



**Written evidence to House of Commons Public Bill Committee on the Housing
and Planning Bill
From Association of Residential Letting Agents (ARLA)
November 2015**

Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.
2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.
3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Written evidence:

Housing and Planning Bill, Part 2 Rogue Landlords and Letting Agents in England, Chapter 2 - Banning orders

4. ARLA agrees with the proposals in the Housing and Planning Bill that banning orders must be enforced against individual agents and not agencies. This is because we would not want to see an individual agent, such as a new recruit, who has done something wrong shut down an entire agency, particularly as some of the large corporate agencies employ tens of thousands of people.
5. Ideally we think that the Government should seek to extend the provisions contained within the Estate Agents Act 1979, which can ban sales agents, to include letting agents and potentially landlords. This is predominately because under the Estate Agents Act, the National Trading Standards Estate Agency Team of Powys County Council (the UK's regulator under the Act) can issue banning or warning orders to sales agents, but currently the rules still allow banned sales agents to practise as letting agents.

Chapter 3 – Database of rogue landlords and letting agents



6. Under the proposals in the Housing and Planning Bill we think it is vitally important that whoever the body is that will be dealing with the banning orders for lettings agents and landlords work very closely with the Team at Powy's Council so that we do not end up with a situation where somebody can be banned as a sales agent but can still practise as a letting agent, or be banned as a letting agent and still practice as a sales agent.
7. We suggest that either the two sides come together as one overarching body, or that they speak very closely and regularly, to make sure that we do not end up with unintended consequences.

Information to be included in the database

8. Clause 27 (3) in the Bill references a body corporate and we would reiterate here that the database should only include details of individual offending agents and the Clause should remove any requirement for details about non-offending officers at the company in which the offence(s) took place.
9. The Companies House register for disqualified company directors in England and Wales can provide the private rented sector with a useful guide. It contains their name; address; date of birth; nationality; last registered address, when the disqualification began and ends; how many disqualifications they've had; why they were disqualified and the company number of the offending individuals. However, when searching on the Disqualified Director Register it only asks for a Surname and if known the Forenames and Post Town of the offender. In addition, the Insolvency Service only retains details of the individual disqualified, the start of disqualification and the period of disqualification.
10. A list that concentrates on individuals will provide more clarity and certainty for tenants and landlords when they are considering which letting agent they should use. It will also help to prevent the actions of an offending individual from damaging the reputations of companies and the livelihoods of other members of staff who work at a firm and abide by the rules.

Access to information in the database

11. ARLA would like to see both the rogue agent database and the banned agent database being public. As outlined in Point 11, firstly, this would mean that tenants and landlords would be able to see whether their agent had been banned or blacklisted. Secondly, it would mean that agents can also check the database when they are looking to recruit new staff.
12. In addition, a main area of concern for agents since the discussion paper was launched earlier in the year is what would happen if they employ someone who has been banned. They cannot check the database under the proposals in the Bill and therefore they will not know who has been banned. If it then subsequently becomes clear that they have hired a banned agent this would damage their reputation through no fault of their own and with no ability to actually check.



Housing and Planning Bill, Part 3 Recovering Abandoned Premises in England

13. Generally, ARLA welcomes the process around abandonment that has been outlined in Bill. It follows the same path as under the Renting Homes (Wales) Bill in Wales and the Private Housing (Tenancies) (Scotland) Bill in Scotland.

14. However, we would like to see the inclusion of a clause on deposit protection in the Housing and Planning Bill to address the issue of deposits. For instance, the issue of abandonment is not a massive problem, but when it does happen it causes significant financial hardship, such as loss of income to make mortgage payments. In addition it takes up a huge length of time and landlords have to factor in the deposit, particularly if a custodial scheme is used. Under custodial schemes it is difficult for the landlord to regain the deposit because these schemes require both sides to agree to the deductions from the deposit, if there are any. If one party has disappeared and abandoned the property, there is no way of getting that party's agreement. The deposit therefore sits in the deposit scheme.

15. Clause 51 (2) Warning Notices in the Bill should include reference to providing information to the tenant that the landlord may seek to recoup costs incurred as a result of abandonment through the tenant's deposit.

Clause 52 Reinstatement

16. We would ask that, under clause 52(3), the period of application be reduced to two months instead of six. This is because six months will allow a tenant to leave a property, take up an entirely new six-month tenancy somewhere else and then come back to the property and demand it back. For example, someone may be living up in the Midlands and has a six-month contract to work down in London, they come to London, do their contract then go back and demand their property back, which they will be able to do under these clauses.

Additional comments

17. ARLA would like to see much greater regulation and much more appropriate regulation of the lettings and management industry, something akin to the London Mayor's London Rental Standard.

18. The London Rental Standard has created an appropriate model of regulation of the private rented sector in London, which utilises the existing skills and infrastructure set up by the professional bodies. It will therefore not cost huge sums of money to create a regulator.

19. We want to see local authorities being adequately resourced to enforce the rules. ARLA believes that local authorities need to be able to keep the fines they impose and the Government must ensure the fines are ring-fenced for further housing enforcement activity. For example, when the Consumer Rights Act 2015 came into force with the requirement for agents to advertise fees, a



member visited their local high street and of the 23 agents in the town, 19 were not displaying the necessary fees. At a £5,000 fixed penalty notice, that is £195,000 in on-the-spot fines that could be levied with very little work by a Trading Standards Officer. In addition, if these agents hadn't got the fees on their website, that would have amounted to another £195,000. Using Fixed Penalty Notices reduces the administrative and financial burden of prosecution from local authorities and by allowing them to keep the fines imposed will turn Environmental Health and Trading Standards departments from revenue drains on local authority resources into revenue generators that be then be used for further enforcement in order to rid the sector of the small minority of rogue and criminal operators which brings our industry into disrepute.

20. ARLA is not against longer minimum tenancies lengths such as three—year tenancies. However, we don't believe that they should be mandatory because there are a lot of situations where people do not want this type of tenancy. For instance, students who have been in halls for one year and have only two years left of their undergraduate course, it is unlikely that they would want to sign a three-year tenancy when they do not know what they will be doing at the end of their third year.
21. Furthermore, according to our latest survey of our members, the average tenancy is now 20 months and in the vast majority of cases tenancies actually end at the request of the tenant, not the landlord. Consequently, removing that element of flexibility could do more harm than good to the majority of tenants in the private rented sector.
22. ARLA believes it should be compulsory for letting agents to be members of a client money protection scheme and a new clause should be added to the Housing and Planning Bill to include this. Client money protection is an issue that has unanimous support among everyone involved in the housing sector. The Consumer Rights Bill started moving us in the right direction, with firms having to display whether they have client money protection and further regulation to ensure that all letting agents have client money protection will protect millions of tenants and landlords.
23. Letting agents hold a significant amount of money on behalf of the tenant and landlords, so client money protection acts as an insurance premium, which in the event of agency going bust or misappropriating funds it offers landlords and tenants the ability to get their money back. Client money protection is also important because it means that agencies have to have their client accounts audited, so that they know whether something is going wrong.
24. All our licensed ARLA members must have client money protection, so that in the event that any one of them goes bust or misappropriates the funds, which has happened 12 times in our 34 years, we will cover the money up to certain caps. We audit every single one of our member firms' client accounts and we require this in order for them to join our professional body.