

**Communities and Local Government Committee inquiry
Private Rented Sector: Combatting 'rogue landlords'
Response from ARLA Propertymark
November 2017**

Background

1. ARLA Propertymark 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.

Written evidence

Do local authorities have the powers and capacity required to enforce standards in the private rented sector and deal with 'rogue landlords'?

3. ARLA Propertymark does not believe that local authorities have the powers and capacity required to enforce standards in the private rented sector and deal with 'rogue landlords.' Up to June 2015, there were 145 laws with over 400 regulations that landlords need to abide by to legally let property in England and Wales.¹ However, in 2014 only 428 landlords in England were prosecuted for housing offences.² Laws are passed but not enforced. There are not enough resources and enforcement is not a high enough priority for local authorities.
4. By way of examples of the problems facing local authorities, Birmingham City Council only has five Environmental Health Officers to cover a city with a population of over one million people. In addition, at a time when local authorities are reducing departmental budgets, a Borough Council employee in Warwickshire has told us that the local authority would require two new members of staff if they introduced a borough wide licensing scheme for the 5,000 private rented properties in the area. In

¹ http://www.propertychecklists.co.uk/downloads/20170508_1

² <https://publications.parliament.uk/pa/cm201516/cmpublic/housingplanning/memo/hpb106.htm>

this time of austerity, the Council may not have the resources to employ these additional staff so may have to divert existing staff from enforcement to administering the scheme should they choose to introduce it. This would further deplete their human resources available for enforcement.

What are the main obstacles to effective intervention in the private rented sector?

5. There is very poor enforcement of current regulations in the private rented sector. These include both recently created and long-standing laws. More needs to be done to resource local authority enforcement teams rather than creating new legislation that won't be enforced. It is essential that prosecuting bodies are given the powers to become revenue generators for local authorities rather than revenue drains. Fines collected as a result of housing breaches must be ring-fenced with the money going towards further enforcement. To this end, we are pleased that this is starting to happen with the Enterprise and Regulatory Reform Act 2013, Consumer Rights Act 2015, Housing and Planning Act 2016 and the measures outlined in the Draft Tenant Fees Bill.
6. Following the Government's announcement in October asking for views on the regulation of letting and managing agents and the approaches government could take to implement any such regulation, we believe that the establishment of a Lead Enforcement Authority could address some of these issues.³ This would work by the Lead Enforcement Authority overseeing professional bodies and introducing a single code of practice. Professional bodies would be required to pay a fee, recouped through membership, to recover the cost of the work carried out by the Lead Enforcement Authority.
7. There is a lack of understanding from legislators about how the practical implication of legislation will work. For example, since October 2015, in private rented property in England, a smoke alarm must be fitted on every floor on which there is a room used wholly or partly as living accommodation and a Carbon Monoxide alarm placed in any room where a solid fuel is burnt such as wood, coal or biomass. Checks must be made by the landlord or letting agent to make sure that each alarm is in proper working order on the first day of the tenancy. When these regulations were passed insufficient consideration was given to whether and how they could be enforced. Professional agents, such as ARLA Propertymark members, are complying with the rules but many

³ <https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence>

landlords and agents are not. Furthermore, it is difficult to see how enforcing bodies are monitoring these rules consistently.

8. The method of assessing private rented housing conditions under 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.
9. Where enforcement does take place there needs to be better joined up working between local enforcement agencies. It is our view that within local authorities, planning departments 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.
10. Local authorities must comply with Statutory Guidance which is placed upon them in relation to the private rented sector. The primary example is the 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 several different Housing Ministers 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 local authorities are not ignoring their statutory duties.

How effective are landlord licensing schemes in promoting higher quality accommodation?

11. ARLA Propertymark does not believe that licensing schemes are an effective way of promoting higher quality accommodation. This is because most schemes fail as they are not adequately resourced to undertake the necessary enforcement activity. The licensing regime becomes an administrative exercise, penalising those landlords who comply with the regulations whilst still allowing the landlords that the scheme was designed to target to continue operating under the radar.

12. In 2013, Newham Council became the first local authority in the country to introduce borough-wide licensing, which requires all landlords to licence their private rented property. Newham Council has done better than most councils in enforcing its licensing scheme. However, there is no way to measure impact on property conditions and while improvement notices have been served, it is not clear if the required work has been carried out. Furthermore, Newham has only made 908 prosecutions against landlords, with 84 per cent of all arrests being for immigration offences, in a private rented sector that is now estimated to provide accommodation to 60,000 households.⁴
13. In July 2017, Newham applied to renew its licensing scheme. On evaluating the scheme Newham have a responsibility to prove that the initial five-year scheme has comprehensively met their objectives and that a further period of licensing is necessary to address new issues. If licensing has failed to deliver the expected objectives, then we do not believe there is a case for seeking a further scheme. Licensing schemes are designed to work and re-designations demonstrate that both the original scheme failed and the new scheme is bound to fail.
14. The licence fee is a controversial issue as it can only cover the costs involved in administering the scheme; not enforcing against those who do not get licensed. These charges vary between local authorities and are often passed on by landlords to their tenants, thus increasing costs for those who rent in an area. In Peterborough, for example, where a selective licensing scheme was introduced in September 2016 the fee for landlords is £900 for a single let property.⁵ Under Newham's proposal to renew their borough-wide licensing scheme they are proposing a standard application fee of £750 per property for a licence that lasts until the scheme ends in 2022. Early bird applications made before the scheme goes live will incur a fee of £450 per property.
15. Furthermore, many local councils refuse to include a discount for landlords and agents that are accredited with a professional body such as ARLA Propertymark. We believe if councils adopted co-regulation initiatives this would encourage more landlords to join a professional body, use professional letting agents and help to drive up standards across the sector. For example, when Liverpool City Council introduced the first city-wide licensing scheme of rented properties in 2015, it formed a partnership with industry bodies such as ARLA Propertymark. This meant that landlords whose properties are managed by an ARLA Propertymark agent received a 50% discount on

⁴ <https://www.newham.gov.uk/Documents/Housing/RentedPropertyLicensingProposalConsultation.pdf>

⁵ <https://www.peterborough.gov.uk/residents/housing/selective-licensing/apply-for-selective-licensing/#Payment>

licensing fees. It also meant that Liverpool City Council recognised the importance of distinguishing between the professional market and those who the scheme is designed to remove from Liverpool's rental market.

16. To this end ARLA Propertymark believe that local authorities should adopt collaborative approaches to tackling issues within the private rented sector rather than introducing licensing schemes. As an example of such an approach, ARLA Propertymark was appointed by the Mayor of London to be one of the accrediting bodies for the London Rental Standard. This was a voluntary minimum set of rules that landlords and letting agents must adhere to in order to operate within the private rented sector in London. The London Rental Standard separated out agents and landlords performing their duties to a high professional standard thus allowing local authorities to target their scarce resources on intelligence-led enforcement rather than the administrative burdens of a licensing scheme. Whilst discontinued by the current Mayor, we believe this scheme would have worked had the Mayor had powers to make it mandatory.

What approaches have local authorities taken to promote affordable private rented sector accommodation in their areas?

17. HomeStamp in the West Midlands is an example of where statutory and industry bodies work closely on enforcement and sector regulation to improve the supply of good quality private rented homes.⁶ The organisation is a multi-agency partnership comprising of local authorities, private rented sector bodies, universities, Police and Fire services. 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.

18. In 2013 when the rules for Primary Authority were updated Propertymark entered into an agreement with Warwickshire County Council Trading Standards Department (WCC Trading Standards).⁷ As a result, WCC Trading Standards operate as the Primary Authority for Propertymark.⁸ Many landlords and agents operate across council boundaries and due to the inconsistent implementation of legislation by local

⁶ <https://homestamp.com/>

⁷ <http://www.propertymark.co.uk/how-we-protect-you/>

⁸ <http://www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/>

authorities, they often end up having to comply with two different interpretations of the same legislation.

19. The reason for entering into the agreement with Warwickshire County Council Trading Standards Department was because of the inconsistent enforcement of Consumer Protection Regulations and the Estate Agents Act 1979 by Trading Standards Officers in local authorities. This was causing an unnecessary burden on Propertymark members.
20. As a result of our agreement, organisations who have registered with Propertymark benefit from consistent advice from WCC Trading Standards on a range of issues that are subject to Trading Standards enforcement. This means that when a member's company adheres to such Assured Advice they will be protected from inconsistent interpretation of the rules; regardless of which county in England, Wales or Scotland their offices are based. Where members comply with the Assured Advice Warwickshire County Council can step in to stop prosecutions if the agent's local Trading Standards takes on a different interpretation of the legislation. Organisations that are not registered cannot rely on such protection.
21. An example of where Assured Advice has informed agents is the discrepancy over how long a property may be described as 'new' or 'new instructions' when advertising. In this situation we worked with WCC Trading Standards and looked at guidance from the Consumer Protection from Unfair Trading Regulations 2008 plus previous advice given by LACORS (Local Authorities Coordinators of Regulatory Services) to say to agents that the terms should only be used when the property concerned is in fact new to the market and not when it is just new to that estate agent or subject to a new or revised instruction.
22. In another area members have requested guidance on how an Energy Performance Certificate (EPC) should be provided to tenants. Referring to guidance from the Department for Communities and Local Government (DCLG) as well as the Energy Performance of Buildings Regulations, WCC Trading Standards has determined that this can be achieved by giving a complete paper copy of the EPC by hand, fax or email. The guidance also clarifies that it's not acceptable to direct the tenant to the online EPC register.
23. However, there are many other aspects of local authority-enforced regulation that must be made simpler, more consistent and more cost-effective for lettings and estate agents. For instance an area where we think greater consistency is needed is that

Trading Standards Officers should have enforcement powers in relation to letting agents and their requirement to register with a Government-approved redress scheme. Currently, it is the local authority housing department that have been given these powers in regard to letting agents, whereas it is Trading Standards for sales agents. Therefore we believe that there could be a possible duplication of effort on the part of local authorities if this inconsistency is not removed.

24. Again, as outlined in point six, as the Government looks to regulate property agents, the establishment of a Lead Enforcement Authority could help. For instance, the approved schemes for redress, client money protection and tenancy deposit protection would all report in to the Lead Enforcement Authority. Data sharing between the scheme providers and the Lead Enforcement Authority would then mean that if an agent is expelled from any one scheme they should be prevented from joining another scheme.

How effective are complaint mechanisms for tenants in the private rented sector?

25. Since 1 October 2014 it has been a legal requirement for all lettings agents in England to belong to one of the three Government-approved redress schemes.⁹ The schemes provide a way for tenants and landlords, who are dissatisfied with the service they have received from their letting agent, to complain at no cost. This route is beneficial because it is an alternative to going to court, where proceedings are expensive and time-consuming.
26. The schemes have qualified adjudicators to consider each case, make decisions and where appropriate make awards. As a result many cases are resolved at an early stage. However, if the initial mediation does not succeed, the Ombudsman will make an award and the scheme member will be notified. They are then given a period of time to comply. In the majority of cases the scheme member will pay up and resolve the situation. If they don't do this they will be expelled from the scheme, meaning they are no longer compliant with the law.
27. The schemes all exchange information about which agencies have been expelled so none of the schemes will accept a letting agent as a member until they have complied with the award made. If the letting agency continues to practice without being a member of a redress scheme they can receive a £5,000 fine and notice to cease trading. However, the main problem with redress schemes is that enforcement action

⁹ <http://www.propertymark.co.uk/working-in-the-industry/member-requirements/independent-redress-scheme.aspx>

needs to be taken by local authority Trading Standards Officers not the property redress schemes, many of whom don't have the expertise or staff to carry this out.

28. In contrast, since 6 April 2007 tenancy deposit protection has applied to all newly created assured shorthold tenancies in England and Wales where a deposit is taken. All three tenancy deposit protection schemes offer alternative dispute resolution, which is funded by the scheme providers as part of their overall running costs and review cases long before they go to court. The formulation of arrangements for deposits have revolutionised the process and seen standards raised in other areas. For instance, tenancy agreements are now much better worded with clear deposit use clauses and an increase in the use of professional inventories (check-in and check-out). Nearly all disputes are resolved by negotiation and the model of transparency means it is leaner, quicker and much more manageable for everyone involved.

29. Ultimately, ARLA Propertymark believes that full mandatory government regulation of sales and letting agents is the quickest and most effective method to eliminate unprofessional, unqualified and unethical agents from the property sector. Piecemeal legislation is unmanageable and unenforceable. There is no statutory regulation to ensure agents are suitably qualified. Additionally, agents who are not members of a professional body do not have to meet minimum competency standards.