an agent is insistent that the information was there all along. This will also give the option of taking screen shots at a later date if they are needed. Once representations have been made, it would be advisable to take a second recording of the website, especially if no changes have been made or the changes are not adequate.

*An Internet Bot, also known as web robot, WWW robot or simply 'bot', is a software application that runs automated tasks over the Internet.

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N.B. If your matter is proceeding to a Tribunal appeal and you intend to rely on a Disc or USB of a Hypercam recording you MUST check with the Tribunal first. Some Tribunals accept USBs and Discs whereas some accept one or the other or not at all. If you are relying on it in evidence, make sure you send a copy to the letting agent as well as the Tribunal in good time before the hearing. Quite often, after an appeal is made to the Tribunal it is apparent that there is no dispute about the breaches on the website. In such circumstances there is no necessity to provide the recording to the relevant parties (although you still can) but it is still important to evidence the breaches and it is always important to bring the disc or USB with you on the day just in case a dispute arises.

This example pro forma guide to the person using Hypercam could be used as an aide memoire:

Internet Investigations Record

Date:		
Reference Number:		
Investigating Officer:		
Letting Agent:		
Web address:		
Delete browsing history and cookies?	Time:	
Set screen region:	Yes ☐	No ☐
Set location file saved to:	Yes ☐	No ☐
Time screen recording started:	Time:	
Time screen recording finished:	Time:	

Time Complete

Date:

Name and Signature:

Time:

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Appendix 5: Tribunal Decisions

In this section we have included a summary of various Tribunal decisions that council officers may find useful as a point of reference. It is not a complete record of all Tribunal decisions and nor is it intended as such.

Whilst only Upper Tribunal decisions set precedence, First-tier Tribunal (FTT) decisions can still be persuasive and can be referenced in the bundle of documents that is prepared for a Tribunal hearing.

To date, not all decisions are published online. Some First-tier Tribunal (Regulatory Chamber) decisions can be found here and Upper Tribunal (Administrative Appeals Chamber) are published here.

If a Tribunal decision cannot be found online, it may be possible to request a copy from the Tribunal or from the relevant local authority.

Below is a brief summary of various Upper Tribunal decisions available at the time of publication.

Raza v Bradford Metropolitan District Council

Ref: [2021] UKUT 39 (LC)

Date: 17 February 2021

The case explored the suitability of paper determinations where there are factual issues in dispute and the Tribunal must determine whether an offence has been committed to a criminal standard of proof. Whilst the appeal related to three determinations under the Housing and Planning Act 2016, the same criminal burden of proof applies to breaches of the client money protection requirements.

Judge Elizabeth Cooke found that the difficulty with the procedure adopted by the FTT was that these landlords were at risk of being found to have committed a criminal offence, there were factual issues in dispute, and the FTT made findings of fact without the evidence being tested in cross-examination. That made the procedure unreliable. It was also unfair because it resulted in a finding that a criminal offence had been committed without giving the landlord the opportunity to cross-examine the witnesses who gave evidence against him or to respond, under cross-examination, to the case against him.

The three appeals that were heard together succeeded and each case was remitted to the FTT for an oral re-hearing (in person or via remove video platform) by a different panel. Paper determinations may still be appropriate if the only issue in dispute is the quantum of the penalty.

London Borough of Waltham Forest v (1) Marshall (2) Ustek

Ref: [2020] UKUT 0035 (LC)

Date: 3 February 2020

The case explored the weighting given to the enforcing authority's policy and matrix of civil penalty charges when deciding appeals about the level of penalty imposed. It related to civil penalties imposed on two landlords for failing to obtain a property licence under the Housing Act 2004 (as amended); a different jurisdiction but with a similar civil penalty regime. The FTT had reduced the penalties imposed. On appeal by the local authority, both higher penalties were reinstated. The Judge held that the FTT was not the place to challenge the council's policy about financial penalties and the FTT must give such policies special weighting. Whilst the FTT could depart from adopted policy, it may only do so in certain circumstances.

London Borough of Waltham Forest v Hasan Younis

Ref: [2019] UKUT 0362 (LC)

Date: 8 October 2019

The case related to a notice on intent to impose a civil penalty under the Housing Act 2004 (as amended). Whilst noting the notice was far from ideal, the Judge concluded the FTT were wrong to regard the notice of intent as defective or invalid as it stated the reasons for proposing to impose a penalty in such a way that they could be understood and responded to. The Judge indicated a concise statement of the facts said to amount to the breach of licence condition or other offence would be preferable to the practice of providing particulars by means of a number of repetitive witness statements.

The Judge made reference to the Court of Appeal decision R v Mone Sec., Ex p Jeyeanthan [2001] 1 WLR 354 and concluded that even if the notice had been defective in some respect, that would not necessarily result in the notice being deemed invalid.

G Crawford Management Services Ltd v London Borough of Tower Hamlets

Ref: MISC/2478/2018 [2019] UKUT 139 (AAC)

Date: 23 April 2019

The Upper Tribunal reviewed the decision in G Crawford Management Services Ltd v London Borough of Tower Hamlets (PR/2018/0003) in which a penalty of £5,000 was confirmed for failure to belong to a redress scheme.

The Upper Tribunal found that the requirement to belong to a redress scheme applied to the appellant company which was paid £10,000 annually to undertake administrative and office services in the course of a business for the head leaseholder in a leasehold block. The Tribunal ruled the fact work was undertaken for just one client did not alter the need for redress scheme membership.

However, the Tribunal reduced the penalty to £3,000 as the appellant company was in the process of disengaging from its activities, there was genuine and reasonable doubt about the meaning of the legal requirements and that a penalty of £5,000 represented a considerable proportion of the company's annual turnover.

London Borough of Newham v Samson Estates Limited

Ref: MISC/1742/2018 [2019] UKUT 110 (AAC)

Date: 29 March 2019

The Upper Tribunal reviewed the decision in Samson Estates Ltd and London Borough of Newham (PR/2017/0023) in which the decision to impose a £3,000 penalty for lack of redress scheme membership had been quashed.

The company was a member of an approved redress scheme for letting agency work but not for residential leasehold management. Article 5(1) of the 2014 Order stated: "A person who engaged in property management work must be a member of a redress scheme for dealing with complaints in connection with that work".

The Property Ombudsman had confirmed the redress scheme membership did not cover disputes concerning management of residential leasehold blocks.

Judge Levenson ruled that redress scheme membership must cover all property management work undertaken by the company or the whole purpose of redress scheme membership would be undermined. As such, he set aside the FTT decision due to an error of law and imposed a penalty of £3,000 which was the amount originally stated in the Final Notice.

M & M Europe Limited v London Borough of Newham

Ref: GE/2787/2017 [2018] UKUT 271 (AAC)

Date: 3 August 2018

The Upper Tribunal reviewed the decision in M & M Europe Limited and London Borough of Newham (PR/2017/0007) in which a £5,000 penalty was awarded for failing to display fees and CMP membership as the information was kept in a locked office and was not on display in the reception area.

Judge Levenson granted permission for the company to appeal on four grounds:

- whether on the facts found by the Tribunal there was a breach of the statutory requirements
- whether the financial state of the company should be taken into account in assessing the appropriate penalty
- whether the maximum penalty should be reserved for the worst case; and
- whether the availability of the necessary information somewhere on the premises and at sometimes is a mitigating factor.

The company made no submissions to the Upper Tribunal after permission to appeal was granted. The local authority made written submissions. It was held that having information in a locked office was not adequate mitigation to reduce the maximum penalty and the appeal did not succeed.

Reading Borough Council v Ashley Charles Limited

Ref: MISC 3568/2017

Date: 25 September 2017

Both parties acknowledged the company was not a member of a redress scheme from 7 November to 24 November 2016 due to non-payment of the scheme renewal fee. The council appealed against the decision of the FTT to impose a nil penalty.

The Upper Tribunal explained that the right of appeal to the UT is restricted to a point of law. In the absence of any error of law, it is not their role to substitute their own view of the facts for that taken by the FTT.

The company were making a loss and had no funds, the last member of staff had left, they had tried to sell the business, they were not taking on any new business, the company was due to be wound up and the breach was for just 3 weeks.

The Upper Tribunal acknowledged the DCLG guidance but noted it should not be regarded as a legally binding statement of law or practice and the council should decide whether to depart from it in an appropriate case due to extenuating circumstances.

It was held the FTT had acted correctly by finding the breach occurred but issuing a nil penalty due to extenuating circumstances.

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London Borough of Camden v Foxtons Limited
Ref: MISC/0156/2017
Date: 25 August 2017

It was found that there was nothing wrong per se with using the expression 'administration charge' or 'administration fee' provided that it is accompanied by a description that is sufficient to enable a person to understand the service or cost that is covered by the fee or the purpose for which it is imposed.

However, in this case it was found that the wording did not meet that test and accordingly did not meet the requirements of section 83(4)(c) of the Consumer Rights Act 2015. It particular, it was not clear exactly what was included, what it might not cover and that the fee quoted would never be exceeded as the maximum fee.

In allowing the appeal by London Borough of Camden, Judge H Levenson decided that credit should be given for the company's attempt to design a compliant system, and awarded four penalties of £4,500 (£18,000 in total) for failure to publish all relevant fees in three branches and also on the company's website.

Data Select Limited v HMRC [2012] UKUT 187 (TCC)

This Upper Tribunal decision sets out the principles against which an application to appeal out of time will be considered.

Willow Court Management Company (1985) v Mrs Ratna Alexander (2016) UKUT 0290

This Upper Tribunal decision sets out the principles against which an application for an order of costs will be considered.

The table below summarises relevant FTT decisions that were considered when developing this updated enforcement toolkit. Over 60 new decisions have been referenced in this latest edition.

First-tier Tribunal decisions

Redress Scheme Membership Tribunal Decisions		
PR/2014/0001	Rosewood Residence Ltd and London Borough of Newham	Appeal dismissed and £2,500 penalty upheld
PR/2015/0003	APS Estates Ltd and London Borough of Islington	Appeal dismissed and £5,000 penalty upheld
PR/2015/0004	ETB Property Services Ltd and London Borough of Islington	Appeal dismissed and £5,000 penalty upheld
PR/2015/0010	London Sweet Homes Limited and London Borough of Camden	Appeal dismissed and £2,500 penalty upheld
PR/2015/0015	Landmarc Estates Ltd and London Borough of Camden	Notice varied and penalty reduced from £5,000 to £2,500 to avoid financial hardship and to acknowledge a trajectory of compliance
PR/2015/0017	Meridian Properties Leeds Ltd and Leeds City Council	Appeal dismissed and £2,500 penalty upheld
PR/2015/0019	Matthew Lee (Westside Lettings) and Sheffield City Council	Notice varied and penalty reduced from £2,100 to £2,000 to apply the council's guidelines slightly differently and give an increased discount for 'contrition'
PR/2015/0020	Noor Rashid (Let Belle Vue) and Darlington Borough Council	Appeal dismissed and £3,000 penalty upheld
PR/2015/0025	AG Camden Ltd and London Borough of Camden	Appeal dismissed and £5,000 penalty upheld
PR/2015/0027	Mrs Oprul Rumayo, Pineapple Properties Limited and Leeds City Council	Appeal dismissed and £2,500 penalty upheld
PR/2016/0002	Meridian Relocations and City of Bradford MDC	Appeal dismissed and £5,000 penalty upheld
PR/2016/0017	Pick N Move Properties Ltd and Kirklees Council	Notice varied and penalty reduced from £5,000 to £4,000 to acknowledge a trajectory of compliance
PR/2016/0018	Lets Go (Leeds) Ltd and Leeds City Council	Notice varied and penalty reduced from £5,000 to £3,725 to avoid financial hardship
PR/2016/0019 PR/2016/0020	Ghulan and Tahera Tahir and Leeds City Council	Appeal dismissed and £2,500 penalty upheld
PR/2016/0025	Mohammed Mlah T/a SN Property Services Limited and London Borough of Camden	Notice varied and penalty reduced from £11,000 to £9,000 due to ill health

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PR/2016/0027	Fraser Property Services Limited and Leeds City Council	Notice varied and penalty reduced from £2,500 to £500 due to the small size of the business and to avoid financial hardship
PR/2016/0032	Cherry Estate Agency Limited and London Borough of Newham	Notice varied and penalty reduced from £5,000 to £3,000 to avoid financial hardship and to acknowledge a trajectory of compliance
PR/2017/0002	Campbell Property UK Ltd and Portsmouth City Council	Appeal allowed and notice quashed as it was decided the Agent was a member of a redress scheme
PR/2017/0014	Ridgemoor Properties Limited and Reading Borough Council	Appeal allowed and notice quashed. Held that the company were not carrying out property management work
PR/2017/0016	Witney Properties Ltd and West Oxfordshire DC	Appeal dismissed and £5,000 penalty upheld. The contention that the appellant was not an agent was rejected
PR/2017/0026	Rockpole Ltd and London Borough of Redbridge	Appeal dismissed and £2,500 penalty upheld
PR/2017/0027	Alliya Umer (Diverse Lettings Limited) and Kirklees Council	Notice varied and penalty reduced from £5,000 to £4,500 to acknowledge a trajectory of compliance
PR/2017/0031	Yasir & Co Ltd and London Borough of Newham	Appeal dismissed and £5,000 penalty upheld
PR/2017/0032	Mr Zulfikar Shakoor (T/a Homes 4U Direct) and London Borough of Newham	Notice varied and penalty reduced from £5,000 to £2,000 as the breach was only of short duration
PR/2017/0033	George Thomas Worsley and Leeds City Council	Notice varied and penalty reduced from £2,500 to £750 as only letting one property
PR/2017/0043	Silk Estates (Yorkshire) Ltd and Leeds City Council	Appeal dismissed and penalty increased from £2,500 to £3,000
PR/2017/0050	LETS4U and North Kesteven DC	Appeal allowed and notice quashed. Held the partnership was not engaged in letting agency work
PR/2018/0003	Gillian Crawford and London Borough of Tower Hamlets	Appeal dismissed and £5,000 penalty upheld. See also the Upper Tribunal decision relating to this case
PR/2018/0007	Masa Lettings and Estates and City of Bradford	Appeal dismissed and £5,000 penalty upheld
PR/2018/0012	N Jones Properties Ltd (t/a Kath Wells Property Rentals) and Leeds City Council	Appeal dismissed and £2,500 penalty upheld
PR/2018/0021	Jeffrey Savage and Leeds City Council	Notice varied and penalty reduced from £2,500 to £2,000
PR/2018/0024	Kenneth Lloyds (E1) Ltd and London Borough of Tower Hamlets	Appeal dismissed and £5,000 penalty upheld
PR/2018/0037	Tilecroft Ltd and Colchester Borough Council	Appeal dismissed and £5,000 penalty upheld
PR/2018/0040	Lifestyle Club Limited and London Borough of Newham	Appeal dismissed and £5,000 penalty upheld
PR/2018/0041	JJM (Holdings) UK Limited and Westminster City Council	Appeal dismissed and £5,000 penalty upheld
PR/2018/0058	Averys Limited and Westminster City Council	Appeal dismissed and £5,000 penalty upheld
PR/2019/0014	Buchanan Mitchell Limited and Harrogate Borough Council	Appeal dismissed and £2,500 penalty upheld
PR/2018/0073	Farzad Zarandi and Colchester Borough Council	Appeal dismissed and £5,000 penalty upheld
PR/2019/0027	Abby Homes Group Ltd and London Borough of Tower Hamlets	Appeal dismissed and £2,500 penalty upheld

Display of Prescribed Information Tribunal Decisions		
PR/2016/0005	V and V Properties Ltd and Islington Council	Appeal dismissed and £2,000 penalty upheld
PR/2016/0008	Uxdale Ltd and London Borough of Islington	Appeal dismissed and £8,000 penalty upheld for four breaches
PR/2016/0009	Alexanders Property Consultants Ltd and London Borough of Camden	Notice varied and penalty reduced from £10,200 to £5,200 as it was considered to be two breaches
PR/2016/0012	Ringley Agency Ltd and London Borough of Camden	Notice varied and penalty reduced from £5,000 to £3,000 as it was considered to be one breach and to avoid financial hardship
PR/2016/0014	Southwood Property Services Ltd and Reading Borough Council	Appeal dismissed and £5,000 penalty upheld

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PR/2016/0021	Oakford Estates Limited and London Borough of Camden	Notice varied and penalty reduced from £2,500 to £1,250 as it was considered to be one breach
PR/2016/0022	Avas Residential Property Services Limited and London Borough of Tower Hamlets	Notice varied and penalty reduced from £5,000 to £3,850
PR/2016/0036	Roxflex Services Limited and London Borough of Newham	Appeal allowed and notice quashed due to a procedural error
PR/2016/0037	Flavio Costa Properties Limited and London Borough of Newham	Notice varied and penalty reduced from £10,000 to £4,000 as it was considered to be one breach
PR/2016/0039	London Corporate Apartments Ltd and London Borough of Tower Hamlets	Appeal dismissed, £5,000 penalty upheld and agent ordered to pay £2,700 costs for unreasonable behaviour
PR/2016/0050	Metropole Properties Limited and Westminster City Council	Notice varied and penalty reduced from £7,500 to £5,000 as it was considered to be one breach
PR/2017/0004	Oliver Franklin Limited and London Borough of Tower Hamlets	Appeal dismissed and £5,000 penalty upheld. Application to set aside the decision also refused
PR/2017/0006	Abid Sukander (Trading as A S Properties) and London Borough of Newham	Notice varied and penalty reduced from £10,000 to £5,000 as it was considered to be one breach
PR/2017/0007	M & M Europe Limited and London Borough of Newham	Notice varied and penalty reduced from £10,000 to £5,000 as it was considered to be one breach
PR/2017/0011	Central Park Estates Limited and London Borough of Newham	Notice varied and penalty reduced from £8,000 to £4,000 as it was considered to be one breach
PR/2017/0012	Marcus James T/a Marcus James (UK) Limited and London Borough of Newham	Appeal dismissed and £10,000 penalty upheld for failing to display information instore and on the agent's website
PR/2017/0015	Homegain Limited and London Borough of Newham	Appeal dismissed and £7,500 penalty upheld for failing to display information instore and on the agent's website
PR/2017/0018	Countrywide Residential Services Ltd and London Borough of Barking & Dagenham	Notice varied and penalty reduced from £5,000 to £4,000 due to error in Notice of Intent
PR/2017/0019	Prime Lodge Estates and London Borough of Barking and Dagenham	Appeal dismissed and £10,000 penalty upheld for failing to display information instore and on the agent's website
PR/2017/0020	Anglowide Estates and Mortgages Ltd and London Borough of Barking & Dagenham	Notice varied and penalty reduced from £9,000 to £4,500 as it was considered to be one breach
PR/2017/0021	Top Supports Estate Agents Limited and London Borough of Barking & Dagenham	Notice varied due to error in Notice of Intent and penalty reduced from £10,000 to£3,000 as it was considered to be one breach and to avoid financial hardship
PR/2017/0024	Station Estates Ltd and London Borough of Newham	Notice varied and penalty reduced from £10,000 to £4,500 as it was considered to be one breach and to acknowledge a trajectory of compliance
PR/2017/0025	Frognal Estates Limited and London Borough of Camden	Appeal dismissed and £15,000 penalty upheld for several breaches
PR/2017/0029	Filtons Stratford Ltd and London Borough of Newham	Notice varied and penalty reduced from £11,000 to £5,000 as it was considered to be one breach
PR/2017/0036	S M Properties UK Ltd and London Borough of Newham	Appeal dismissed and £4,000 penalty upheld
PR/2017/0041	Hexlink Limited t/a Excel Property and London Borough of Camden	Notice varied and penalty reduced from £4,000 to £3,000 for failure to display CMP information; all other information was displayed
PR/2017/0044	Abbey Property Hampstead Ltd and London Borough of Camden	Appeal dismissed and £5,000 penalty upheld
PR/2017/0045	The Vita Property Group Ltd and London Borough of Camden	Appeal dismissed and £5,000 penalty upheld
PR/2017/0048	Next Property Ltd and Westminster City Council	Appeal dismissed and £5,000 penalty upheld
PR/2018/0001	Hamilton (Sales and Lettings) Limited and Westminster City Council	Notice varied and penalty reduced from £12,600 to £5,000 as it was considered to be one breach
PR/2018/0002	Up My Street Ltd and London Borough of Camden	Notice varied and penalty reduced from £13,000 to £12,000, whilst still considering it to be three separate breaches
PR/2018/0006	K Hillside Ltd t/a Field and May and London Borough of Tower Hamlets	Notice varied and penalty reduced from £10,000 to £8,000 for failure to display fees and CMP information

PR/2018/0008	Calingford Limited t/a Xpresslink Properties and London Borough of Tower Hamlets	Appeal dismissed and £10,000 penalty upheld for failure to display fees and CMP information both instore and on the website
PR/2018/0009	EK Estates Limited t/a Keystones Properties and London Borough of Tower Hamlets	Appeal dismissed and £1,000 penalty upheld
PR/2018/0010	SDV HQ Ltd t/a Sterling De Vere and London Borough of Tower Hamlets	Notice varied and penalty reduced from £5,000 to £2,500 for failure to display fees
PR/2018/0015	Panther International Properties Ltd and Royal Borough of Kensington and Chelsea	Notice varied and penalty reduced from £3,500 to £3,000 for failure to display fees and CMP information
PR/2018/0023	Mohammed Asif and another t/a Mortgage Administration and London Borough of Waltham Forest	Notice varied and penalty reduced from £5,000 to £4,000 for failure to display fees
PR/2018/0028 PR/2018/0029	Marylebone Properties International Limited and Westminster City Council	Appeal dismissed and £10,000 penalty upheld
PR/2018/0035 PR/2018/0036	Lancaster Estates (UK) Ltd t/a Cavendish Rowe and Westminster City Council	One notice quashed; second notice upheld as it was considered to be one breach. Penalty reduced from £9,000 to £4,500
PR/2018/0038	Ace Property Finder Ltd and London Borough of Newham	Notice varied and penalty reduced from £4,500 to £1,000 due to financial hardship with agreement from the council
PR/2018/0039	Baker and Chase Ltd and London Borough of Enfield	Appeal dismissed and £6,250 penalty upheld
PR/2018/0044	Bayswater Property Services Ltd t/a Astons London Estate Agents and Westminster City Council	Appeal dismissed and £4,000 penalty upheld
PR/2018/0048	Elliott Davis Properties and London Borough of Newham	Appeal dismissed and £5,000 penalty upheld
PR/2018/0050	Cameron Adams and London Borough of Newham	Appeal dismissed and £4,500 penalty upheld
PR/2018/0051 PR/2018/0052 PR/2018/0053	Atco Estates Ltd and London Borough of Barking & Dagenham	Notice varied and penalty reduced from £6,250 to £4,000 as it was considered to be one breach
PR/2018/0054	AFM Express Properties-UK Ltd and London Borough of Brent	Notice varied and penalty reduced from £20,000 to £5,000 as appellant not found to be responsible for the website
PR/2018/0078 PR/2018/0079 PR/2018/0080	Chetts Estates Ltd and London Borough of Barking and Dagenham	Appeal dismissed and £2,500 penalty upheld
PR/2018/0082	Golden Eagle International Limited and Westminster City Council	Appeal dismissed and £5,000 penalty upheld
PR/2018/0089 PR/2018/0090 PR/2018/0091	Ambi Investments Limited T/A Primelodge Estates and London Borough of Barking and Dagenham	Appeal allowed in part and two Final Notices quashed. CMP breach not proved. Penalty reduced from £12,000 to £5,000 as it was deemed one offence of failure to displayed prescribed information on the website.
PR/2019/0006	Kaden Properties Limited and London Borough of Camden	Notice varied and penalty reduced from £25,000 to £5,000 as it was considered to be one breach and some allegations not proved
PR/2019/0007	BNP Paribas Real Estate Advisory & Property Management UK Ltd t/a Strutt & Parker and Westminster City Council	Appeal dismissed and £5,000 penalty upheld
PR/2019/0011	BOFR Lettings Ltd and London Borough of Islington	Appeal dismissed and £2,500 penalty upheld
PR/2019/0013	Goldmarque Solutions Ltd t/a Letting Genie and Milton Keynes Council	Appeal dismissed and £1,250 penalty upheld
PR/2019/0017	Taren Lamba t/a Smart Move and London Borough of Enfield	Appeal allowed in part as Final Notice related to prescribed information breach instore and on website whereas Notice of Intent only related to website. Penalty reduced from £5,000 to £2,000
PR/2019/0018	Maya Residential London Ltd T/A Anistenhomes and London Borough of Redbridge	Appeal allowed and Final Notice quashed as it did not include the required information about how to pay the penalty
PR/2019/0021	Mulberry's Independent Estate Agents Ltd t/a Alpha Residential and Buckinghamshire & Surrey Trading Standards	Appeal allowed and Final Notice quashed as it did not contain information about the right of appeal
PR/2019/0022	Wayne and Silver Limited and London Borough of Camden	Appeal dismissed and £3,000 penalty upheld

PR/2019/0026	Northwood (Eastbourne) Ltd and East Sussex County Council	Final Notice varied and penalty reduced from £5,000 to £3,000. Whilst fees did not include VAT, it was not considered to be an egregious disregard of the legislation
PR/2019/0028	Olympia Estates Limited and Westminster City Council	Appeal dismissed and £5,000 penalty upheld
PR/2019/0029	Northwest 6 Ltd and London Borough of Brent	Appeal dismissed and £1,500 penalty upheld
PR/2019/0033	Alvares Estates Ltd and London Borough of Lambeth	Appeal dismissed and £5,000 penalty upheld
PR/2019/0035 PR/2019/0036	Sablemanor Limited trading as Holmes Estate Agents and London Borough of Lambeth	Both Notices varied and each penalty reduced from £5,000 to £3,750 to take account of efforts to comply and the deemed seriousness of the breaches
PR/2019/0037 PR/2019/0038	1st Choice Estates Ltd and London Borough of Lambeth	Both Notices varied and each penalty reduced from £5,000 to £2,500 as it was a small company with a relatively small turnover
PR/2019/0040	Jawning Cleaning Services Ltd t/a Holmes and London Borough of Lambeth	Appeal dismissed and £5,000 penalty upheld
PR/2019/0042	H4U (London) Limited and London Borough of Lambeth	Appeal allowed and Final Notice is quashed as it was held that the company was not a letting agent
PR/2019/0046	Dillon Estates Limited and London Borough of Brent	Appeal dismissed and £2,075 penalty upheld
PR/2019/0070 PR/2019/0071	Irwin Fishers Ltd and London Borough of Barking and Dagenham	Appeal allowed in part as failure to display fees and CMP information held to be one breach, not two. One penalty of £5,000 upheld

Redress Scheme & Display of Prescribed Information Tribunal Decisions		
PR/2016/0047 PR/2016/0048 PR/2016/0049	Centrepoint Property Limited and London Borough of Newham	Appeal dismissed and £15,000 penalty upheld for three breaches
PR/2016/0052 PR/2016/0053	Paul Lawson T/a Howard Estates and Westminster City Council	Appeal allowed and notice quashed as it was served on the wrong legal entity
PR/2016/0055 PR/2016/0056 PR/2016/0057	Jeremy James and Co Limited and Westminster City Council	Consent Order made requiring payment of £9,000 penalty at a rate of £3,000 per month over 3 months
PR/2017/0023	Samson Estates Ltd and London Borough of Newham	Appeal succeeded in part. Penalty of £3,000 for failure to join a redress scheme quashed (decision overturned on appeal to UT). Penalty of £8,000 for failure to display prescribed information on the website and in store reduced to £4,000
PR/2018/0017 PR/2018/0018	Wiseman Estates and London Borough of Islington	Appeal dismissed and £8,000 penalty upheld for failure to display fees (£3,000) and failure to belong to a redress scheme (£5,000)
PR/2018/0022	Heathcrest Property Services Ltd and London Borough of Islington	Appeal dismissed and £8,000 penalty upheld for four breaches
PR/2018/0045 PR/2018/0046 PR/2018/0047	Ultra Estates (SJW) Ltd and Westminster City Council	Two alleged breaches were withdrawn by the council during proceedings. The penalty for failure to belong to a redress scheme was reduced from £5,000 to £1,500 and failure to display CMP information was reduced from £5,000 to £4,300
PR/2019/0024 PR/2019/0025	Wex & Co and London Borough of Brent	Appeal dismissed. £2,500 penalty upheld for failure to join a redress scheme and further £2,500 penalty upheld for failure to display prescribed information

Other Tribunal Decisions		
PR/2016/0031 PR/2016/0034	The Flat Shop Limited and Plymouth City Council	The Tribunal refused to grant an extension of time for an appeal to be submitted
PR/2018/0020	Xpress Link Limited and London Borough of Tower Hamlets	The Tribunal refused to grant an extension of time for an appeal to be submitted
PR/2020/0003 PR/2020/0004 PR/2020/0005 PR/2020/0006	Kensington Letting Company Limited and Royal Borough of Kensington and Chelsea	Appeal dismissed and £15,000 penalty (3 x £5,000) imposed for failure to join a redress scheme, failure to display prescribed information and failure to belong to a CMP scheme

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Appendix 6: Legislation and key reference documents

Relevant legislation includes:

- Local Government (Miscellaneous Provisions) Act 1976, section 16: https://www.legislation.gov.uk/ukpga/1976/57/section/16
- The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009 No. 1976) https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules
- Enterprise and Regulatory Reform Act 2013 https://www.legislation.gov.uk/ukpga/2013/24/contents/enacted
- 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) https://www.legislation.gov.uk/uksi/2014/2359/contents/made
- Consumer Rights Act 2015, Part 3, Chapter 3 https://www.legislation.gov.uk/ukpga/2015/15/part/3/chapter/3/enacted and Schedule 9 https://www.legislation.gov.uk/ukpga/2015/15/schedule/9/enacted
- Consumer Rights Act 2015 (Commencement No. 2) (Wales) Order 2015 https://www.legislation.gov.uk/wsi/2015/1831/made
- The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 (SI 2018 No. 751) https://www.legislation.gov.uk/uksi/2018/751/contents/made
- The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc..) Regulations 2019 (SI 2019 No. 386) https://www.legislation.gov.uk/uksi/2019/386/made
- Tenant Fees Act 2019 https://www.legislation.gov.uk/ukpga/2019/4/contents/enacted

Key reference documents include:

- Letting Agents and Property Managers – which government approved redress scheme do you belong to? MHCLG, October 2014 https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes
- Improving the Private Rented Sector and Tackling Bad Practice – A Guide for Local Authorities. MHCLG, March 2015 https://www.gov.uk/government/publications/improving-the-private-rented-sector-and-tackling-bad-practice-a-guide-for-local-authorities
- Estate Agents Enforcement Toolkit, produced by the National Trading Standards Estate Agency Team at Powys County Council (not available online)
- Applying to become an approved client money protection scheme - guidance for prospective schemes, MHCLG, July 2018 https://www.gov.uk/government/publications/applying-to-become-an-approved-client-money-protection-scheme
- Mandatory client money protection for property agents – Enforcement guidance for local authorities, MHCLG, May 2019 https://www.gov.uk/government/publications/mandatory-client-money-protection
- Tenant Fees Act 2019: statutory guidance for enforcement authorities, updated September 2020 https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance
- Bristol City Council Enforcement Policy in relation to the “relevant letting agency legislation”, undated https://www.bristol.gov.uk/documents/3368713/3492947/Tenant+Fees+Act+Penalty+Notice+Policy.pdf/789145a2-0b15-5542-2851-63d3bc47d57b

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Appendix 7: Example letters and notices

Please note that the template letters and notices in this section are intended as examples that the enforcing authority may wish to use or adapt for local use. Whilst they are not prescribed forms, the legislation does state what information must be included. No liability can be accepted relating to the use of these forms and you may wish to seek legal advice.

Example advisory letter to letting agent

Dear Sir / Madam,

The Client Money Protection Schemes for Property Agents (Requirements to Belong to a Scheme etc.) Regulations 2019

We are writing to inform agents that as of 1 April 2019, it is mandatory for all property agents who hold client money to be a member of a government approved client money protection (CMP) scheme.

Obtain, Display & Produce
The Regulations also require a property agent to:

(a) obtain a certificate confirming the property agent's membership of the scheme;

(b) display or publish the certificate in accordance with the regulations;

(c) produce a copy of the certificate, on request, in accordance with the regulations.

What is a Property Agent?
A 'property agent' is a person who engages in letting agency work or property management work.

However, a property agent would not include a person who engages in that work in the course of the person's employment under a contract of employment.

What is a Client Money Protection Scheme?
A "client money protection scheme" means a scheme which enables a person on whose behalf a property agent holds money to be compensated if all or part of that money is not repaid in circumstances in which the scheme applies.

As a property agent, you are regarded as a professional in your industry and the onus is on you to stay abreast of all legislation that impacts on your business.

Consumer Rights Act – Amendments
Previously, it was a requirement for letting agents to publicise (on their websites and in their offices with a list of fees) if they were a member of a client money protection (CMP) scheme. Since 1 June 2019 letting agents that hold client funds are required to display or publish, with the list of fees, a statement:

(a) that indicates that the agent is a member of a client money protection scheme, and

(b) that gives the name of the scheme.

A Client Money Protection Scheme is an insurance backed scheme and there are currently 6 government approved schemes. Some trade associations such as The Association of Residential Letting Agents (ARLA Propertymark), safeagent (formally NALS), The Royal Institute of Chartered Surveyors (RICS) and The UK Association of Letting Agents (UKALA) all have CMP as a compulsory part of their membership. CMProtect and Money Shield (which is administered by Propertymark) offer separate CMP policies to letting agents.

The three tenancy deposit protection schemes are not client money protection schemes,

therefore if an agent is only a member of one of the three deposit protection schemes, namely My Deposits, the Deposit Protection Scheme (DPS) and The Dispute Service (TDS), then they must also join one of the above CMP schemes if they hold client money. An up-to-date list is available here: https://www.gov.uk/client-money-protection-scheme-property-agents

Property agents need to be aware that in order to join a CMP scheme, it is a legal requirement that they have a client account which holds all client money, and also that it can sometimes take a number of weeks to go through the process of joining a CMP scheme.

In addition to this regulation 4 of the legislation requires all regulated property agents to obtain a certificate confirming the agent's membership of the approved or designated client money protection scheme. The certificate must be displayed at each of the agent's premises in England at which the agent deals face-to-face with persons using or proposing to use the agent's services as a property agent. Furthermore, the certificate must be displayed at a place in each of those premises where the certificate is likely to be seen by such persons as well as publishing a copy of the certificate on the agent's website (if any). It is also a legal requirement to produce a copy of the certificate to any person who may reasonably require it, free of charge.

Nearly all Property Agents hold Client Money and must therefore join a scheme. Please see our FAQ below/attached.

In the event a property agent has its membership of an approved client money protection scheme revoked or becomes a member of a different approved client money protection scheme the agent must notify each of its clients in writing of this change in circumstances within 14 days of the occurrence.

Penalties

The penalty for not being a member of a client money protection scheme is a maximum of £30,000.

The penalty for not displaying a CMP certificate on your website or in your office is a maximum of £5,000.

The penalty for not displaying CMP information required by the Consumer Rights Act on your website (or on a portal) or in your office remains a penalty of £5,000 (and government guidance suggests that this figure should be the norm).

If you require any further information on these changes, then please contact me by email at ##.

Yours faithfully,

FAQs

Do I need to belong to a CMP Scheme?

Q1. We do not hold client money apart from a one week holding deposit we take from prospective tenants. Do I still need to join a client money protection scheme?
YES

Q2. We do not hold any client money apart from the tenants deposit for a number of hours before the administration is completed and it is protected. Do I still need to join a client money protection scheme?
YES

Q3. The only rent I hold is the first month's rent until the standing order is set up between the tenant and the landlord. Do I still need to belong to a client money protection scheme?
YES

Q4. We operate a guaranteed rent model (aka a rent to rent scheme) where we become the landlord ourselves and rent to tenants. The homeowners enter into company let agreements with our property company and we are authorised under the company let agreement to let to sub-tenants under assured shorthold tenancies. These agreements guarantee the owner a fixed rent each month. Do I still need to belong to a Client Money Protection scheme?
YES, you are still a property agent caught by the regulations

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

The Enterprise and Regulatory Reform Act 2013 s83 – 88

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

Notice of Intent

To: Name

Address

[Name of Council] proposes to impose a monetary penalty on your business. This document is to give you notice of our intent. It explains the following:

(1) the amount of the proposed financial penalty
(2) the reasons for proposing to impose the penalty;
(3) information about the right to make representations and objections; and
(4) what you should expect after a review.

Details of breach

I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of the following duty under Article 3 and/or Article 5 [delete as appropriate] of the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

It is a requirement under the above legislation for persons who are engaged in letting agency work and/or property management work to belong to an 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 engaging in letting agency work / property management work [delete as appropriate] work whilst not being a member of a government approved redress scheme and you have therefore failed to comply with the above legislation.

Date of breach: .... [this can also be a period e.g. from 1 October 2014 to date]

Signature of authorised officer: .... **Date of Notice:** ....

The amount of the penalty

We intend to issue you with a monetary penalty of £5,000 [or such lessor amount as specified] for failure to belong to an approved redress scheme.

Information about the right to make representations and objections

Before a final notice is served, you may within 28 days (beginning with the day after the date on which the notice of intent was sent) make written representations and objections to us in relation to the proposed imposition of a monetary penalty and this will result in a formal review. Please include an explanation of why the review is being requested.

Written representations and objections must be sent to [insert full postal address] or by email to [insert email address]

What you should expect after a review

We will consider any representations you make and will decide whether to confirm, vary or withdraw the proposed monetary penalty.

We will notify you of our decision in writing.

If we decide to issue a final notice to impose a monetary penalty, you may either pay the penalty or appeal to the General Regulatory Chamber of the First Tier Tribunal, within the period of 28 days beginning with the day after that on which the final penalty notice is served. On appeal, the Tribunal will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this notice.

Once a final notice has been served, you may appeal to the First Tier Tribunal against the decision to impose the penalty if you think the decision to impose a monetary 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.

Example Final Notice (Redress Scheme Membership) (England)

The Enterprise and Regulatory Reform Act 2013 s83 – 88

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

Final Notice

To: Name

Address

On [date] [name of Council] issued you with a notice of intent to impose a monetary penalty and invited you to make a written representation within the period of 28 days beginning with the day after that on which the notice of intent was sent.

We have now decided to issue you with this Final Notice varying / imposing / quashing* the monetary penalty for the following reasons:

- We believe the decision to vary / impose / quash* the level of fine is reasonable
- After considering your representations we have decided to vary / impose / quash* the monetary penalty or [No written representation was received following service of the notice of intent and the Council has decided to vary / impose the monetary penalty]
- [any other reasons can be inserted here*]

*delete as appropriate

Details of breach
I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of the following duty under Article 3 and/or Article 5 [delete as appropriate] of the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a Scheme etc) (England) Order 2014.

As a letting agent or property manager [delete as appropriate], engaging in letting agency work and/or property management work [delete as appropriate], you have failed to comply with the duty to belong to an 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 engaging in such work whilst not being a member of a government approved redress scheme and you have therefore failed to comply with the above legislation.

The Council has therefore issued you with this Final Notice imposing a monetary penalty of £5,000 [or such lessor amount as specified] which must be paid within the period of 30 days from 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.

Date of breach: ....

Signature of authorised officer: .... **Date of Notice:** ....

How the penalty charge may be paid
[use this section to explain the options available to pay the penalty]

Appealing this notice
You may either pay the penalty or appeal against this Notice to a First Tier Tribunal, within the period of 28 days beginning the day after the date of this final notice. An appeal to the First Tier Tribunal must be on one or more of the grounds listed below:

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 will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this final notice.

If you appeal, this final notice will be suspended until the appeal is finally determined or withdrawn. This means we cannot pursue you for payment until the appeal has been heard and decided.

Appeals will be heard by the First Tier Tribunal (General Regulatory Chamber) which can be contacted at:

General Regulatory Chamber
HM Courts and Tribunals Service PO Box 9300
Leicester LE1 8DJ
Email: grc@justice.gov.uk
Telephone: 020 3936 8963

Further details on the appeals procedure can be found at the following link:
https://www.gov.uk/appeal-against-a-fine-as-a-letting-or-managing-agent

If you do not pay the penalty charge
Unless we withdraw this notice or a tribunal quashes it, or you have already paid the monetary penalty required, we will seek a Court Order from the County Court. These proceedings cannot be started any earlier than:

(a) the end of the period allowed for the payment of the monetary penalty; or
(b) 28 days from the day after we confirm the monetary penalty after the review (where requested); or
(c) where you appeal to a First Tier Tribunal, before the day on which the appeal is either withdrawn or determined.

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).

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

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

Notice of Intent

To: Name

Address

[Name of Council] proposes to impose a monetary penalty on your business. This document is to give you notice of our intent. It explains the following:

(1) the amount of the proposed financial penalty
(2) the reasons for proposing to impose the penalty;
(3) information about the right to make representations and objections; and
(4) what you should expect after a review.

Details of breach
I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of Section 83 of the Consumer Rights Act 2015, namely:

As a letting agent, engaging in letting agency or property management work, you have failed to comply with the duty to display or publish required information in your office / on your website [delete as appropriate*] in accordance with section 83 of the Act in relation to properties (dwelling-houses) located in England.

Details of breach:
As a letting agent you have failed to display the following required information in your office / on your website [delete as appropriate*]:

- ☐ A list of your full landlord fees. The list of fees must provide 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.
- ☐ The amount of each fee inclusive of any applicable tax or where the amount of each fee cannot reasonably be determined in advance, a description of how that fee is calculated.
- ☐ If you hold client money, a statement indicating that you are a member of a client money protection scheme that gives the name of that scheme with your list of fees.
- ☐ A statement indicating that you are a member of redress scheme that gives the name of the scheme with your list of fees.

The Council is satisfied, on the balance of probabilities that you have been engaging in letting agency or property management work whilst failing to display this information and you have therefore failed to comply with the legislation.

Date of breach: ....

Signature of authorised officer: .... **Date of Notice:** ....

The amount of the penalty
We intend to impose a monetary penalty of £5,000 [or such lessor amount as specified] for a failure to display prescribed information, as explained above.

Information about the right to make representations and objections
Before a final notice is served, you may within 28 days (beginning with the day after the date on which the notice of intent was sent) make written representations and objections to us in relation to the proposed imposition of a monetary penalty and this will result in a formal review. Please include an explanation of why the review is being requested.

Written representations and objections must be sent to [insert full postal address] or by email to [insert email address]

What you should expect after a review
We will consider any representations you make and will decide whether to confirm, vary or withdraw the proposed monetary penalty.

We will notify you of our decision in writing.

If we confirm a monetary penalty charge, you may either pay the charge or appeal to the General Regulatory Chamber of the First Tier Tribunal, within the period of 28 days beginning with the day after that on which the final penalty notice is sent. On appeal, the Tribunal will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this notice.

Once a final notice has been served, you may appeal to the First Tier Tribunal against the decision to impose a financial penalty was based on an error of fact, the decision was wrong in law, the amount of the financial penalty is unreasonable or the decision was unreasonable for any other reason.

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

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

Notice of Intent

To: Name

Address

[Name of Council] proposes to impose a monetary penalty on your business. This document is to give you notice of our intent. It explains the following:

(1) the amount of the proposed financial penalty
(2) the reasons for proposing to impose the penalty;
(3) information about the right to make representations and objections; and
(4) what you should expect after a review.

Details of breach
I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of Section 83 of the Consumer Rights Act 2015, namely:

As a letting agent, engaging in letting agency or property management work, you have failed to comply with the duty to display or publish required information in your office / on your website [delete as appropriate*] in accordance with section 83 of the Act in relation to properties (dwelling-houses) located in Wales.

Details of breach:
As a letting agent you have failed to display the following required information in your office / on your website [delete as appropriate*]:

- ☐ A list of your full landlord fees. The list of fees must provide 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.
- ☐ The amount of each fee inclusive of any applicable tax or where the amount of each fee cannot reasonably be determined in advance, a description of how that fee is calculated.

The Council is satisfied, on the balance of probabilities that you have been engaging in letting agency or property management work whilst failing to display this information and you have therefore failed to comply with the legislation

Date of breach: ....

Signature of authorised officer: .... **Date of Notice:** ....

The amount of the penalty
We intend to impose a monetary penalty of £5,000 [or such lessor amount as specified] for a failure to display prescribed information, as explained above.

Information about the right to make representations and objections
Before a final notice is served, you may within 28 days (beginning with the day after the date on which the notice of intent was sent) make written representations and objections to us in relation to the proposed imposition of a monetary penalty and this will result in a formal review. Please include an explanation of why the review is being requested.

Written representations and objections must be sent to [insert full postal address] or by email to [insert email address]

What you should expect after a review
We will consider any representations you make and will decide whether to confirm, vary or withdraw the proposed monetary penalty.

We will notify you of our decision in writing.

If we confirm a monetary penalty charge, you may either pay the charge or appeal to the Residential Property Tribunal, within the period of 28 days beginning with the day after that on which the final penalty notice is sent. On appeal, the Tribunal will consider any representations

you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this notice.

Once a final notice has been served, you may appeal to the First Tier Tribunal against the decision to impose a financial penalty was based on an error of fact, the decision was wrong in law, the amount of the financial penalty is unreasonable or the decision was unreasonable for any other reason.

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

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

Final Notice

To: Name

Address

On [date] [name of Council] issued you with a notice of intent to impose a monetary penalty and invited you to make a written representation within the period of 28 days beginning with the day after that on which the notice of intent was sent.

We have now decided to issue you with this Final Notice varying / imposing / quashing* the monetary penalty for the following reasons:

- We believe the decision to vary / impose / quash* the level of fine is reasonable
- After considering your representations we have decided to vary / impose / quash* the monetary penalty or [No written representation was received following service of the notice of intent and the Council has decided to vary / impose the monetary penalty]*
- [any other reasons can be inserted here*]

*delete as appropriate

Details of breach
I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach under section 83 of the Consumer Rights Act 2015, namely:

As a letting agent, engaging in letting agency or property management work, you have failed to comply with the duty to display or publish required information in your office / on your website [delete as appropriate*] in accordance with section 83 of the Act in relation to properties (dwelling-houses) located in England.

Details of breach:
As a letting agent you have failed to display the following required information in your office and/or on your website [delete as appropriate*]:

☐ A list of your full landlord fees. The list of fees must provide 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.

☐ The amount of each fee inclusive of any applicable tax or where the amount of each fee cannot reasonably be determined in advance, a description of how that fee is calculated.

☐ If you hold client money, a statement indicating that you are a member of a client money protection scheme that gives the name of that scheme with your list of fees.

☐ A statement indicating that you are a member of redress scheme that gives the name of the scheme with your list of fees.

The Council is satisfied, on the balance of probabilities that you have been engaging in letting agency or property management work whilst failing to display this information and you have therefore failed to comply with the legislation. The Council has therefore issued you with this Final Notice imposing a monetary penalty of [insert amount] which must be paid within the period of 28 days beginning with the day after that on which this Final Notice was sent.

Date of breach: .... [*this can be a date or a range]

Signature of authorised officer: .... **Date of Notice:** ....

*Note if a breach in relation to the website and the office it is suggested that a separate notice is used for each.

How the penalty charge may be paid
[use this section to explain the options available to pay the penalty]

Appealing this notice

You may either pay the penalty or appeal against this Notice to a First Tier Tribunal, within the period of 28 days from the day after that on which this final notice was sent. An appeal to the First Tier Tribunal must be on one or more of the grounds listed below:

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 will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this final notice.

If you appeal, this final notice will be suspended until the appeal is finally determined or withdrawn. This means we cannot pursue you for payment until the appeal has been heard and decided.

Appeals will be heard by the First Tier Tribunal (General Regulatory Chamber) which can be contacted at:

General Regulatory Chamber
HM Courts and Tribunals Service PO Box 9300
Leicester LE1 8DJ
Email: grc@justice.gov.uk
Telephone: 020 3936 8963

Further details on the appeals procedure can be found at the following link:
https://www.gov.uk/appeal-against-a-fine-as-a-letting-or-managing-agent

If you do not pay the penalty charge

Unless we withdraw this notice or a tribunal quashes it, or you have already paid the monetary penalty required, we will seek a Court Order from the County Court. These proceedings cannot be started any earlier than:

(a) the end of the period allowed for the payment of the monetary penalty; or
(b) 28 days from the day after we confirm the monetary penalty after the review (where requested); or
(c) where you appeal to a First Tier Tribunal, before the day on which the appeal is either withdrawn or determined.

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).

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

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

Final Notice

To: Name

Address

On [date] [name of Council] issued you with a notice of intent to impose a monetary penalty and invited you to make a written representation within the period of 28 days beginning with the day after that on which the notice of intent was sent.

We have now decided to issue you with this Final Notice varying / imposing / quashing* the monetary penalty for the following reasons:

- We believe the decision to vary / impose / quash* the level of fine is reasonable
- After considering your representations we have decided to vary / impose / quash* the monetary penalty or [No written representation was received following service of the notice of intent and the Council has decided to vary / impose the monetary penalty]*
- [any other reasons can be inserted here*]

*delete as appropriate

Details of breach
I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach under section 83 of the Consumer Rights Act 2015, namely:

As a letting agent, engaging in letting agency or property management work, you have failed to comply with the duty to display or publish required information in your office / on your website [delete as appropriate*] in accordance with section 83 of the Act in relation to properties (dwelling-houses) located in Wales.

Details of breach:
As a letting agent you have failed to display the following required information in your office and/or on your website [delete as appropriate*]:

☐ A list of your full landlord fees. The list of fees must provide 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.

☐ The amount of each fee inclusive of any applicable tax or where the amount of each fee cannot reasonably be determined in advance, a description of how that fee is calculated.

The Council is satisfied, on the balance of probabilities that you have committed this breach. The Council has therefore issued you with this Final Notice imposing a monetary penalty of [insert amount] which must be paid within the period of 28 days beginning with the day after that on which this Final Notice was sent.

Date of breach: .... [*this can be a date or a range]

Signature of authorised officer: .... **Date of Notice:** ....

*Note if a breach in relation to the website and the office it is suggested that a separate notice is used for each.

How the penalty charge may be paid
[use this section to explain the options available to pay the penalty]

Appealing this notice
You may either pay the penalty or appeal against this Notice to a First Tier Tribunal, within the period of 28 days from the day after the date of this final notice. An appeal to the First Tier Tribunal must be on one or more of the grounds listed below:

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 will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this final notice.

If you appeal, this final notice will be suspended until the appeal is finally determined or withdrawn. This means we cannot pursue you for payment until the appeal has been heard and decided.

Appeals will be heard by the Residential Property Tribunal Wales which can be contacted at:

Residential Property Tribunal Wales
Oak House
Cleppa Park
Celtic Springs
Newport NP10 8BD

Email: rpt@gov.wales
Telephone: 03000 252 777

Further details on the appeals procedure can be found at the following link:
https://residentialpropertytribunal.gov.wales/frequently-asked-questions

If you do not pay the penalty charge
Unless we withdraw this notice or a tribunal quashes it, or you have already paid the monetary penalty required, we will seek a Court Order from the County Court. These proceedings cannot be started any earlier than:

(a) the end of the period allowed for the payment of the monetary penalty; or
(b) 28 days from the day after we confirm the monetary penalty after the review (where requested); or
(c) where you appeal to a First Tier Tribunal, before the day on which the appeal is either withdrawn or determined.

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).

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Example Notice of Intent (Requirement to belong to a CMP Scheme)

Sections 133 – 135 of the Housing and Planning Act 2016

The Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

Regulation 3 – Requirement to belong to a client money protection scheme

Notice of Intent

To: Name

Address

[Name of Council] proposes to impose a monetary penalty on your business.
This document is to give you notice of our intent. It explains the following:

(1) the amount of the proposed financial penalty

(2) the reasons for proposing to impose the penalty;

(3) information about the right to make representations and objections; and

(4) what you should expect after a review.

Details of breach

I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of Regulation 3 of the Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.

As a property agent who holds client money, you failed to comply with the duty to be a member of an approved client money protection scheme.

It is a requirement under the above legislation for persons engaging in letting agency work or property management work, within the meaning of section 54 or 55 of the Housing and Planning Act 2016, to belong to an approved client money protection scheme, as required by regulation 3 of the legislation. The Council is satisfied, beyond reasonable doubt that you are a property agent and are therefore required to belong to a client money protection scheme.

Date of breach: ....

Signature of authorised officer: .... **Date of Notice:** ....

The amount of the penalty

We intend to impose a monetary penalty of [specify amount up to £30,000.00] for failure to belong to a client money protection scheme, as explained above.

Information about the right to make representations and objections

Before a final notice is served, you may within 28 days (beginning with the day after the date on which the notice of intent was served) make written representations and objections to us in relation to the proposed imposition of a monetary penalty and this will result in a formal review. Please include an explanation of why the review is being requested.

Written representations and objections must be sent to [insert full postal address] or by email to [insert email address]

What you should expect after a review

We will consider any representations you make and will decide whether to confirm, vary or withdraw the proposed monetary penalty.

We will notify you of our decision in writing.

If we confirm a monetary penalty charge, you may either pay the charge or appeal to the First Tier Tribunal, within the period of 28 days beginning with the day after that on which the final penalty notice is served. On appeal, the Tribunal will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this notice.

Once a final notice has been served, you may appeal to the First Tier Tribunal against the decision to impose the penalty or the amount of the penalty.

Example Notice of Intent (Requirement to display or publish CMP Certificate)

Sections 133 – 135 of the Housing and Planning Act 2016

The Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

Regulation 4 – Requirement to display or publish a copy of a property agent's client money protection certificate

Notice of Intent

To: Name

Address

[Name of Council] proposes to impose a monetary penalty on your business. This document is to give you notice of our intent. It explains the following:

(1) the amount of the proposed financial penalty

(2) the reasons for proposing to impose the penalty;

(3) information about the right to make representations and objections; and

(4) what you should expect after a review.

Details of breach

I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of Regulation 4 of the Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.

As a property agent who holds client money, you failed to comply with the duty to display your client money protection certificate [in your office] [on your website at (insert website address)]*.

It is a requirement under the legislation for persons engaging in letting agency work or property management work, within the meaning of section 54 or 55 of the Housing and Planning Act 2016, to display a copy of their client money protection certificate [in their office] [on their website]* as required by regulation [4(b)] [4(c)]* of the legislation. The Council is satisfied, beyond reasonable doubt that you are a property agent and are therefore required to display your client money protection certificate.

*delete as appropriate

Date of breach: ....

Signature of authorised officer: .... **Date of Notice:** ....

The amount of the penalty

We intend to impose a monetary penalty of [specify amount up to £5,000.00] for failure to display your client money protection certificate, as explained above.

Information about the right to make representations and objections

Before a final notice is served, you may within 28 days (beginning with the day after the date on which the notice of intent was served) make written representations and objections to us in relation to the proposed imposition of a monetary penalty and this will result in a formal review. Please include an explanation of why the review is being requested.

Written representations and objections must be sent to [insert full postal address] or by email to [insert email address]

What you should expect after a review

We will consider any representations you make and will decide whether to confirm, vary or withdraw the proposed monetary penalty.

We will notify you of our decision in writing.

If we confirm a monetary penalty charge, you may either pay the charge or appeal to the First Tier Tribunal, within the period of 28 days beginning with the day after that on which the final penalty notice is served. On appeal, the Tribunal will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this notice.

Once a final notice has been served, you may appeal to the First Tier Tribunal against the decision to impose the penalty or the amount of the penalty.

Example Final Notice (Requirement to belong to a CMP Scheme)

Sections 133 – 135 of the Housing and Planning Act 2016

The Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

Regulation 3 – Requirement to belong to a client money protection scheme

Final Notice

To: Name

Address

On [date] [name of Council] issued you with a notice of intent to impose a monetary penalty and invited you to make a written representation within the period of 28 days beginning with the day after that on which the notice of intent was sent.

We have now decided to issue you with this Final Notice varying / imposing / quashing* the monetary penalty for the following reasons:

- We believe the decision to vary / impose / quash* the level of fine is reasonable
- After considering your representations we have decided to vary / impose / quash* the monetary penalty or [No written representation was received following service of the notice of intent and the Council has decided to vary / impose the monetary penalty]*
- [any other reasons can be inserted here*]

*delete as appropriate

Details of breach

I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of Regulation 3 of the Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.

As a property agent who holds client money, you failed comply with the duty to be a member of an approved client money protection scheme.

It is a requirement under the above legislation for persons engaging in letting agency work or property management work, within the meaning of section 54 or 55 of the Housing and Planning Act 2016, to belong to an approved client money protection scheme, as required by regulation 3 of the legislation.

The Council is satisfied, beyond reasonable doubt, that you have committed this breach. The Council has therefore issued you with this Final Notice imposing a monetary penalty of [insert amount] which must be paid within the period of 28 days beginning with the day after that on which this Final Notice was served.

Date of breach: .... [*this can be a date or a range]

Signature of authorised officer: .... **Date of Notice:** ....

How the penalty charge may be paid

[use this section to explain the options available to pay the penalty]

Appealing this notice

You may either pay the penalty or appeal against this Notice to a First Tier Tribunal, within the period of 28 days from the day after that on which this final notice was sent. An appeal to the First Tier Tribunal must be on one or more of the grounds listed below:

a) the decision to impose the penalty; or

b) the amount of the penalty.

The Tribunal will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm, vary or quash this final notice.

If you appeal, this final notice will be suspended until the appeal is finally determined or withdrawn. This means we cannot pursue you for payment until the appeal has been heard and decided.

Appeals will be heard by the First Tier Tribunal (## Chamber) which can be contacted at:

[insert name and address of FTT General Regulatory or Property Chamber. Important to clarify which Chamber is handing appeals as this was unclear at time of publication]

Email: ##

Telephone: ##

If you do not pay the penalty charge

Unless we withdraw this notice or a tribunal quashes it, or you have already paid the monetary penalty required, we will seek a Court Order from the County Court. These proceedings cannot be started any earlier than:

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- After considering your representations we have decided to vary / impose / quash* the monetary penalty or [No written representation was received following service of the notice of intent and the Council has decided to vary / impose the monetary penalty]*
- [any other reasons can be inserted here*]

*delete as appropriate

Details of breach
I, [insert name], an authorised officer of [insert council] Trading Standards, believe that you have committed a breach of Regulation 4 of the Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.

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*delete as appropriate

The Council is satisfied, beyond reasonable doubt, that you have committed this breach. The Council has therefore issued you with this Final Notice imposing a monetary penalty of [insert amount] which must be paid within the period of 28 days beginning with the day after that on which this Final Notice was served.

Date of breach: .... [*this can be a date or a range]

Signature of authorised officer: .... **Date of Notice:** ....

How the penalty charge may be paid
[use this section to explain the options available to pay the penalty]

Appealing this notice
You may either pay the penalty or appeal against this Notice to a First Tier Tribunal, within the period of 28 days from the day after that on which this final notice was sent. An appeal to the First Tier Tribunal must be on one or more of the grounds listed below:

a) the decision to impose the penalty; or
b) the amount of the penalty.

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Appendix 8: 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 Appellant
-and-
THE LONDON BOROUGH OF YYY 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 issues 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,

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- 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

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Appendix 9: Example Consent Order

REF. NO: PR/##
IN THE FIRST TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
PROFESSIONAL REGULATION

BETWEEN:

XXX — Appellant
-and-
THE LONDON BOROUGH OF YYY — Respondent

CONSENT ORDER
Rule 37
Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber)
Rules 2009

This Order is made in accordance with Rule 37 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and the Tribunal Directions dated ## and is agreed between the parties.

It is hereby ordered by Consent, that;

1. ##

2. ##

3. ##

We, the undersigned hereby agree to an order being made in the above terms

Signed:	Signed:
Name:	Name:
Representative for the Appellant	Representative for the Respondent
Dated:	Dated:

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Appendix 10:
Example safeagent CMP certificate

This is to certify that

is part of the safeagent
Client Money Protection Scheme

Accreditation Number:

Isobel Thomson
Chief Executive

* The safeagent Client Money Protection Scheme has no inner limit per claimant. Further information about the Scheme can be obtained by contacting safeagent
t 01242 581 712 e info@safeagents.co.uk safeagents.co.uk

SAMPLE

Appendix 11: Disclaimer

In preparing this guidance, safeagent 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 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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t 01242 581 712 **e** info@safeagents.co.uk **safeagents.co.uk**
Cheltenham Office Park, Hatherley Lane, Cheltenham GL51 6SH