

## **Consultation response**

### **Shelter response to Department for Communities and Local Government Consultation**

### **Protecting Consumers in the Letting and Managing Agent Market**

November 2017

Shelter helps millions of people every year struggling with bad housing or homelessness. We provide specialist advice and support on the phone, face to face and online, and our legal teams can attend court to defend people at risk of losing their home.

However at Shelter we understand that helping people with their immediate problems is not a long-term solution to the housing crisis. That's why we campaign to tackle the root causes, so that one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

## Summary:

Shelter welcomes the opportunity to respond to this consultation. We will be focussing our response on the regulation of letting and managing agents in the private rented sector as this is the area where we have the greatest expertise. In light of this we will answer only questions 2.4, 3.1 and 4.6.

Shelter was pleased to hear the Secretary of State for Communities and Local Government announce his intention to require all letting agents to be regulated so they meet strict minimum standards. Our experience as a key housing provider across England makes clear the extent of poor practice in the letting agent market and in 2016/17 Shelter's online letting agent advice pages were visited 37,000 times by people seeking advice about letting agents<sup>1</sup>. Our most recent private renters' survey also highlighted that only 22% of private renters felt agents were acting on their behalf and with their best interests in mind<sup>2</sup>.

The lack of regulation has made it all too easy for agents to get away with poor behaviour and the industry has been described by the Royal Institute of Chartered Surveyors as operating "like the wild west". Landlord groups, tenant representatives and letting agent bodies have been united in calling for increased professionalism, with all parties equally keen to see action taken against those rogue agents who give the industry a bad name.

There is an opportunity to learn from the models of regulation recently introduced in Scotland and Wales and Shelter would be keen to see a similar model introduced in England. The key to any regulation will be to ensure that standards are clear and consistent and are backed up by meaningful enforcement and sanctions for those that do not comply.

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<sup>1</sup> Based on the number of visits to Shelter's online advice pages related to letting agents which lasted 60 seconds or more.

<sup>2</sup> YouGov survey of 3,978 private renters in England, online, weighted, July-August 2017.

## Response to consultation questions:

### **Q2.4 What are the core elements that should be covered in setting appropriate standards for letting agents and for property managing agents?**

Shelter agrees that all letting agents should meet minimum professional standards and would advocate anyone working as a letting agent should be required to:

- Pass a fit and proper persons test
- Complete basic training in housing and consumer law
- Abide by a standard code of practice
- Hold professional indemnity insurance
- Register on a national register of letting agents

#### A fit and proper person test:

Fit and proper person tests are common across financial services and have already been introduced for letting agents in other parts of the UK. Passing a fit and proper person test is now a requirement for letting agents in Wales, in order to be granted an agent license through Rent Smart Wales, and soon will be a requirement for letting agents in Scotland, in order to join the mandatory register of letting agents.

A fit and proper person test would consider factors such as whether anyone employed by a letting agent has committed a criminal offence or broken any law related to housing. Introducing such a test would prevent the worst letting agents from practising in the market and would therefore give extra protection to both tenants and landlords.

#### Training:

Letting agents act as an intermediary between amateur landlords and tenants and therefore it is important they have a good understanding of both housing and consumer law. Shelter would recommend that anyone working as a letting agent should be required to complete a minimum level of training, covering the main rights and responsibilities related to letting and managing private rental properties in England.

Shelter would support a minimum training requirement similar to the requirements being introduced in Scotland, under Part 4 of the Housing (Scotland) Act 2014. As part of this legislation, key individuals within Scottish letting agencies are required to have a relevant approved professional qualification covering essential aspects of letting agency work. In contrast to the model in Scotland, Shelter would advocate that all employees involved in the letting and managing of properties should undertake at least a basic professional qualification. Those who have ultimate responsibility for ensuring that letting agents comply with the law, such as Directors and Senior Managers, should be expected to undertake more advanced qualifications. The different levels of Propertymark Qualifications for 'Residential Letting and Property Management', may provide a suitable model for this.

Requiring letting agents to undertake a professional qualification is preferable to the training requirements introduced as part of Rent Smart Wales, where agents are required to undertake a one day training course. Given the complexity of housing law, it is questionable whether a one day course would be sufficient for achieving the desired level of training and a more in-depth professional qualification is likely to have a greater impact on standards in the industry.

In addition to obtaining a professional qualification, Shelter would strongly support letting agents being required to undertake continuous professional development to ensure they remain up-to-date with any changes in housing or consumer law.

#### Standard Code of Practice:

Shelter believes there should be a single code of practice for letting agents in England. There are currently a number of different codes of practice in operation relating to the letting and management of

properties. The most well-known code is probably the Property Ombudsman's (TPO) Code of Practice for Residential Letting Agents. This is the standard to which TPO members are expected to adhere and other professional bodies, such as the Association of Residential Letting Agents (ARLA), also require their members to sign up to these standards. However some professional bodies, such as the UK Association of Letting Agents have developed their own codes.

As in Wales and soon to be in Scotland, Shelter believes there should be a single code of practice which sets out the professional standards to which all letting agents are expected to adhere. A single code will be necessary to ensure consistency across the industry and will make it easier for letting agents to know the standards they are required to be working to and for landlords and tenants to know the standards they can expect.

Shelter would support a single code of practice based on the current standards in The Property Ombudsman Code for Residential Letting Agents.

#### Professional Indemnity Insurance:

Shelter would also argue that letting agents should be required to hold professional indemnity insurance, given the important role they play in advising amateur landlords. This would bring letting agents in line with other professional services that give advice such as accountants or solicitors. It would also bring letting agents in England in line with agents in other parts of the UK as holding professional indemnity insurance is a requirement to be granted an agent license through Rent Smart Wales or to join the mandatory register of letting agents in Scotland.

#### National register:

Finally, Shelter would advocate for the introduction of a national mandatory register of letting agents, as is being introduced in Scotland. Only agents who comply with all the elements set out above should be allowed to join the register. Admittance onto the register should also depend on agents proving that they meet other legal requirements such as being a member of a redress scheme, a member of tenancy deposit scheme and holding client money protection (for those agents that handle client money)<sup>3</sup>. A national register should be publicly available so that landlords and tenants can easily check their letting agent is complying with all the relevant regulation.

### **Q3.1. Which of the following options do you believe would have the greatest impact in driving up standards and increasing consumer confidence in the sector:**

- a. Requiring all letting agents and managing agents to be members of a relevant professional body. This would require professional bodies or organisations to be approved by Government, possibly operating to one Code of Conduct.**
- b. As above, but with oversight from a regulatory body, established or approved by Government.**
- c. Government establishing or approving a new regulatory body, which agents are required to sign up to, with membership of a professional body optional?**

Shelter believes the greatest impact on standards and consumer confidence would be achieved through option B.

Shelter would support a requirement for all letting and managing agents to be members of a relevant professional body. Professional bodies such as ARLA and the National Approved Lettings Scheme (NALS), have been working to drive up standards in the industry and already require their members to comply with many of the core elements set out in question 2.4. Building on existing structures in the

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<sup>3</sup> Once client money protection becomes mandatory, as set out in Chapter 5 of the Housing and Planning Act 2016

letting industry would have advantages for the Government as it would make a new regulatory model easier to implement and potentially more cost effective.

However, voluntary accreditation schemes currently vary widely in the requirements they place upon their members. The Government will need to ensure the standards required by professional bodies are consistent and should only approve professional bodies that require their members to meet the core elements set out in question 2.4.

Shelter would strongly support there being oversight from a national regulatory body and would suggest this body should be the same agency as the Lead Enforcement Agency<sup>4</sup> for overseeing the ban on letting agent fees. Meaningful enforcement will be vital for ensuring agents comply with the new standards and there will need to be strong sanctions for those that do not comply. Voluntary accreditation schemes currently differ significantly in terms of how effectively they enforce their requirements and therefore it would be beneficial to have a lead regulator to offer guidance on the standards and to oversee enforcement.

The national regulatory body should own the national register of letting agents and should play a role in sharing information between professional bodies and other mandatory schemes such as redress schemes or client money protection schemes. For example, all schemes should inform the national regulator if they expel a letting agent from their membership and the national regulator should ensure this information is passed on to the other relevant schemes of which the agent is a member. The national regulator should also have access to the Government's Rogue Landlords and Letting Agents database and inform relevant bodies of agents who are the subject of banning orders<sup>5</sup>.

Furthermore the regulator should lead on enforcing against those agents that do not comply with the requirements to sign up to a professional body. Enforcing against those who fail to comply will be key to ensuring the worst agents are forced from the market, as recently evidenced in Wales<sup>6</sup>.

#### **Q4.6 Are there other issues relating to the regulation of letting and managing agents that we should consider? Please explain.**

##### Consumer awareness:

It will be important to ensure that consumers are aware of any new regulatory requirements and are encouraged to only use letting agents who comply with these regulations. Previous Shelter research has highlighted that tenants, and more worrying landlords, often do not discriminate in favour of agents who belong to voluntary accreditation schemes<sup>7</sup>. The effectiveness of new regulations will partly depend on landlords and tenants being able to easily find out who is complying with the law and knowing only to use those agents.

Given the number of upcoming changes impacting on the lettings industry, the Government may wish to consider investing in some form of communication campaign once the relevant legislation comes into force, to raise awareness of the key changes. In particular this should ensure consumers are aware of the ban on letting agent fees, the requirement for agents to hold client money protection and new regulatory requirements for agents.

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<sup>4</sup> Draft Tenant Fees Bill, Clause 16

<sup>5</sup> Housing and Planning Act 2016, Chapter 3

<sup>6</sup> News release <https://www.pembrokeshire.gov.uk/newsroom/milford-estate-agent-fined>

<sup>7</sup> Shelter, Letting agencies: The price you pay, 2013

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