

**Response to the Department for Communities and Local Government (DCLG)
Consultation on the Banning of Letting Agent Fees paid by Tenants
from ARLA Propertymark
May 2017**

Background:

1. ARLA Propertymark (Association of Residential Letting Agents) is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.
2. Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected and their money is safe.

General Comments:

3. ARLA Propertymark does not support the banning of letting agents charging fees to tenants. We believe fees should be open, transparent and reasonable. They represent legitimate costs to business that need to be covered.
4. When renting a property, a tenant is taking a legal interest in land for the duration of their tenancy and the fees charged to tenants are broadly similar to those charged when purchasing a property (referencing checks equate to mortgage application fees, contract negotiation charges are akin to conveyancing, and Inventory costs are similar to a survey).
5. In terms of fees, the only difference between renting a home and buying a property is that when purchasing a property, the fees are paid to three different parties and generally cost the purchaser much more, whereas when renting a property, the letting agent acts in a quasi-legal capacity, undertaking these tasks on behalf of the tenant.

Part A – Questions for all Respondents:

Question 1 – Do you think that the transparency measures introduced in the Consumer Rights Act 2015 have helped drive up standards and improve competition? Please include reasons.

6. As it stands today, ARLA Propertymark does not think the transparency measures introduced in the Consumer Rights Act 2015 have helped to drive up standards and improve competition. This is for two reasons. Firstly, whilst the Government issued guidance to local authorities on enforcing

the transparency rules, no guidance was issued to letting agents on how to comply; despite repeated requests from ARLA Propertymark to do so. This created confusion in the industry as to what exactly was required.

7. Secondly, there has been almost no enforcement of the transparency rules. For example, of the 32 London Borough and the City, only four have undertaken any prosecutions (Camden, Islington, Kensington and Chelsea and Newham). Further, during an interview on Radio 4's You and Yours¹ programme on 24 June 2015, featuring ARLA Propertymark Chief Executive, David Cox, and a representative from Trading Standards, it was stated that Trading Standards had higher enforcement priorities and, with their limited budgets, did not have the resources to enforce this legislation.
8. The situation has not improved since that interview and therefore, we do not see the Government's logic in introducing new laws when existing laws are not being enforced. We would also note that, by this, we are not solely talking about the transparency regulations under the Consumer Rights Act 2015. The level of enforcement across all aspects of landlord and tenant law is woefully inadequate. Until this issue is addressed and existing laws are properly enforced, we do not believe that new laws should be introduced as the result will be history repeating itself over again – professional landlords and agents will comply and the criminal element will continue operating under the radar.

Question 2 – Do you agree that the ban on letting fees should also include a ban on letting fees charged to tenants by landlords and third parties? Please include reasons.

9. We do agree that any ban on letting fees should include charges levied by landlords. It would be unjust to ban letting agents charging fees but then allow other parties involved in letting properties to charge fees (such as individual landlords, housing associations, universities, purpose-built student accommodation or institutional investors).
10. This ban will enshrine on the statute books both the restriction of trade and the reduction of competition in the market. Therefore, it must be equitable and ensure that one part of the market is unable to achieve a competitive advantage over another part of the market by being exempted from this ban. In essence, it needs to apply to everyone or no one.
11. It is unclear what is meant by banning fees to “third parties” at paragraph 71, page 20, of the consultation document. Research commissioned by ARLA Propertymark indicates that the lettings industry spends approximately £1.4 billion in its supply chain each year which supports the employment of some 17,000 workers and adds around £1.1 billion to the economy². Many of these services are currently paid for by agents to protect tenants with the costs recovered through the letting fees. If these fees are completely banned as is proposed in the consultation document, agents will likely reduce their services to tenants which will in turn see a reduction in the use of the services offered by the supply chain; placing such small businesses and their workers at risk.

¹ <http://www.bbc.co.uk/programmes/b05zr4ng#playt=0h29m39s>

² Page 22, available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

In turn, if such companies are then banned from providing, directly to tenants, the services they are currently offering to agents, then the Government has effectively banned them from charging to their entire customer base. We would therefore argue that should tenants wish to benefit from the protections offered by these companies, they should be at liberty to source them as they see fit and to pay the prices commercially available to the public at large.

Question 3 – Do you agree that all letting fees, premiums and charges to tenants that meet the general definition of facilitating the granting, renewal or continuance of a tenancy should be banned with the exception of:

- **The rent;**
- **A refundable deposit;**
- **A holding deposit to take the property off the market whilst reference checks are undertaken; and**
- **In-tenancy property management service charges that directly relate to an action or service carried out at the request of the tenant as a result of the tenant’s action?**

If no, please list any fees, charges or premiums aside from those listed above that you think an agent, landlord or third party should be permitted to charge.

12. ARLA Propertymark does not agree that all letting fees, premiums and charges to tenants that meet the general definition of facilitating the granting, renewal or continuance of a tenancy should be banned. As stated earlier in this response, we believe that fees should be open, transparent and reasonable as they represent legitimate costs to business that need to be covered. However, it is clear that banning letting fees is the will of the Government.
13. We welcome the exclusion from the ban of “in-tenancy property management service charges arising because of the action of the tenant” as outlined at paragraph 74, page 21, of the consultation document. We agree with the Government’s rationale behind this exemption. However, it is unclear from the consultation document whether this will include when a tenant wants to leave their tenancy early (Surrender of Tenancy) or where there is a change of tenant / sharer. A significant amount of time and resources is involved in either a Surrender of Tenancy or change of tenant / sharer as effectively an entire new agreement, referencing and Right to Rent checks need to be undertaken. Such a situation will only ever occur at the request of the tenant or due to the tenant’s actions. It will never be instigated by either a landlord or letting agent and therefore, we would argue that these should be included within this exemption.
14. We are also pleased with the exemption for holding deposits to take the property off the market whilst reference checks are undertaken as also outlined at paragraph 74, pages 20 and 21, of the consultation document. Again, we support the Government’s rationale for this exemption as without it, the result would likely be chaos in the market as tenants make offers on multiple properties and then choose which property to take after significant work has already been undertaken by letting agents.
15. We would like to highlight one concern when using the term “holding deposit”. It is important that the legislation clearly states that any monies paid as a “holding deposit” should not be construed as monies requiring protection under the tenancy deposit protection regulations contained within

Part Six, Chapter Four of the Housing Act 2004. If a “holding deposit” requires protection, this will create significant administrative burdens for agents and could result in situations where tenants who have “failed to uphold their side of the agreement” and had their holding deposit forfeited take disputes to the tenancy deposit protection schemes. We would therefore ask that the legislation is very explicit on this point as there have been examples in the past³ where judicial precedent has reversed the spirit of legislation and we are concerned that subsequent case law may determine that agents have to protect these “holding deposits”.

16. We also support the proposal outlined at paragraph 74, page 21, of the consultation document which states that “holding deposits would be forfeited if the applicant has failed to uphold their side of the agreement to let, for example by providing false documentation or withdrawing from the tenancy”. This is a key safeguard for agents and, providing that holding deposits are capped at a level that acts as a deterrent to tenants making offers on multiple properties (this point is further discussed in our response to question six below), this should alleviate the concerns raised in paragraph 14 above.
17. We also support the proposal that holding deposits will be refunded in the case of landlords or agents failing to proceed with the tenancy. This produces a natural balance between the rights of tenants and landlords.
18. However, we would ask that one amendment is made to the holding deposit exemption which is that agents can retain a small part of the holding deposit from the tenant(s) who proceed with the tenancy to cover the cost of their referencing.
19. Referencing checks lay the foundations for a strong tenancy by ensuring that the tenant is who they say they are and does not take on a financial commitment that is unsustainable. Referencing reduces the risk of tenants falling into rent arrears which often results in them being evicted and subsequently subject to County Court Judgments (CCJs). A CCJ often means that the tenant’s credit rating drops which could lead to them having difficulty sourcing other rental properties or making successful mortgage applications when they attempt to take their first step onto the housing ladder. A poor credit history also leads to difficulties in accessing low cost credit from main stream suppliers (such as high street banks or major credit card providers). Ensuring that a tenant takes on manageable levels of financial commitments also helps to ensure that they are not subsequently made homeless.
20. With such a chronic shortage of rental housing, allowing an exemption to the ban on letting fees for tenant referencing will make securing a rental home easier for those on low incomes or those who have a poor credit rating. By exempting referencing, agents will be able to maintain their current referencing services and will not be forced to take shortcuts or take the tenant who appears to be most likely to be able to pay the rent and most unlikely to require follow up Right to Rent checks. Agents will also be able to continue their current practice of assisting tenants with

³ Most notably *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669 which resulted in the Government having to correct the Judgment through primary legislation in the Deregulation Act 2015

completing benefit paperwork and Universal Credit applications to ensure they receive any State benefits to which they are entitled.

21. Tenant referencing is time consuming for letting agents and often involves significant time spent chasing all of the parties involved to complete the referencing process. Checks are frequently complex procedures and are in part (Right to Rent checks) required by law. Referencing is not simply a case of forwarding a prospective tenant's details to a third party. It involves ensuring forms are completed properly, making requests to referees and guarantors, checking a tenant's credit history, liaising with an external referencing company, collecting employment information, liaising with the tenant's previous landlord, checking passports or other visa documents and storing copies securely in order to comply with Right to Rent checks, plus scheduling and carrying out any Follow-up Checks legally required.
22. A survey⁴ of over 1,000 ARLA Propertymark member firms conducted in December 2016 highlighted that it takes eight hours to fully conduct references, credit searches and Right to Rent checks. Agents indicated that collecting references was one of the most time consuming parts of their job, with them needing to chase prospective tenants and referees over several weeks. Many agents use an external credit checking company and therefore the completion time is dependent upon the third party company. This work includes supervising the tenant's completion of reference forms, completing all referencing paperwork, sending reference requests to referees, checking employer and credit references, and liaising with external referencing companies. One agent who responded to the survey noted that "[i]t can take weeks for referencing. Some people take longer than others especially when we're dealing with people overseas and people with complicated employment arrangements".
23. For these reasons, we urge the Government to allow agents to retain a small part of the holding deposit from the tenant(s) who proceed with the tenancy to cover the cost of their referencing.
24. Finally, we request that an exemption be made for payments under the Green Deal (or any subsequent energy efficiency scheme) in the same way as there is an exemption for this in the lettings fee ban in Scotland.

Question 4 – Do you think that refundable deposits, payable at the outset of a tenancy, should be capped? If yes please indicate the level of the cap.

25. The aim of the refundable deposit is to mitigate the risk of a tenant failing to comply with the terms of their tenancy; either by not paying rent or by damaging the property, its fixtures or furnishings. All tenants and all properties are different and, as with any risk-mitigation product, a one-size-fits-all approach is not possible because the mitigation required depends on the level of risk posed. It is this risk-based approach which has set the standard deposit at between one-month and six-weeks as this takes into account a tenant not paying the last month's rent whilst leaving some money left over to cover any damage done by the tenant to the property.

⁴ Page 11, available at: www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf

26. However, it is not uncommon for additional deposits to be taken where there is increased risk of either non-payment of rent or damage. For example, if a tenant wants a pet in the property, it is standard industry practice to require an additional deposit to cover the increased risk of damage done by the pet. Similarly, it is common for increased deposits to be taken from people coming from overseas due to the significantly increased difficulty in taking effective court action where the other party is domiciled in another legal jurisdiction. In certain circumstances, additional deposits are also taken to mitigate the risks associated with a tenant's lifestyle or life choices. A final example would be where a prospective tenant has a poor credit rating or is very close to the affordability threshold for the property they are seeking to rent or has existing County Court Judgments against them. In these situations, agents routinely ask for an additional deposit and guarantor in order to allow the tenant to secure the property whilst mitigating the landlord's risk.
27. It is for these reasons that we do not believe an arbitrary cap should be placed on deposits as it would either need a significant number of exemptions to take into account the issues raised in the previous paragraph⁵ otherwise it will make it difficult for certain parts of the market to secure rental properties; particularly low-income families.
28. There is also no mention in the consultation document as to how such a cap would be enforced and we would suggest it would be almost impossible to enforce it.

Question 5 – How can Government best support the sector to expand or develop new approaches to minimise the financial burden on a tenant at the outset of a tenancy? For example, enabling tenants to pay their deposit in instalments over the first few months of a tenancy or using a line of credit approach where an agreed deposit amount is blocked on a tenant's credit card.

29. As noted in response to the previous question, tenancy deposits are risk-mitigation products and whilst industry-norms exist, deposits are based on the tenant's individual circumstances. The current deposit regime works because tenants have a financial stake in paying the rent and keeping the property in good condition – i.e. as long as they undertake both activities as required by their tenancy agreement, tenants will get their money back at the end of the tenancy. Any new options must retain that financial stake. Therefore, a system whereby tenants pay deposits in instalments will not mitigate any risks as if a tenant moves into a property and then doesn't pay either the deposit or rent, the landlord is left with no rental income and no deposit to act as security; (i.e. the tenant has no financial stake as there is nothing to return). A line of guaranteed credit which can be used against the tenant would be more effective but only if it did not result in landlords being classed as credit providers and therefore needing to be Financial Conduct Authority (FCA) regulated.
30. Recently, we have seen the emergence of deposit replacement insurance schemes whereby the tenant pays a non-refundable insurance premium (usually around £100 - £150) before they sign the tenancy agreement. This insurance product then acts in place of a deposit and should the tenant go into rent arrears or damage the property, the landlord will be able to claim on the insurance policy. These schemes are still very new to the market and it has yet to be seen, should

⁵ The examples noted should not to be taken as exhaustive list

a large number of claims emerge, whether the underwriting insurers will lose their appetite for such policies and withdraw from the market. In addition, the consultation document proposes at paragraph 71, page 20, that fees charged by “third parties” will be banned and therefore, as these products take the form of a non-refundable premium charged to the tenant at the outset of the tenancy, unless a specific exemption is made, it appears that such products will be banned by this consultation.

31. Some local authorities voluntarily offer bonds or interest-free loans to assist tenants with their deposits. The Government could make this a statutory function of local authorities for those private tenants who are unable to afford a deposit.
32. Another example of good practice that currently exists in the market is where companies and public bodies offer their staff interest-free loans to cover tenancy deposits. This could be made mandatory for all public bodies and companies (possibly with an exemption for SME employers who may struggle financially to offer such services to their employees).
33. However, the best possible solution would be for the Government itself to act as the universal guarantor for all tenancies. With the resources available at central government level, the Department for Communities and Local Government (DCLG) could offer a statutory guarantee scheme whereby, in the event a tenant defaults on their rent or damages the property, the landlord could apply to the scheme for recompense and then statutory enforcement bodies pursue the tenant for the outstanding sums owed. Such a scheme should be revenue neutral to Government as the costs of recovery against such tenants could be included in any Money Order secured.

Question 6 – Do you think holding deposits, to ensure that a property is taken off the market, should be capped? If yes please indicate the level of the cap.

34. As previously stated, we are pleased the Government has chosen to exempt holding deposits from the ban. However, if they are to “ensure that there is a commitment from the tenant” as outlined at paragraph 74, page 20, of the consultation document, then they must be set at a level where they act as a meaningful deterrent to tenants making offers on multiple properties.
35. Therefore, ARLA Propertymark recommends that should a cap be placed on holding deposits, it should be at the value of two weeks rent. This is for two reasons. Firstly, any arbitrary financial cap (£200 for example) stipulated in legislation will not change with inflation and therefore, what might be a reasonable cap today is unlikely to stand the test of time and will become entirely ineffective in achieving its aims as the economy grows. An example of where such an arbitrary figure did not work was the Rent a Room allowance which, when set at £4,250 in 1992, was entirely reasonable but this arbitrary figure, written into legislation, did not keep pace with inflation and therefore required additional legislation to bring it in line with its original policy intent; increasing by over 75% to £7,500 on 6 April 2016. Having a cap based on weekly rent levels will always maintain pace with house prices, rent levels and inflation and thus not require either future-proofing or additional legislative intervention in the future.

36. Secondly, an arbitrary cap does not take into account the regional variances in rent levels. With the April 2017 Local Housing Allowance (LHA) rate⁶ for a two-bedroom flat in the Inner South East London Broad Rental Market Area (BRMA) standing at £265.29 per week or £1,149.59 per calendar month, an arbitrary cap of £200 for example is the equivalent of just over five days rent. This is in contrast to the North East where the LHA rate is £86.30 per weeks or £373.97 per calendar month for an equivalent property in the Durham BRMA; thus making an arbitrary £200 cap equivalent to just under 17 days rent. Placing an arbitrary figure as a cap will therefore either be so high as to unfairly penalise tenants in lower-income parts of the country or so low that it will fail to achieve its stated aims in areas with higher rent levels.

Question 7 – Agents may occasionally provide bespoke, non-standard services to tenants at the top end of the market, for example, when arranging a property for someone currently living abroad who is relocating to the UK. Do you think there are premium parts of the market where a different approach to handling letting fees may be warranted?

37. It should be noted that the type of services offered to tenants that is discussed at paragraph 75, page 21, of the consultation document, are not reserved merely for the top end of the market. Indeed, most agents offer a property-finding service to tenants with services includes sourcing suitable properties, undertaking initial property viewings and negotiating the contract with the landlord or letting agent on the tenant’s behalf.

38. Often known as relocation agents, they are used throughout the market but particularly at the top end of the market, as noted in the consultation. Such services are often used by senior executives where their time is at a premium and they are happy to pay for a service which takes the hassle out of finding a new home, possibly in a new country. People in the public eye also often use such services as they provide a level of privacy during the property search as their identity is not revealed until contract signing.

39. Therefore, ARLA Propertymark would argue that as these services are only provided at a tenant’s request and the agent only acts on the tenant’s behalf, they should fall outside the definition of tenant fees as outlined at paragraph 70, page 20, of the consultation response. Should such services not be excluded from the ban, the Government would be banning the entire relocation industry.

Question 8 – What do you think will be the main impacts of the ban on letting fees paid by tenants? Please include any unintended consequences that you believe may arise

40. The recent raft of legislative changes mean that many landlords are feeling the squeeze with higher taxes and increased compliance costs. This means that any ability to offset taxation and compliance costs that landlords incur through increased legislation is likely to be passed on through rent rises. Our member research shows that 87% of ARLA Propertymark members think that rent prices will increase in the medium to long term as a result of banning letting fees⁷. In

⁶ Based on the 30th percentile of market rents <https://www.gov.uk/government/publications/local-housing-allowance-lha-rates-applicable-from-april-2017-march-2018>

⁷ Page 8, available at: www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf

addition, Capital Economics' analysis of the impact of the ban on fees indicates that the most plausible outcome for the market is that letting agents stand to lose £200 million in turnover, landlords will lose £300 million in income and tenants will pay an increased rent of £103 per year⁸. Importantly, Capital Economics conclude that as rents will increase by less than the average tenant fees, those tenants who move more frequently will enjoy savings on overall costs but those who don't move so often, which are likely to be lower-income families, those Just About Managing, will see a loss. For tenants to make a saving from this policy, they would have to stay in their home for less than two and a half years⁹. Therefore, this policy runs contrary to the Government stated aim of encouraging long term tenancies as it will mean tenants in long term tenancies will end up worse off as a result.

41. An outright ban on fees is also unlikely to result in tenants being asked for less money at the start of the tenancy. If rents increase as a result of the ban, the subsequent costs associated with providing the first month's rent and deposit will likely result in broadly the same figure as the deposit, rent and fees do at present: To use an analogy, the pie will remain the same – it will merely be sliced differently.
42. This proposal for an outright ban on letting fees will likely mean that letting agents become unable to continue offering a full service to tenants; particularly Local Housing Allowance tenants who often require the assistance of their agent to fill in increasingly complex benefit applications. If agents withdraw the services they currently provide, the Department for Work and Pensions will likely see an increase in the number of failed Housing Benefit and Universal Credit applications because tenants have been unable to complete the forms on their own. Exempting referencing, as we suggest in response to Question Three above, should effectively mitigate against this eventuality as letting agents will be able to retain current service levels to tenants.
43. The private rented sector is now the largest housing tenure outside of owner-occupation, set to grow and with an increasing numbers of families and longer term tenants. Therefore, the professional services that letting agents provide will become even more important as a growing percentage of the population, from increasingly diverse demographics, rent their homes within an ever more complex legislative framework. However, after successive Governments have effectively focused on increasing property standards for those living in the private rented sector, policies such as this ban could well see the good work of the last two decades undermined as landlords struggle, with some failing, to make ends meet. The result will be a reduction in property conditions and an increase in poor management practices with the use of the professional services provided by letting agents reserved for only those who can afford it; leaving the most vulnerable tenants in the hands of inexperienced and/or unscrupulous landlords and agents. Our member research indicates that 61% of ARLA PropertyMark members think that the ban on tenant fees will cause the standards of management for rental properties to fall and 62% think that the condition of rental properties will decline¹⁰.

⁸ Page 46, available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

⁹ Page 47, available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

¹⁰ Both statistics on page 9, available at: www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf

44. If less-professional and part-time landlords turn away from agents due to increasing costs, they will likely be unaware of new (and existing) legal requirements, causing widespread non-compliance and putting tenants in danger. This could well result in more tenants having to seek assistance from their local authority. In the current fiscal climate, many local authorities are dispensing with their Tenancy Relations Officers and their Housing, Environmental Health and Trading Standards teams, which are already over-stretched and under resourced, will struggle to enforce the laws; leaving tenants, particularly vulnerable tenants, living in substandard conditions with nowhere to turn.
45. The cost of running a letting agency – an office, staff, travel expenses, advertising properties and administration costs all mount up. 42% of ARLA PropertyMark members think that a ban on letting agent’s fees to tenants will mean staff numbers will reduce in the medium to long term¹¹. Some letting agents may not be able to absorb the loss of income created by tenant fees and will close. Others may have to cut staff and costs. Capital Economics’ analysis suggests that in the worst case scenario (where agents do not pass on any additional costs to landlords), 16,000 jobs will be lost in the sector and a further 8,000 in the supply chain¹² and even in the most plausible scenario, whereby letting agents pass on 75% of the loss from the fees ban to landlords, this will result in 4,000 jobs in the sector being lost¹³.
46. In either situation, unemployment will increase as a direct result of the ban on letting fees; adding additional costs to the public purse in terms of direct unemployment benefits from those losing their jobs. It will also result in the reduction of new roles being created in the industry as it will reduce the ability for small businesses to grow, train their existing staff and take on properly-trained apprentices who will become the next generation of professional, qualified letting agents. Therefore, this policy again runs contrary to the Government’s stated aim of championing small businesses; which represent the majority (60%) of the industry¹⁴.
47. In addition to direct unemployment benefits, tenant fees are not currently paid for through the Local Housing Allowance (LHA) or housing element of Universal Credit. If rents do increase as a result of an outright ban, this will in turn increase the LHA rates requiring an increase in the Housing Benefit budget.
48. Finally, it is also important to note that Value Added Tax (VAT) is currently charged on letting fees. Capital Economics estimate that the sector provides the Exchequer with annual tax revenues of around £1 billion, from VAT, business rates and employee taxes¹⁵. Therefore, banning letting fees outright will result in a significant loss of income to the Exchequer.

¹¹ Page 8, available at: www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf

¹² Page 44, available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

¹³ Ibid, page 45

¹⁴ Ibid, page 27

¹⁵ Ibid, page 21

Question 9 – Do you agree that the ban on letting fees should be enforced by Trading Standards? If not, how do you believe the ban should be enforced?

49. Trading Standards departments are the logical enforcing body. However, they need to be adequately resourced. Unless specific funding is set aside for the sole purpose of enforcing these new laws, then we expect the same lack of effective enforcement on the ban on lettings fees as has been demonstrated on the transparency rules under the Consumer Rights Act 2015. This will result in professional agencies complying with the ban and rogue operators continuing to charge fees with impunity; thus creating a two-tier market.
50. In addition, we recommend that whichever prosecuting authority becomes the statutory enforcement body, any fines imposed must be returned to that body and ring-fenced for further enforcement activities.

Question 10 – Would you support greater data sharing on rogue agents and landlords across organisations in the lettings sector?

51. As the largest professional body for letting agents with the highest regulatory requirements on members, we already have data sharing protocols in place with some of the redress and tenancy deposit schemes and therefore would be keen to support greater data sharing on rogue agents and landlords; subject to there being sufficient safeguards in place on data protection.
52. It should be noted that we currently publicise on our website the outcomes of our independent Disciplinary Tribunal's hearings and any agencies that have their memberships terminated for financial irregularities¹⁶.

Question 11 – Would you support the introduction of a lead enforcement authority for letting agents to develop advice, standards and guidance and to share information? Please include reasons.

53. In principle, ARLA Propertymark is supportive of this concept and welcomes any moves by Government to "make enforcement of regulations more consistent and effective" as outlined at paragraph 96, page 24, of the consultation document. Our sister body, NAEA Propertymark (National Association of Estate Agents), has a strong working relationship with the National Trading Standards Estate Agency Team (NTSEAT) based at Powys County Council which has yielded positive results for both organisations and the sector as a whole.
54. However, a lead authority model will have cost implications for Government and therefore, we wonder whether extending the existing Primary Authority regime to allow for the creation of Primary Authority Partnerships covering the legal requirements placed on letting agents, may achieve the same aims but with zero impact on the public purse.
55. The benefit of using a Primary Authority model is three-fold. Firstly, the cost of Assured Advice is borne by the organisation asking for it rather than the public purse. Secondly, rather than creating over-arching guidance, Assured Advice responds to the specific needs of the sector. Thirdly, as

¹⁶ Available at: www.propertymark.co.uk/complaints/tribunal-hearings-and-terminations

other enforcing bodies are required to adhere to Assured Advice, it creates consistency in enforcement across local authorities.

Question 12 – Do you think that the penalty for non-compliance with the ban on letting fees for tenants should be (please tick all that apply):

- a) A civil penalty up to £5,000 in line with the penalty for non-compliance with the requirement to belong to a Government-approved redress scheme or non-compliance with the transparency requirements of the Consumer Rights Act 2015;**
- b) A civil penalty up to £30,000 in line with the civil penalty for committing a banning order offence;**
- c) A banning order offence under the Housing and Planning Act; or**
- d) Other (please list)?**

56. ARLA Propertymark believes that the penalty for non-compliance with the ban on fees to tenants should be both option (b) a civil penalty up to £30,000 in line with the civil penalty for committing a banning order offence and option (c) a banning order offence under the Housing and Planning Act 2016.

57. As stated previously in this response and many other responses to previous Government consultations¹⁷, we believe that in order for there to be tangible improvements in the sector, there needs to be effective enforcement coupled with consequences which are sufficiently severe to act as a deterrent to unlawful conduct. This is why we called for the civil penalties and rent repayment orders which are contained within the Housing and Planning Act 2016 and have been vocal supporters and advocates of these measures to the industry.

58. Professional agents will comply with the ban on letting fees but a £5,000 civil penalty as suggested at option (a) is just over than the average fee income from 24 tenants¹⁸ and as such, is not sufficient to act as a deterrent to criminal operators. Therefore, financial penalties need to be higher and we believe that £30,000 outlined at option (b) is both the right level and as it is in line with the other penalties brought into force under the Housing and Planning Act 2016 on 6 April 2017, allows for consistency across the sector.

59. ARLA Propertymark has long called for greater regulation of the lettings industry in order to rid our sector of the criminal operators that tarnish the reputation of professional agents and the essential services they provide. With this in mind, we believe that a financial penalty alone is not enough. In order for this legislation to achieve its aims, it needs to be properly enforced with punishments sufficiently severe in terms of both financial penalties and business impact. Therefore, we would argue that the £30,000 penalty in option (b) be a combined with a banning order under option (c) otherwise this legislation will be inadequate to act as either a sufficient deterrent or be successful in ridding the sector of criminal operators.

¹⁷ <http://www.arla.co.uk/lobbying/consultations/>

¹⁸ Based on an average fee of £206 per tenant from Capital Economics' analysis on the impact of the letting fees ban, page 37, available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

Question 13 – Do you think further action is needed to regulate the letting and management agent sector in addition to the ban on letting fees paid to tenants? What additional action do you think should be taken to regulate the sector?

60. As stated in response to the previous question, ARLA Propertymark has long called for greater regulation of the letting and management sector and wholeheartedly supports the concept that further action is needed. Indeed, we also echo the calls from our sister body, NAEA Propertymark (National Association of Estate Agents) for great regulation of sales agents as well.
61. No Government over the last decade has taken an holistic approach to the private rented sector and the result has been successive Governments passing a colossal number of new laws; each trying to find a legislative solution to a specific problem in isolation. However, these many but tiny laws are falling into oblivion as there is no over-arching regulatory structure for the industry upon which these “bells and whistles” may hang. The result is the creation of a two-tier market where professional agents and landlords understand and comply with myriad of laws and best practice guidance, whilst, due to the lack of effective enforcement, the criminal fringe operate with almost total impunity. It is this criminal fringe which causes the vast majority of the problems highlighted to MPs and Government; they are the agents who charge extortionate letting fees, offer substandard properties, overcrowd homes and poorly manage rental accommodation. Not only does this bring the professional industry into disrepute it also damages professional business as these criminals can offer lower fees to landlords because they are simply ignoring large swathes of legislation.
62. ARLA Propertymark would recommend a system of regulation akin to the current framework for authorising tenancy deposit protection schemes under the Housing Act 2004 and redress schemes under the Enterprise and Regulatory Reform Act 2013. In such a model, the Government would set out in legislation an overarching regulatory framework for the sector with clearly defined minimum entry criteria. We would recommend that this framework should require all lettings businesses to have Professional Indemnity Insurance at specified levels¹⁹, be a member of a Government-authorized redress scheme and hold Client Money Protection (CMP). Business owners or the most senior person with day-to-day control over the lettings business and at least one member of staff in every office should be required to hold a government-approved qualification of at least a Level Three standard on the National Qualifications Framework (akin to an A-Level) and undertake at least 12 hours Continued Professional Development each year²⁰. Once this framework is established, as with redress and tenancy deposit protection schemes, organisations would then tender to operate the administrative functions of the regulatory framework (i.e. monitoring compliance with the regulatory requirements and notifying the statutory enforcement bodies where evidence of non-compliance was uncovered). This proposal will be extremely low-cost to Government as it utilises the existing knowledge and frameworks within the professional bodies. It will also allow competition in the market as several organisations will likely tender to become regulatory bodies. Further, as already noted, the redress and tenancy

¹⁹ We would recommend that specified minimum levels of indemnity should be set based on fee income; for example, Propertymark requires agencies with a total annual fee income of up to £150,000 to have a minimum indemnity level of £150,000 and agencies with a total annual fee income of over £150,000 to have a minimum indemnity level of £500,000

²⁰ <http://www.propertymarkqualifications.co.uk/qualifications/residential-letting-property-management/>

deposit protection schemes provide precedent for this form of regulatory framework in the private rented sector, as does, to a lesser extent, the London Rental Standard and Liverpool Selective Licensing Co-Regulation Scheme. If we look to other sectors, this model is akin to how Barristers are regulated through being required to join one of the Honourable Societies of the Inns of Court and surveyors have less competition than proposed as they are required to undertake training accredited solely by the Royal Institution of Chartered Surveyors (RICS).

63. The alternative to the above proposal would be something akin to the model being introduced in Scotland. This model creates a register of lettings businesses and agents which is administered by the Government. In this model, every agency would need to be on the register in order to lawfully operate a lettings business. In order to access the register, the business is required to hold Professional Indemnity Insurance and hold Client Money Protection (CMP). In addition, the business owner or most senior member of staff in the agency with day-to-day responsibility for the lettings business and at least one member of staff in every office need to be on the register. In order to access the register, individuals need to be fit and proper people and trained to at least a Level Three standard as in the previous proposal²¹. However, this model would require significant investment and administration from Government and duplicates the work Propertymark currently undertakes in regulating the 17,500+ members of its professional bodies. It is for this reason, we would strongly urge the Government to introduce a legislative framework based on the first model as soon as practicably possible.

Parts B and C – Additional Questions for Tenants and Landlords:

Questions 14 – 22

64. As the professional body for letting agents, these questions are not applicable.

Part D – Additional Questions for Agents:

Question 23 – What fees do you charge to tenants? Where possible please give a breakdown of the service and fees charged.

65. Between 1 – 21 December 2016 ARLA Propertymark surveyed its members asking what services they charge tenants for, what work is involved and how many hours it took to complete the tasks. 1,008 agencies responded and the report²² highlighted that on average it took:

- a. Eight hours to fully conduct references, credit searches and Right to Rent checks. Agents indicated that collecting references was one of the most time consuming parts of their job, with them needing to chase prospective tenants and referees over several weeks. Many agents use an external credit checking company and therefore the completion time is dependent upon the third party company.

²¹ In Scotland, the minimum training requirement is a Level Six of the Scottish Credit and Qualifications Framework which is akin to a Level Three in England

²² Available at: www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf

- b. Five hours to finalise tenancy agreements. Agents stated that drafting the agreement and chasing the tenant's and landlord's signature was the most time consuming aspect.
- c. Six hours to conduct full inventory checks. Agents indicated that chasing tenants for a signed copy of the inventory report was one of the most time consuming aspects of undertaking inventory checks.
- d. Five hours to complete checking in/out procedures. Agents stated that adding/removing a tenant before the end of the tenancy was particularly time consuming, as it required the agreement to be redrafted and new references to be collected.
- e. Eight hours to undertake their administrative work. Agents suggested that preparing, processing and distributing paperwork was the most time consuming aspect.
- f. Four hours to complete amendments, six hours for dealing with deposits and eight hours for viewings²³ (although the report notes that these services are, on average, conducted less often).

66. The report also demonstrates that making adjustments to tenancy agreements is very time consuming, with the need to get both the landlord and the tenant to agree upon any changes²⁴.

67. In addition to the research we undertook with members, we also commissioned an economic impact of the letting fees ban from leading research consultancy, Capital Economics, which highlighted that there are a number of estimates of the average fees charged by letting agents to tenants²⁵:

- a. ARLA Propertymark finds that the average fee charged by its members is £202 per tenant.
- b. DCLG estimates that the mean fee paid by tenants on entering their accommodation was £223 in 2014-15 and the median fee was £200. This included a non-returnable fee for finding the property, a fee for references, contracts and inventories (administration fee), a holding fee to ensure no-one else viewed or rented the property and/or a returnable version of the last fee as well as 'other' fees.
- c. Shelter argues average fees are higher and that one in seven tenants have been charged more than £500.
- d. Meanwhile, www.lettingfees.co.uk, a site operated by Generation Rent, which looks at fees quoted by 902 letting agents across the United Kingdom on their website finds that for a simple contract for two tenants, average fees total £412 or £206 per person. Capital

²³ Page 18, available at: www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf

²⁴ Ibid

²⁵ Page 37, available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

Economics used this estimate of average fees in their analysis as it is the one based on the widest sample across the market.

68. The analysis also looked at international comparisons where it found that letting fees in England are lower than in many other developed economies. For example, in France, fees are capped at €12 per square metre which equates to approximately €480 or £416 for a 40 square metre Parisian apartment while in the USA tenant fees are generally one-months' rent; an average of \$1,404 or £1,132²⁶.
69. In addition, fees paid by tenants to arrange a tenancy are lower than those spent on buying a house. Capital Economics note that average fees in the rental sector are just under 3% of the tenant's total annual rent. This is lower than the 3.7% in fees due by buyers compared with their annual mortgage payments²⁷.
70. Further, the analysis also states that when looking at other industries we find similar fees to those charged in the lettings sector²⁸. For example, car sales companies offer a myriad of services which, similar to those in the letting industry, make purchasing the item simpler for the client. Car dealers charge administrative fees for paperwork, transferring ownership of the car if the car was pre-owned, or, if the car is brand new, for paperwork related to its registration. Airlines also charge fees for services such as changes on the name of a ticket if this was originally misspelt. This is akin to fees for changing the names on a tenancy agreement within the context of lettings.
71. Finally, the analysis highlights that as rents will increase by less than the average tenant fees this will be positive for tenants. However, those that move property less often will not reap the same benefits in savings. Typically, these are likely to be lower income families who will probably move less often than younger, wealthier millennials. For savings to accrue to tenants from the change in policy they would need to move as often as every two-and-a-half to three years²⁹.

Question 24 – What letting fees do you charge to landlords? Where possible please give a breakdown of the service and fees charged.

72. ARLA Propertymark has not surveyed its members on the fees they charge to landlords. Therefore, we are unable to provide any empirical or anecdotal evidence in response to this question.
73. However, we run monthly member surveys and therefore, should DCLG wish to gain such data from our members, we would be happy to include mutually agreed questions in any monthly survey.

²⁶ Page 31, available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

²⁷ Ibid, page 33

²⁸ Ibid, page 34

²⁹ Ibid, page 47

Responding to the Consultation:

74. As per the request on page 36 of the consultation document, ARLA Propertymark can confirm that as of 29 May 2017, the association represented just under 9,200 members operating from almost 9,200 branches. Our members range from online and single-office agencies up to and including the largest, FTSE 250, corporate businesses.
75. We have undertaken extensive consultation with members on this topic; both before and after the announcement in last year's Autumn Statement. Engagement has been through the Chief Executive and staff of the association, the four members of the ARLA Propertymark Presidential Team, nine ARLA Propertymark Board Members, our network of 32 Regional Representatives, more than 70 conferences and events across the country, briefings with corporate agencies, numerous individual face-to-face meetings, our monthly member surveys, social media activities, newsletters, *soleus* emails, our bi-monthly magazine Property Professional, specific letting fees pages on our website, a dedicated email address and debates at the last three ARLA Conferences which this year had over 1,000 delegates.
76. In addition, we undertook a specific survey in December 2016 on the fees our members charge to tenants³⁰ which generated over 1,000 responses and commissioned a leading research consultancy, Capital Economics, to undertake an economic analysis on the impact of the ban³¹.
77. Finally, to ensure our response to this consultation represented the views of not only all ARLA Propertymark members but the industry at large, we published a draft response on 2 May 2017, asking the industry to share their views on our response with us. The draft response was reported in the trade press the following day on both Letting Agent Today³² and Property Industry Eye³³ which resulted in a further tranche of responses, bringing the total number of detailed written responses on this topic to ARLA Propertymark to more than 700. The wider industry's views have been taken on board and we have amended this response accordingly.

³⁰ Available at: www.arla.co.uk/media/1045477/tenant-fees-research-report.pdf

³¹ Available at: www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf

³² Available at: <https://www.lettingagenttoday.co.uk/breaking-news/2017/5/tenant-referencing-must-be-exempt-from-letting-agents-fees-ban-insists-arla>

³³ Available at: <http://www.propertyindustryeye.com/the-fight-goes-on-tenant-referencing-must-be-exempt-from-lettings-fee-ban-plea/>