

CYNGOR SIR POWYS COUNTY COUNCIL

**Portfolio Holder Delegated Decision
30th July 2013**

REPORT FOR: County Councillor Barry Thomas
Portfolio Holder for Highways and Public Protection

SUBJECT: Estate Agents Function - transfer from Office of Fair
Trading to Local Authority Trading Standards Service

REPORT FOR: Decision

1. SUMMARY

- 1.1 This paper sets out proposals for Powys County Council's Trading Standards Service, potentially in conjunction with another Welsh TS Service, to bid to the National Trading Standards Board to undertake the Estate Agency Enforcement function that is currently delivered by the Office of Fair Trading but that will transfer from that body when it is effectively disbanded from April 2014.

2. BACKGROUND

- 2.1 The government recently published its consultation on the changes for the provision of consumer information, advice, education and enforcement, which proposes changes that will improve how local trading standards services collectively enforce consumer law to deal with national and regional threats to the fair trading environment.
- 2.3 As part of this new consumer landscape, the government is committed to helping support consumer protection locally, regionally and nationally. In April 2013, many of the Consumer Enforcement functions currently held by the Office of Fair Trading (OFT) transferred to the Trading Standards Service (TSS) through the National Trading Standards Board (NTSB).
- 2.4 From April 2014 the Department of Business Innovation and Skills (BIS) intends to expand the range of national and regional functions which Trading Standards perform collectively further by the transfer of the Estate Agent function in so much that it applies to the administration of warning and prohibition notices and the compulsory membership of a redress scheme.
- 2.5 BIS intends to transfer the budget currently held by the OFT to the NTSB and it will be up to the NTS Board to decide how this budget will be used. This will of course be subject to the government guidelines that the spending constitutes value for money.
- 2.6 The NTSB views this as a three-year project from April 2014. The grant however will only be confirmed on a year by year. £178k is the annual budget allocated to the function. A further £50k is being provided as a start up fund for 2013/14.

- 2.7 Agreement has been reached with the Convention of Scottish local Authorities (CoSLA) and the Department of Enterprise, Trade and Investment, Northern Ireland (DETINI) that this will be a UK wide function.

3. CURRENT SITUATION

- 3.1 Under the Estate Agents Act 1979 (as amended), the OFT has the power to make an order banning a person from estate agency work if they have committed certain specified offences involving fraud, other dishonesty or violence, or have committed racial or sexual discrimination in the course of estate agency work, or have failed to comply with the requirements placed on estate agents by the Estate Agents Act 1979, and are unfit to carry on estate agency work. Alternatively, if such conduct occurred in the course of estate agency work, the OFT also has the power to issue a notice warning the person that the repetition of such conduct will result in them being banned.
- 3.2 Complaints about Estate Agents are currently brought to the attention of the OFT by Trading Standards Services and members of the public.
- 3.3 The OFT has the power to issue a Prohibition or Warning Order when they have doubts about the fitness of a person (an individual or an organisation with legal personality) to engage in estate agency work.
- 3.4 The power to issue a Prohibition Order or a Warning Order requires a relevant infringement or irregularity under the Estate Agents Act. Once an irregularity has occurred additional matters can be considered in order to determine whether a person unfit to engage in estate agency work. The occurrence of such a matter does not automatically mean that formal enforcement action will be taken in respect of every infringement. Instead, the duty obliges enforcers to take steps to promote compliance by the most appropriate means, in line with their enforcement priorities and consistent with available resources.
- 3.5 Prohibition and Warning Orders are not the main or only sanction; they should be viewed as a tool to be used in those cases where an offence is so serious that prohibition should be considered in addition to other sanctions for that offence or where there is evidence of a pattern of repeat behaviour.
- 3.6 It should be noted that in addition to prohibition orders there is a wide range of formal actions that can be taken under sector specific and general law. In particular, enforcers should consider whether the Enterprise Act 2002 or the Consumer Protection from Unfair Trading Regulations 2008 could be used as a more effective tool than prohibition or warning orders.
- 3.7 The OFT has an adjudication function under the Estate Agents Act 1979. This function is delegated to certain authorised people within the OFT - 'the adjudicators'. The adjudicators issue and determine notices on behalf of the OFT.
- 3.8 The Adjudication Unit deals with cases that have been passed to it by the investigators in the form of a draft notice setting out the matters contended against the Estate Agent along with the supporting evidence. The adjudicator will only make a decision based on the information that the trader has seen and has had the opportunity to comment on.

- 3.9 The functions of the Adjudication Unit are to consider and issues notices, receive written representation and chair hearings, determine notices and prohibit people from estate agency work on the basis of a decision about fitness.
- 3.10 Before a prohibition or warning order is issued, the person concerned has the right to make representations to the OFT as to why the order should not be made. If these representations are unsuccessful, a subsequent appeal can be made to the Tribunal Service – an executive agency of the Ministry of Justice, on behalf of the Secretary of State.
- 3.11 The Estate Agents Public Register provides details of Estate Agents currently prohibited from engaging in estate agency work or have received a formal warning under the Estate Agents Act 1979.
- 3.12 The Secretary of State for Business Enterprise and Regulatory Reform made an Order under The Estate Agents Act 1979 (as amended by The Consumers, Estate Agents and Redress (CEAR) Act 2007) on 1 July 2008. This requires those engaging in estate agency work in respect of residential property to join an approved estate agents redress scheme. The OFT is able to approve a redress scheme if it considers the provisions of the operation are satisfactory. The OFT monitors the performance of two such schemes.

4 SUMMARY OF FUNCTIONS THE UNIT WILL DELIVER

- 4.1 The Estate Agency Enforcement Unit (the Unit) will provide a centre of excellence to be drawn upon by all local and regional trading standards services in the UK to provide specialist support and capability. In particular, this Unit must receive referrals in cases where Trading Standards feel that a warning notice or prohibition order is required. The Unit will investigate such cases and make decisions regarding the issue of warning letters, and prohibition notices and administer appropriate appeals that may arise as a result of such decisions.
- 4.2 The Unit will approve all redress schemes under The Consumers, Estate Agents and Redress (CEAR) Act 2007 and to include monitoring existing approved schemes. (N.B. This scheme is currently limited to Estate Agents but government proposals are to include a redress scheme for letting agents in the near future. At this stage it is proposed that the administration of this scheme will pass to the lead authority for Estate Agents.)
- 4.3 The Unit will provide a publicly available register detailing estate agents who are prohibited from engaging in estate agency work or who have received a formal warning under the Estate Agents Act.
- 4.4 The Unit will work with TSI in the development of guidance for both TSS and the industry in relation to Estate Agency Functions and Redress Schemes.

5. OPTIONS

NOTE : ALL BIDS FROM WELSH AUTHORITIES WHO WISH TO DELIVER THIS FUNCTION NEED TO HAVE THE SUPPORT OF THE WALES HEADS OF TRADING STANDARDS GROUP (WHOTS)

5.1 OPTION 1 - Powys County Council Trading Standards Service bids to the NTSB to deliver the Estate Agency Function for the UK in its entirety.

This option would require Powys County Council to establish a specialist Unit within the Trading Standards team and would necessitate the employment of a Unit Manager and 2 investigators as well as some Administrative support, in order to deliver the function. All staff would need to be employed on a 3 year contract basis, renewable annually, as the funding is going to be agreed on a year by year basis.

The Appeals procedure could be developed through a panel of Elected Members such as the Licensing Committee.

Training of all relevant staff and Elected Members would be required and is provided for within the budget allocated.

The system would operate as follows:-

- Cases requesting a banning order against an Estate Agent would be investigated and reported on by the investigators. This would be signed off by the Trading Standards Manager in conjunction with the Head of Service.
- If a recommendation to ban or to issue a Warning Notice was the outcome, the matter would then be referred to the Chief Executive of the authority who together with a representative from the legal team would endorse the recommendation or refer it back for further consideration.
- Were an Appeal to be lodged against the recommended course of action (ie a Warning Order or outright ban) then this Appeal could be made to a Committee formed from Elected Members of perhaps, the authorities Licensing Committee. The decision would be conveyed to the appellant who would have one further appeal to the Secretary of State.
- The Estate Agents register which contains details of those Estate Agents subject to Warning Orders or bans, could be hosted on the either the Powys County Council website or Trading Standards Wales website.

5.2 OPTION 2

Powys County Council Trading Standards Service bids to deliver the Estate Agency function in conjunction with another authority (ie Anglesey County Council).

This option would require one authority to be designated as the `lead` authority and the other authority would provide a supporting role for the Redress scheme and the Appeal procedure. Under this option Powys would be the Lead Authority. This Option could provide a degree of independence to the process and could allow Elected Members from the other authority to form the Appeals panel.

Again the staffing levels mentioned in Option 1 would be required and this arrangement would work as follows :-

- Two authorities (Powys and one other) from Wales submit a joint bid to NTSB. It is hoped that this bid would be endorsed by Welsh Government and or WLGA.

- Staff to run the entire function as detailed above would be employed on a 3 yearly contract basis (renewable year on year) by both authorities (3 Powys 1 Anglesey).
- The function would be split with Powys taking the lead in relation to the Estate Agency enforcement functions and the other authority the lead for the redress scheme and the Appeals procedure.
- The process would be similar to above with the advantage that Appeals could be heard by the other authority. It also allows for a case to transfer where there might be a conflict of interest with, for example, a Powys estate agent.

So:

- Cases requesting a banning order against an Estate Agent would be investigated and reported on by the investigators. This would be signed off by the Trading Standards Manager in conjunction with the Head of Service.
- If a recommendation to ban or to issue a Warning Notice was the outcome, the matter would then be referred to the Chief Executive of the authority who together with a representative from the legal team would endorse the recommendation or refer it back for further consideration.
- Appeals would be referred to the other Local Authority who would organise an Elected Member body to overhear any Appeal.
- The lead officer for this would oversee both functions to ensure consistency and continuity.
- The Estate Agents register could be hosted on the Powys County Council's website or Trading Standards Wales website
- The other authority would take control of the redress scheme and administer it as appropriate

OPTION 3

Do nothing and allow an opportunity to bring quality jobs, a high profile function and an opportunity to heighten Powys County Council and Wales` reputation, to pass without bidding.

6. PROPOSAL

That Powys County Council submits a bid in association with Anglesey County Council to run the Estate Agency enforcement function for the UK (including Scotland and Northern Ireland) in line with option 2 above.

7. CORPORATE IMPROVEMENT PLAN

- 7.1 This proposal is NOT directly included within the Local and Environmental Services Business Plan 2013/16 BUT supports the Corporate Improvement Plan by supporting Powys` economic development. The opportunity to submit such a bid to bring such posts into the County should not be missed. The proposal is in line with the Powys Change Plan`s economic aspirations for the authority.

8. PREFERRED CHOICE AND REASONS

8.1 Option 2 is preferred for the following reasons:

- The authority has the professional staff with the capability to support the bid and manage the function within its Trading Standards Team
- There is an opportunity to deliver a UK function from a partnership between 2 Welsh Authorities working together. This is likely to receive endorsement from WLGA.
- It will demonstrate our ability to deliver projects within budget and to given timescales.
- At a time of reducing budgetary pressures on the authority the opportunity to provide staff with quality options for future employment should not be missed
- The Chief Executive is in full support of the delivery of this function within the authority and is aware of the implications it brings

8.2 Sustainability and Environmental Issues/Equalities/Crime and Disorder,/Welsh Language/Other Policies etc

8.2.1 There is a positive impact on the sustainability of Trading standards services offered within the County, albeit for an initial 3 year phase, funded year on year.

8.3 Children and Young People's Impact Statement - Safeguarding and Wellbeing

8.3.1 No obvious impact

8.4 Local Member(s)

8.4.1 Proposal applies with equal force across the whole County

8.5 Other Front Line Services

8.5.1 No impact

8.6 Support Services (Legal, Finance, HR, ICT, BPU)

8.6.1 BPU - have noted the content of this report and would want to clarify the administrative support requirements of the Estate Agency Function, should the recommendation be adopted and the bid won. Noted re letting agencies potentially being subject to the redress schemes in the future.

8.6.2 Finance - Clearly there is a risk in financial terms to the Authority of the finances allocated to the function not being sufficient to deliver the function as proposed. It is noted that Letting Agents are not included in the scheme at present and the bid should carry a caveat to the effect that sufficient funding must be allocated should Letting Agents be brought within the scheme. In general terms the funding split needs to be decided as part of the process

8.6.3 HR – content with the proposal. Would recommend contracted arrangements due to year on year funding.

8.6.4 Legal and Chief Executive. Roles are noted and given the current number of Banning Orders and or Warning Notices issued in previous years (12 max) delivering this function should not be problematic. Changes to the number of referrals (for example should house prices take off or letting agents be brought within the scheme) will necessitate a review.

8.6.5 ICT – not affected by proposal although there will be an IT requirement. Recommend laptops and remote access is provided to all staff

8.7 Local Service Board/Partnerships/Stakeholders etc

8.7.1 No impact.

8.8 Communications

8.8.1 A press release highlighting Council taking on this national role in partnership with another authority would have a positive impact on the Councils reputation and image.

8.9 Statutory Officers

8.9.1 Strategic Director, Finance & Infrastructure (Section 151 Officer): I note the comments of the Finance services

8.9.2 Strategic Director, Law & Governance (Monitoring Officer): I note the legal comments and have nothing further to add.

8.10 Members' Interests

8.10.1 The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
That Powys County Council`s Trading Standards Service submits a joint bid with Anglesey County Council to host the Estate Agency Enforcement function on behalf of the UK and that the function is split as per option 2 above and that an endorsement is sought from WLGA for this bid.	Supports regeneration aspirations of the Council, providing quality employment and opportunity for Powys employees/residents. Provides an opportunity to enhance the Councils reputation and standing within Wales. Provides Wales with reputational advancement in the UKs Trading Standards Community.

Relevant Policy (ies):			
Within Policy:	Y / N	Within Budget:	Y / N

Relevant Local Member(s):	None
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Person(s) To Implement Decision:	
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Date By When Decision To Be Implemented:	
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Contact Officer Name:	Tel:	Fax:	Email:
Ken Yorston	01597 826032		Ken.yorston@powys.gov.uk

Background Papers used to prepare Report:

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APPENDIX A: PROJECT DETAILS

- 3.1 The emphasis is to deliver on behalf of the NTSB, the administration of the Estate Agency enforcement function with effect from 1st April 2014.
- 3.2 The Estate Agency Enforcement Unit (the Unit) will provide a centre of excellence to be drawn upon by all local and regional trading standards services to provide specialist support and capability. In particular, this unit must receive referrals in cases where Trading Standards feel that a warning notice or prohibition order is required. The unit will investigate such cases make decisions regarding the issue of warning letters and prohibition notices and administer appropriate appeals that may arise as a result of such decisions.
- 3.3 The Unit will approve all redress schemes under The Consumers, Estate Agents and Redress (CEAR) Act 2007 and monitor existing approved schemes.
- 3.4 The Unit will provide a publicly available register detailing estate agents who are prohibited from engaging in estate agency work or who have received a formal warning under the Estate Agents Act
4. **What the funding will cover**
 - 4.1 To assist in this aim, funding of £178,000 will be available on an annual basis for a three year period from April 2014. Subject to the agreement of project plans with BIS an additional £50,000 will be made available in 2013/14, such that the unit can be up and running by April 2014.
 - 4.2 The funding is to be used:
 - To establish and maintain a single National Estate Agency Enforcement Unit
 - To provide an appropriate adjudication system including a process to manage appeals
 - To provide and maintain a web based public register
 - To approve and monitor approved estate agent redress schemes
 - All trading standards services and regional groups in England and Wales are invited to apply for funding to carry out this work. Applicants will need to demonstrate how they intend to deliver the aims of the project and how they will meet the criteria in order to obtain funding.
 - 4.3 Any applications must have the full support of their regional trading standards group confirmed in writing and submitted with the application. Funding is available for applications that meet the criteria for a three-year period. The allocation of funding will be at the discretion of the NTSB, having properly considered all the criteria and all the applications received.
 - 4.4 There is no separate amount for each aim of the project, however, applications should specify the amounts required to deliver each aim as appropriate.

5. Criteria

5.1 Applications for funding must be received by 30th August 2013.

5.2 Each bid must demonstrate how it will provide the following

- The establishment and maintenance of a single National Trading Standards Estate Agency Enforcement Team.
- The provision of a system for adjudication to be determined in the submission
- A resource that can be tasked to deliver specialised functions in support of national estate agency enforcement, including staff who have the knowledge and skills to provide advice to the NTSB and other Local Authorities re the application of warning orders or prohibition orders etc and to maintain a detailed knowledge of the Estate Agents Act.
- The approval and monitoring of approved estate agents redress schemes
- The provision, support and maintenance of the Estate Agents Public Register

5.3 You must indicate in your application how progress will be monitored during the project to ensure that it is achieving its aims and keeping to the timetable.

5.4 You should give an indication as to a named individual or a specific post that will be responsible for ensuring that this project is delivered.

5.6 A breakdown of the expected costs should be provided. This should include expenditure, such as any required to meet the equipment specification of providing the public register. Please note that you will be responsible for meeting any demands for payment for VAT from the funding provided therefore you will need to consider this when calculating the costs of the project. This should be included in your application.

Annexe C indicates the current staff working in this area by % of time.

6. Applications

6.1 Applications for this project, to run from April 2014 for a three-year period, should be submitted on the attached application form by **30th August 2013**