

Mayor of London – London Housing Strategy Public Consultation

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.

Comments on proposals

Improving standards for private renters

Proposal A

The Mayor will encourage consistently good standards in London's private rented sector by enabling councils to make better use of their powers. This will include:

i. support for greater collaboration between councils through a new London Boroughs' Private Rented Sector Partnership;

3. ARLA Propertymark supports efforts to increase collaboration between councils across London in order to improve coordination, joint working and information sharing to drive forward improvements in the private rented sector.
4. 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 will not 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.

5. In order to improve the supply of good quality private rented homes, councils in London should be working closely with statutory and industry bodies on enforcement and sector regulation. A good example of this is HomeStamp in the West Midlands.¹ The organisation is a multi-agency partnership comprising local authorities, the private rented sector, universities, Police and Fire services. Through HomeStamp's initiation, the partners were concerned that many landlords were not aware of legislation and regulation, and as a result the Midlands Landlord Accreditation was started. In order to become accredited for five years, landlords and letting agents had to comply with the following: certify that they are a Fit and Proper Person, attend a one day Foundation seminar, continue to learn by accruing 50 Continued Professional Development (CPD) points over the next five years, sign a code of conduct and co-operate with a robust complaints procedure. The scheme now has over 2,000 members in the West Midlands and their seminars are regularly sold out every month.
6. HomeStamp consider and respond to regional and national issues affecting the private rented sector in addition to providing information and training for landlords. The organisation has worked on projects including a guide for tenants and landlords, laying out in simple terms what should be provided in a property that is for rent as well as producing a guide for fire safety in Houses in Multiple Occupation (HMO). This approach should be encouraged in London as it will help to resolve issues before problems arise.
7. HomeStamp is also a forum where all parties can share best practice and look to find a joint-working response to issues before they become problems. HomeStamp has proved beneficial and resulted in local authorities in the West Midlands choosing this route to overcome issues rather than creating licensing schemes except in specific, targeted areas.

ii. working to make best use of new regulatory powers, including for short term lettings operators;

8. Short term letting falls between regulations. It is neither the private rented sector nor the hospitality sector. The issue needs to be resolved. The Mayor of London and the

¹ <https://homestamp.com/>

Government must look at whether short term lettings needs its own classification to ensure that this sector of the market operates with greater regulatory oversight.

9. It is imperative that local authorities enforce the 90 day limit and landlords use a qualified and professional letting agent to let their properties for longer term tenancies going forward. At present a landlord could be in a position where they are granting an Assured Shorthold Tenancy to tenants through even a short term let, which will create serious obligations for them as landlords (including safety checks and deposit registration), which at the moment they may not be satisfying, thus leaving them vulnerable as a landlord. Furthermore, from a tenant's perspective, there is also little assurance that relevant due diligence has been carried out. For example, an Airbnb host could be renting a property which is sub-let without the legal owner's consent or necessary permissions or safety checks. If this was the case, a tenant could be rendered homeless or significantly out of pocket.

iii. opposing the discriminatory Right to Rent policy.

10. Right to Rent checks can represent significant work for letting agents and in some cases checks are complex. Consequently, we recognise the Mayor of London's concerns about the scheme. The complexity of the rules led us to provide a series of 26 events across England to support letting agents in complying with the legislation. We also provide a legal helpline to members. Between February 2016 and March 2017 the helpline dealt with 450 in-depth member queries wholly concerned with immigration issues around tenancies.
11. Conscious and subconscious discrimination is a serious concern amongst all Right to Rent stakeholders, most notably highlighted in the Joint Council for the Welfare of Immigrants report, *Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England.*²
12. Within the scheme in England ARLA Propertymark believes that there is regular abuse of List A Group 2 Acceptable ID documents. Letting agents and referencing agencies are reporting an increasing number of prospective tenants who cannot provide any List A Acceptable Single Documents or current Time Limited documents from List B, but can provide a combination of documents from List A Group 2 (for example, a letter from a professional referee and a letter from a homeless charity) granting them a

²https://www.jcwi.org.uk/sites/default/files/2017-02/2017_02_13_JCWI%20Report_Passport%20Please.pdf

permanent statutory excuse. Agents who are seeing this regularly are concerned that this is a weakness of the system which undermines the work that goes into carrying out systematic Right to Rent checks.

13. In light of the Government's decision to ban letting agent fees to tenants we are very concerned that agents may discriminate against prospective tenants who have more complicated and time consuming applications; for example using time-limited documents requiring follow up checks. To this end we believe that the Government should exempt reference checks (which include the Right to Rent checks) from the ban on letting agent fees to tenants.

Proposal B

The Mayor will work with councils and Government to target enforcement resources against the minority of poor quality and criminal landlords. This will include:

i. providing strong support for well-designed and operated council licensing schemes, including calling for devolution of powers over such schemes to the Mayor;

14. ARLA Propertymark does not support licensing schemes 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. For instance, Newham Council has done better than most councils in enforcing its borough-wide licensing scheme. However, there is no way to measure the 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.³ As outlined in point five and six of our response, local authorities in London should be adopting collaborative approaches to tackling issues within the private rented sector rather than introducing Selective or Additional Licensing Schemes.

15. The licence fee is a controversial issue as it can only cover the costs involved in administering a scheme; not enforcing against those who do not get licensed. These

³ <https://www.newham.gov.uk/Documents/Housing/RentedPropertyLicensingProposalConsultation.pdf>

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. Furthermore, there is no correlation between the amounts that local authorities charge. In the London Borough of Hammersmith and Fulham, for example, registering for the selective licence scheme costs £540 per property.⁴ Under Newham's plans 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 2022.⁵

16. 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 co-regulation partnership with industry bodies such as ARLA Propertymark. This meant that landlords represented by an ARLA Propertymark agent received a 50% discount on 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.
17. We do not support further devolution of powers over such licensing schemes. This is because the main problem with the schemes are that they all so different. The schemes should be centralised, if they are to continue, not further devolved.

ii. supporting calls to establish a light touch landlord registration scheme; and

18. ARLA Propertymark can see some benefit to a low-cost, easy-to-use register for landlords as part of efforts to drive out rogue landlords from operating. However, new rules giving local authorities greater powers to issue large fines and take action against rogue landlords and agents under the Housing and Planning Act 2016 have only just been introduced and further rules are expected. Therefore these changes need time to settle in before further regulation is considered in order to ensure that good landlords don't feel like they are being penalised further and subsequently leave the market.

⁴ <https://www.lbhf.gov.uk/housing/private-housing/property-licensing-landlords-and-letting-agents>

⁵ <https://www.newham.gov.uk/Documents/Housing/RentedPropertyLicensingProposalConsultation.pdf>

iii. introducing a London-wide public database to ‘name and shame’ landlords and letting agents who have acted unlawfully.

19. ARLA Propertymark welcomes plans by the Mayor to introduce a London-wide ‘name and shame’ criminal landlord database. We have campaigned for the Government’s database of rogue letting agents and landlords to be publicly available as, with no public access to the database, how will landlords or tenants know if they are using a banned agent? ⁶ This online database will overcome this problem and means that tenants and landlords in London can rent with the confidence of knowing their agent has not committed any offences.
20. However, many letting agents are also sales agents and therefore regulated under the Estate Agents Act 1979. Consequently, we believe that being banned under the Estate Agents Act 1979 should also constitute a Banning Order Offence under the Housing and Planning Act 2016 and thus the London-wide public database. Without combining the lists, there is a very real danger that a banned sales agent could set up as a letting agent or vice versa which will do little to improve the standards or perception of the industry.

Improving affordability and security for private renters

Proposal A

The Mayor will explore options for a new deal that offers tenants greater stability and helps to protect the rights of landlords. This will include:

i. working with landlord representatives bodies and groups representing tenants to explore options for a ‘London Model’ of reform for tenants and landlords; and

21. While long-term tenancies are becoming more popular, many people rent for the short term to keep their living situation flexible. ARLA Propertymark’s Private Rented Sector Report for October 2017 shows that tenants are staying in rental properties for 18 months on average.⁷
22. Landlords should be encouraged to enter voluntary longer-term arrangements with tenants where this is mutually attractive. However, our research shows that tenants

⁶ <http://www.arla.co.uk/media/1043863/arla-written-evidence-to-house-of-commons-public-bill-committee-on-the-housing-and-planning-bill.pdf>

⁷ <http://www.arla.co.uk/media/1046583/prs-report-october-2017.pdf>

don't seem to want longer-term tenancies. In June 2017, we surveyed our members about this issue. The results show that 75% of agents are offering longer term tenancies compared to 25% who aren't. We also surveyed members to ask them whether tenants are asking for longer term tenancies. From the results 67% of agents said that tenants were not asking for longer term tenancies.

23. Furthermore, most mortgage lenders limit tenancy agreements to 12 months. We understand that specialist mortgages do exist but even with these lenders, tenancies are limited to between 18 months and two years.

ii considering reforms that enhance security of tenure for renters, reduce discrimination, improve the evictions process and dispute resolution, and ensure landlords retain their right to gain possession of the property for legitimate reasons.

24. The Mayor of London must continue to recognise that the main incentive for landlords in relation to providing greater security of tenure is the ability for them to get their property back if things go wrong. For example, a tax reduction will not reimburse them for a long period of rent arrears. There needs to be a better rationalisation of dispute resolution for housing and property disputes because the ability for landlords to access a swift, efficient and cost effective justice system is a key component of a successful lettings industry. Ideally the Government should establish a new housing court or tribunal to deal with all matters concerning housing and property which will speed up the system, increase expertise in the decision making process and ensure greater consistency with reduced costs.

Proposal B

The Mayor will work with Government, councils, and employers to address upfront costs and fees that private renters are forced to pay. This will include:

i supporting the proposed ban on letting agent fees and lobbying Government to ensure its enforcement is properly resourced; and

25. ARLA Propertymark does not agree with the Government's decision to ban letting agent fees to tenants. We believe fees should be open, transparent and reasonable. They represent legitimate costs to business that need to be covered. The hugely valuable service that letting agents deliver ensures that a tenant's home is safe, legally compliant and professionally managed.

26. The widespread concern of letting agents is that the cost of tenant fees will be passed on to landlords, who will need to recoup the costs elsewhere; inevitably through higher rents. Independent research commissioned by Capital Economics predicts that as a result of a full ban on fees, tenants will pay an increased rent of £103 per year.
27. In London, real estate activity amounts to 83,000 jobs. Our analysis suggests that on average, 60 per cent of the market is comprised of small letting agent firms (one with three or fewer branches) and just one quarter of the market is made up of large national letting chains. Furthermore, residential lettings activity undertaken by agents in England and Wales turns over around £4 billion each year and adds £2 billion to the economy.⁸ If letting agents leave the sector, some landlords will likely be unaware of new (and existing) legal requirements, potentially causing widespread non-compliance and putting tenants in danger. This will likely cause added pressure on local authorities as tenants look for assistance.
28. The Department for Communities and Local Government's (DCLG) Draft Tenant Fees Bill proposes that there should be exemptions which ensure that tenants do not abuse the new regime or fail to comply with their legal or contractual obligations. In addition to this ARLA Propertymark believes that there should be exemptions for checks involved in referencing tenants. Reference checks are an essential part of the letting process, giving landlords the reassurance that their tenants are who they say they are, work where they say they work and are able to make rental payments. Whilst reference checks benefit the landlord, they also benefit the tenant as it ensures they are not overstressing themselves in terms of what they can afford. If a tenant falls into rent arrears this could result in County Court Judgments made against them, which could have a significant impact on their credit rating and their subsequent ability to obtain credit.
29. With such a chronic shortage of rental housing, 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 completing benefit paperwork and Universal Credit applications to ensure they receive any State benefits to which they are entitled.

⁸ <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

ii working with employers to widen access to Tenancy Deposit Loan schemes to help renters manage the upfront costs of renting, along with other incentives to help with employees' housing costs.

30. We welcome the Mayor's plans to work with London employers to offer tenancy deposit loans to more Londoners. These schemes can help staff secure a property without incurring financial difficulty leading to debt and it can also help companies recruit and retain staff. Propertymark offers a deposit loan scheme to its staff.
31. Bond Schemes can also help those who are unable to afford the deposit to be able to rent a home in the private rented sector. The Bond is an agreement between a local authority, the landlord or letting agent and the incoming tenant. It is not a transfer of cash, but a written guarantee issued to the landlord on behalf of the tenant to cover the deposit for the property they wish to rent. The maximum value of the Deposit Bond is normally the monthly rent of the tenancy. It could cover the tenant's deposit for a certain period of time, for example two years, in which time the tenant can save to cover their own deposit.
32. Through the Deposit Bond Scheme the landlord or letting agent has the benefit of knowing the deposit is backed up by the local authority, they have access to the advice should they need it and the local authority can be more proactive in working with landlords and tenants to ensure that the condition of property is maintained. Furthermore, it can often mean that the tenant is more likely to be able to stay in a tenancy for a longer period of time.
33. 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 a large number of claims emerge, whether the underwriting insurers will lose their appetite for such policies and withdraw from the market.
34. However, the best possible solution would be for the Government itself to act as the universal guarantor for all tenancies. With the resources available the Mayor of London could offer a 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 the Mayor as the costs of recovery against such tenants could be included in any Money Order secured.

Proposal C

The Mayor supports measures that would limit unacceptable rent increases without negatively impacting on housing supply, and he will work with Government to address long term affordability for London's renters. This will include:

i urging Government to comprehensively review the financial support available to private renters on low and middle incomes; and

35. ARLA Propertymark believes that the challenge in London remains to find new, imaginative and additional ways of delivering good homes in safe and friendly neighbourhoods for prices people can afford. The Greater London Authority as well as Transport for London and the National Health Service should release land for residential development and ensure that development works alongside local need.

36. We welcome the Mayor of London's call for the Government to comprehensively review the financial support provided to private renters on low and middle incomes. More tenants now rely on housing benefit to pay their rent, but problems in how Universal Credit is being delivered are creating rent arrears and forcing landlords to evict tenants as their only option. The impact of waiting periods and other delays causing rent arrears are having an impact on landlord's attitudes to low income households. Despite recent changes announced at the Autumn Budget 2017, better access to information around tenant's claims and better support when applying for direct payments is needed for private sector landlords.⁹ Tenants should also have choice as to whether they are paid monthly or twice monthly which could help make it easier for claimants to budget according to their individual circumstances.

ii when combined with tenancy reform, properly resourcing the First-tier Tribunal system so it becomes a check and balance when landlords increase rents.

37. 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

⁹ <http://www.arla.co.uk/news/november-2017/universal-credit-gets-a-revamp-in-autumn-budget/>

sector. Flexible tenancies and rent prices driven by market forces have led to the success of the private rented sector across the UK. Furthermore, it is estimated that there are around 100,000 remaining tenancies in the UK, including in London still under rent control that 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.

38. 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. It is our view that the Government cannot simply go on trying to legislate for every eventuality because this is unmanageable to enforce. We are concerned that 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.
39. 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 many of the obstacles to effective intervention in the private rented sector.¹⁰ 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 to recover some of the cost of the work carried out by the Lead Enforcement Authority with the remainder coming from the income received through fines generated as a result of enforcement activity.

¹⁰ <https://www.gov.uk/government/consultations/protecting-consumers-in-the-letting-and-managing-agent-market-call-for-evidence>