



Response to BPF Discussion Paper – Towards a 21st Century Private Rented Sector from Association of Residential Letting Agents (ARLA)

September 2016

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.

Questions

Policymaking and the inter-relationship with other tenures

Q1. What are your views on the growth of the PRS, and should Government policy be seeking to constrain that growth, support it, or be broadly neutral?

4. In the last 15 years the size of the private rented sector has more than doubled and now accounts for almost one-fifth of all dwellings in the UK.¹ As homeownership becomes out of reach for more people we are likely to see further growth of the private rented sector. As a consequence the Government must find a balance between increasing property standards for tenants, promote the importance of using a professional and qualified letting agent, and provide incentives for people to invest in the private rented sector.

¹<http://www.lse.ac.uk/geographyAndEnvironment/research/london/docs/GRP12392---LSE-report-design-WEB2.pdf>

5. Housing supply has been a serious problem for more than 25 years, with too few homes being added to the national housing stock. ARLA's Private Rented Sector Monthly Report for July 2016 showed that the number of rental properties on letting agents' books was the highest number seen so far in 2016 and up five per cent from June. However, year on year supply is down. The Report also showed that the number of tenants experiencing rent hikes has not changed in three months.² Whilst this is positive news, particularly in-light of media reports that the housing market is spiralling out of control in the aftermath of the EU Referendum result, we still need new houses to balance the growing gap between supply and demand.
6. As well as tackling supply the Government also need to make the most of current housing stock by making sure properties are not left empty for extended periods of time. In October 2015, the Department for Communities and Local Government (DCLG) said that there were 600,179 empty homes in England and of these 203,596 had been empty for longer than six months – classed as long-term empty properties.³
7. ARLA feels strongly that institutional investors should be encouraged into the residential property sector. According to DCLG's Private Landlords Survey in 2010 it showed that 89 per cent of landlords in England are private individuals rather than companies or organisations, 92 per cent of landlords are part-time, and just two per cent of landlords have a portfolio of more than 10 properties.⁴
8. We also think that the private rented sector should be treated as an 'entrepreneurial business activity' for Capital Gains Tax purposes. This would allow landlords to take advantage of the same level of roll-over relief available to other businesses when reinvesting in the sector and limiting Capital Gains Tax to gains released from business as profit.⁵

Standards in the sector

Q2. Are there better ways of ensuring that more landlords and tenants are knowledgeable of their rights and obligations and good practice?

² <http://www.arla.co.uk/media/1045003/arla-prs-report-july-2016.pdf>

³ <http://researchbriefings.files.parliament.uk/documents/SN03012/SN03012.pdf>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf

⁵ <http://www.arla.co.uk/media/1033973/Housing-Manifesto-2015.pdf>



9. ARLA believes that landlords and tenants should be using professional, well trained and qualified letting agents who are members of a professional body to ensure that they are knowledgeable about their rights and obligations and good practice. Ultimately we think that full mandatory government regulation of sales and letting agents is the quickest and most effective way to achieve this.

Q3. How can the information flows to landlords and tenants be improved, both in terms of reach and quality of advice?

10. Apart from using a qualified and trained letting agent who is a member of a professional body, ARLA believes that the How to Rent Guide is the most effective way of providing information to landlords and tenants. We are working with DCLG and other industry stakeholders to ensure that the How to Rent Guide refers to improving tenant knowledge and understanding that it is their responsibility to deal with domestic waste. We also think that to avoid confusion for landlords, letting agents and tenants the How to Rent Guide should only be updated once or twice a year.

Q4. Do you support some form of registration, or licensing, of landlords? Is so, at what level; national, or at local discretion?

11. ARLA is not supportive of Selective Licensing schemes because most schemes fail as they are not adequately resourced to undertake the necessary enforcement activity. Our concern is that the licensing regime becomes an administrative exercise, penalising those landlords who comply with the regulations whilst still allowing the landlords the scheme was designed to target to continue operating under the radar.
12. In Scotland anyone who owns residential property which is let must register as a landlord with the local authority for the area. They must also declare any letting agent they use. The application won't be approved until both the landlord and the agent they are using have been assessed as 'fit and proper'. There is a fee of £55 to each local authority where an application is made and a fee of £11 for each property registered. Registration is valid for three years. However, recent media reports have found that a number of de-registered landlords continued to work in Glasgow despite being struck off.⁶ Therefore it would appear that the landlord registration scheme in Scotland is not doing what it is meant to be and more resources need to be put into enforcing the rules.
13. When the Welsh Government first came up with the idea for licensing and registration under Rent Smart Wales we felt that this was a good first step towards appropriate regulation of letting agents – something ARLA has been campaigning on for 20 years.

⁶ <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-37169170>



However, during the passage of the legislation through the Welsh Assembly we became increasingly concerned that Rent Smart Wales had simply turned into an administrative exercise for letting agents. Rent Smart Wales does have a training requirement for letting agents, but only for a one day training course. This is clearly not sufficient for agents running a large lettings portfolio to understand all of their legal obligations. We still have concerns about Cardiff City Council who are administering the scheme being adequately resourced to enforce the rules. There is also no continued professional development criteria under Rent Smart Wales. A decision that is likely to conflict with the new tenancy regime in Wales being introduced via the Renting Homes (Wales) Act 2016, meaning that all agents will have to retrain.

Q5. How can we make better use of existing databases and knowledge to support enforcement of standards?

14. ARLA thinks that there is very poor enforcement of current regulations in the private rented sector. These include both recently created and long-standing laws. For instance, we know there has been very little enforcement of firstly, the mandatory requirement for letting agents to be members of a redress scheme brought into force in October 2014 and secondly, for agents to display their fees which has been law since May 2015. To combat this problem we think that local authorities should be revenue generators not revenue drains. The fines collected from housing offences should be ring-fenced with the money going towards further enforcement.
15. Where enforcement does take place there needs to be better joined up working between local enforcement agencies. It is ARLA's view that within local authorities planning departments they rarely speak to environmental health teams and therefore there have been situations where landlords cannot comply with the requirements of both Planning and Environmental Health. This fundamentally undermines the local enforcement regime.
16. An example of where statutory and industry bodies work closely on enforcement and sector regulation is HomeStamp in the West Midlands. The organisation is a multi-agency partnership comprising of local authorities, the private rented sector, universities, Police and Fire services. They encourage joint working between all stakeholders and the supply of good quality private rented homes. HomeStamp also consider and respond to regional and national issues affecting the private rented sector in addition to providing information and training for landlords. This approach should be encouraged as it will help to resolve issues before problems arise. We believe that collaborative working is more important than ever within the private



rented sector particularly as a result of new measures such as the Right to Rent checks and the need to determine the identity of potential tenants.

Q6. How could the legal requirements that landlords must follow be simplified, whilst retaining necessary protection for tenants?

17. ARLA believes that the Housing Health and Safety Rating System (HHSRS) should be reviewed with a view to changing it to an easier to use set of “Fit for Human Habitation” criteria. The HHSRS is too complicated and poorly understood by tenants, landlords, agents and enforcement officers. The HHSRS does not provide practical assistance for landlords and agents to know what is expected of them in relation to the main hazards under HHSRS.

Q7. Are there suggestions/innovations that you believe would help better police the sector’s standards?

18. We would suggest that where local authorities do not have the resources to undertake repeat visits to properties where they have imposed civil penalties and/or Improvement Notices, they could use the powers afforded them under the Housing Act 2004, Section 239 to employ local letting agents (from a list of accredited local letting agents who are regulated by one of the professional bodies) to undertake repeat checks on their behalf. For a small fee, agents could be given the Improvement Notice which highlights works that need to be undertaken, visit and inspect the property to see whether the works have been done and then report back to the local authority. If the works have not been done, the local authority can issue a further Civil Penalty.
19. This system would allow local authorities to better target their enforcement officers on new cases whilst ensuring that existing cases are adequately followed up and where further civil penalties are issued, the local authority will be generating revenue at limited cost (the fee to the agent for visiting the property) whilst simultaneously building strong working relationships with the professional agents operating within their boundaries.

Q8. Are there ways of improving access to justice for tenants and landlords?

20. We believe that there should be a single housing court with a single cost structure and procedural rules to deal with all matters concerning housing and property. The single housing court should be given the existing powers of both the County Court and Tribunals to ensure that wherever possible persons bringing proceedings (whether



before a Court or Tribunal) should be able to have their matters dealt with in a single process. Appeals can go to Upper Tribunal and the Court of Appeal.

21. We also think that High Court Enforcement Officers (HCEOs) should be allowed to enforce County Court Possession Orders without the need for landlords to make further applications to the Court. Under existing rules Possession Orders issued by the County Court are enforced by County Court Bailiffs (CCBs) and can only be enforced by HCEOs if leave is granted by the Court. As a result an increasing number of landlords are choosing to escalate possession proceedings to the High Court in order to request the use of HCEOs, but the decision to permit the transfer of enforcement is at the discretion of County Court Judges. Permission is not always granted and there are significant inconsistencies across the country on how judges deal with such an application. This causes landlords and letting agents significant hardship, such as through the loss of rental income during the legal proceedings.

Q9. Are there consumer-type policies, or wider redress, you would suggest should be rolled out across the sector, and what would be the costs and benefits?

22. DCLG has very recently launched a review into Client Money Protection (CMP) and whether it should be introduced for all letting agents. ARLA has been at the forefront of the campaign and we hope that the review will finally lead to full mandatory CMP. Client Money Protection is already compulsory for ARLA Licensed letting agents and it provides landlords and tenants protection in the event of a letting agent misappropriating funds. Membership of the ARLA's CMP scheme costs £330 per year and it provides an extra, but essential, degree of security for professionals in the industry as letting agents currently hold approximately £2.7 billion in client funds.
23. ARLA agrees with the concept of mandatory electrical inspections in all private rented property, with a certificate every five years. We think that any change in the rules should clearly outline via a check list as to what is expected of the landlord and letting agent in order to comply. We also think that there must be a sensible timescale and a long lead in time for compliance as costs for electrical safety checks will vary depending on the property type. Where possible a range of flexible funding options should be available to support delivery across the private rented sector.

Q10. Should co-regulation be used more and if so, what is stopping that happening?

24. ARLA has previously supported proposals from a leading landlord organisation who are pushing for a market led approach to self-regulation in the private rented sector. We favour collaborative approaches to tackling issues and we want to see local



authorities be revenue generators and not revenue drains when it comes to enforcement.

Affordability

Q11. Do you believe there is a problem of affordability in the PRS, and if so how can it be resolved? Please give pros and cons if possible.

25. Yes, ARLA does believe there is a problem of affordability in the private rented sector. The rising cost of rent in the UK is a huge issue, and is preventing tenants from being able to save to buy a home. ARLA's Cost of Renting report that was released in November 2015 reveals that tenants are already spending a significant proportion of their income on rent, and therefore struggling to save any money. Brits that move out of their family home at the age of 18, will typically rent for 13 years before buying their first property. For instance, those buying a property for the first time last year in the North East will have spent £31,300 on rent (the lowest amount in England), whereas in London, the average amount spent is more than double that, at £68,300.⁷
26. As we said in March 2016 after the third Budget that directly affected landlords, the sector has been punitively taxed, with stamp duty on buy-to-let properties, mortgage interest relief and now capital gains tax changes. Every other sector has been offered a tax break - yet there has been nothing from the Government to help the private rented sector, including landlords - and most importantly tenants - who will see rent costs rise to subsidise the taxes that landlords pay on property. The Government's goal is to help the younger generation get onto the property ladder, but these tax changes will likely mean that the supply of available property is bound to decrease, and as a result rents will rise.⁸
27. Furthermore, our members believe that the supply of buy-to-let properties will dwindle when the new tax comes in to effect, and this news means that supply will fall even faster and harder. We're already in a position where demand out-strips supply and as supply falls, rent costs rise, meaning the goal of home-ownership falls even further out of reach for most of the country's renters.
28. In order to encourage a stable long term rental culture the Government must build more houses to bring down the cost of renting. It's also important that existing landlords who want to expand their property portfolios have new investment

⁷ <http://www.arla.co.uk/media/1044306/cost-of-renting-report.pdf>

⁸ <http://www.arla.co.uk/media/1044449/arla-budget-reaction-march-2016.pdf>

channels to tap into and there is a more flexible tax regime putting private landlords on a level playing field with the social rented sector and owner-occupiers.

29. As we have outlined throughout this response we think it is essential that Housing Enforcement teams are properly resourced to remove rogue landlords and agents from the sector. According to figures from Shelter in 2014 there were only 428 prosecutions recorded for offences under the Housing Act 2004.⁹
30. The decision by the Bank of England in August 2016 to cut interest rates is welcome news for many current homeowners, but it represents a body blow for savers and those hoping to get their first foot on the property ladder. For instance, homeowners with outstanding mortgages are currently enjoying some of the lowest fixed rate mortgages seen for a long while, with lenders battling it out to offer the cheapest deal.
31. We believe that Shared Ownership can, in the right circumstances, offer a way of avoiding the high costs associated with buying a property. By splitting the deposit, maintenance fees and mortgage repayments, it can make owning a home a more realistic aim for many would-be first time buyers. However, it's important to remember, that this option requires a lot of trust, transparency and good planning between all parties involved.

Q12. Are there innovative ways of using existing stock that would support, which might assist affordability?

32. Run down houses in forgotten areas are being revamped through a series of schemes including those in which homes can be brought for as little as a pound. For instance, Liverpool started a pilot scheme back in 2013 in the Granby and Edge Hill parts of the city, and it has moved into its second phase with Home for Pound Plus, concentrating on empty homes on Smithdown Road in Picton. Overall 150 empty homes are expected to be renewed under the scheme and this concept should be encouraged in other areas of the country.
33. Home owners and landlords should be incentivised to maintain and make improvements in their properties, thus improving the quality of housing stock in general. The Government's decision to end funding to the Green Deal Finance Company is disappointing and could mean that the Minimum Energy Performance Standard (MEPS) regulations may become impossible to implement. This is largely because the Green Deal allowed landlords to make their properties energy efficient at no upfront cost. Furthermore, maintenance costs are lower in energy efficient

⁹ <http://www.publications.parliament.uk/pa/cm201516/cmpublic/housingplanning/memo/hpb106.htm>

properties and tenants that do not have to pay significant sums of money to keep their homes at a comfortable temperature generally stay in properties longer, thus void periods are reduced.

Security of tenure

Q13. What are your views on current security of tenure and should it be changed?

34. We don't see any advantages in restricting rent increases or introducing any rent stabilisation measures, such as longer minimum fixed term tenancies in the private sector. This is because flexible tenancies and rent prices driven by market forces have led to the success of the private rented sector across the UK. In addition, we know from our members that landlords appreciate good tenants and would avoid raising rents to retain them. ARLA's Private Rented Sector Report July 2016 showed that the average length of a tenancy is 19 months and that the number of tenants experiencing rent hikes has not changed in three months.¹⁰ Therefore, if, for example, rent controls were introduced to rise only with inflation, instead of tenants getting a potential reduction they may be more vulnerable to automatic increases.
35. It is estimated that there are around 100,000 remaining tenancies in the UK still subject to 'rent control' which applied to landlords before the introduction of the Housing Act 1988. Whilst the gap between the rent charges on these properties compared with similar unregulated property near to them underlines just how much private rents have overtaken prices and earnings since the 1980s, the fact that many of these properties are in very poor condition, as it is not in either the landlords or the tenants interest to maintain them, clearly highlights the problems with rent control.

Q14. If you advocate change, to what length of tenancy, and on what terms and conditions? If you do not advocate change, please explain why?

36. If rent stabilisation measures were introduced we think that landlords would sell their property, diminishing the private rented sector and leaving the market open to foreign investors only. Furthermore, it's likely that landlords would start new tenancies with higher rents to make up for the amount they wouldn't be able to charge during the rest of the tenancy. This would not be done as a profit making exercise but to ensure that the landlord can pay the mortgage. This would also ensure that landlords could invest in improving their existing property, have capital to invest in new property and help grow the private rented sector.

¹⁰ <http://www.arla.co.uk/media/1045003/arla-prs-report-july-2016.pdf>



Promoting investment/raising finance

Q15. Are there innovations you would suggest in the buy-to-let market, either in terms of its product, or way it is regulated?

37. Here we would reiterate that in order to encourage a stable long term rental culture the Government must build more houses to bring down the cost of renting. Furthermore it also vital that existing landlords who want to expand their property portfolios have new investment channels to tap into and there is a more flexible tax regime putting private landlords on a level playing field with the social rented sector and owner-occupiers.

Q16. Do you have suggestions for supporting the growth of the Build-to-Rent sector?

38. The build to rent sector is widely seen by the industry and government to be one of the solutions in addressing the UK's housing supply shortfall. ARLA is very pleased to join forces with Get Living London, a new residential owner and management company who let home direct to residents. We hope this will help to raise standards and boost consumer confidence in renting.¹¹ To support the growth of the Build-to-Rent sector the Government need to look at viability and perhaps give it a unique focus in the planning process.

Q17. Are there other innovations you would like to suggest that would help promote investment in the sector?

39. Other than the points we have already raised in our response, ARLA thinks that local authorities must ensure that homes are built on suitable land that is located along existing transport corridors. These developments must provide schools, hospitals, local shops and green spaces for communities to use and enjoy. These developments must also include cycle ways and good bus routes connecting local towns, villages and cities. Local authorities should also identify and bring back into residential use empty housing, buildings and where appropriate converting empty shops into flats to help regenerate town and city centres.

40. We also think that unused public sector land should be released for residential developments in towns and cities across the UK. We know from National Audit Office's report in July 2016 that more action is needed on the disposal of public sector land for new homes. DCLG want to release enough public sector land for 160,000 homes by

¹¹ <http://www.arla.co.uk/media/1044571/get-living-london-arlas-first-institutional-investor-member.pdf>

2020, but so far only land with capacity for an estimated 8,580 homes has been disposed of.¹² This is particularly relevant in London where demand for housing is extremely high. The Greater London Authority, Transport for London and the National Health Service could all release land for development.

Transitions

Q18. Do you have suggestions for improving these transitions between tenures?

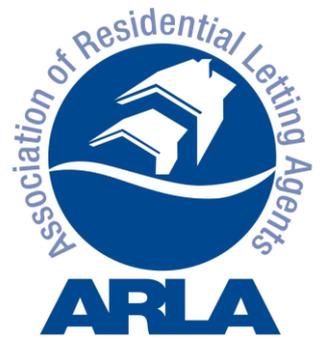
41. In order to help with saving and the understanding the cost implications of living in the private rented sector, we think that tenants must consider how much their rent will be plus bills each month and not simply rent on its own.
42. We don't think parents supporting their children onto the housing ladder or couples who individually may have made prudent property investments earlier on in their lives before buying property together should be penalised with the tax surcharges under the additional homes criteria considering that the Government's agenda is to increase the number of home owners.
43. 'Empty nesters' should be encouraged to downsize in order to free up larger homes for families with children. The appeal of owning a potentially mortgage-free property or lower energy bills or to raise capital should all be widely promoted.

Concluding remarks

Q19. What are therefore the key priorities for the sector? If we were limited to one or two recommendations what would they be?

44. ARLA very much hopes that the review into CMP will lead to the mandatory introduction across the sector. We think that increasing supply of rental properties and raising standards across the industry must go hand-in-hand. However, any criteria for improvement in private rented sector property must be based on the condition of the dwelling and not the tenant. This is because of the transient nature of the private rented sector and in many cases the tenant requests improvements but has moved on before the work is carried out.
45. We also believe that local authorities must comply with Statutory Guidance which is placed upon them in relation to the private rented sector. The primary example is the

¹² <http://www.naea.co.uk/news/july-2016/disposal-of-public-land-for-new-homes-more-action-needed/>



statutory Homeless Code of Guidance for Local Authorities where local authorities are advising tenants to stay in private rented property when issued with a Section 21 Notice. Despite a recent letter to all local authority CEOs from the Housing Minister Brandon Lewis MP confirming that a valid Section 21 Notice is sufficient to class someone as unintentionally homeless, most local authorities are simply ignoring the law and refusing to help tenants until they have been forcibly evicted by the bailiffs. To ensure that we all work towards building a strong private sector, which provides security and stability for both landlords and tenants, more needs to be done to force local authorities to comply with their statutory duties and ensure that legislation is not ignored.

Q20. Where is there consensus?

46. ARLA believes there is consensus amongst the industry for the introduction of electrical safety checks in private rented sector property and the introduction of mandatory CMP. We also think that the industry is in favour of reform to the HHSRS. There is also consensus for the need to build more homes but we believe that there are differences in opinion about the type and affordability criteria between the government, property sector and public.