

## **Protecting consumers in the letting and managing agent market**

### **Response from Generation Rent**

Generation Rent (National Private Tenants Organisation Ltd) represents the UK's private renters and campaigns for a safe, secure and fair private rented sector.

Before we answer the questions, it would help to set out our approach to this call for evidence by considering first how regulating the letting agent market might work in relation to proposals to improve security of tenure.

The government has not yet published these proposals but if we assume that a system of incentives will be adopted (as suggested by ministers) then it follows that there must be a system to ensure that those who are benefiting from incentives (landlords) are complying with the conditions (providing more generous terms to their tenants).

A prospective tenant of a property will want to know the terms of the tenancy before applying for it (and putting down a holding deposit). It is particularly important to prevent cases where the landlord claims an incentive but fails to offer a longer tenancy. As a landlord or their agent can mislead prospective tenants, there should be an independent source of information available to the tenant. This would require every tenancy to be registered.

This could be achieved with a redress scheme for landlords who don't use an agent, and regulation of letting agents. Anyone letting a home would need to register the property, and specify certain terms of the tenancy (including length of fixed term, restrictions on eviction with no grounds, rent increases, and tenant break clause) when doing so. This might make the landlord eligible for any benefits the government deems appropriate to incentivise longer tenancies. Or alternatively, the cost of registering a property with a longer tenancy could be much lower than the cost of registering it with a standard Assured Shorthold Tenancy.

A unique reference number for the property would then be provided to prospective tenants – ideally on any advertisements – so that they could cross-check details and terms against the central database before applying for the tenancy.

A further layer of regulation would place a penalty on abuse of the registration process – e.g. a landlord offering only a standard AST even though the property is registered for longer tenancies. To support the policing of this system, and avoid intimidation of desperate tenants, there could be financial rewards for reporting abuse (payable by the landlord). Evidence of wrongdoing would be inconsistency between the advertisement or email offer of a tenancy and the details held on the database.

This process of registering tenancies would be a central part of regulating letting agents. We therefore believe that there must be a central body that deals directly with letting agents and landlords.

### **The Case for Change**

**Q1.1 Do you agree with analysis of the problems in the market set out in this chapter? What regulatory measures could better empower leaseholders to manage the quality and cost of the services they receive?**

Yes. We do not represent leaseholders so have no views on their empowerment.

**Q1.2 Is a new regulatory approach required for property management agents? If not, why not?**

Yes. We see three main reasons for this: enforcement of the forthcoming letting fees ban, to prevent criminals and other untrustworthy people from setting up in the industry in the first place, and to support efforts to promote longer tenancies. This would build on and have to incorporate existing redress processes.

**Q1.3 Aside from regulation, are there any alternative means the Government should consider for driving up standards and professionalism in the sector?**

The government should consider the role of tenants can play in policing standards in the sector. They are usually the first people who spot wrongdoing, but can be intimidated into staying quiet by the threat of a rent rise or no-fault eviction. To overcome this, compensation or rewards should be available for tenants who raise concerns.

**Q1.4 What should be the scope and objectives of any regulation? In particular: i. Which agents and individuals working within managing agents should be covered? Should individuals, companies and officers be treated differently? ii. What types of services should be included? And should any types of companies or services be excluded? iii. Should any other classes of people or property professionals be covered by any regulator?**

For letting agents, the objectives should be to ensure they properly register the tenancies that they manage, do not charge illegal fees to tenants, respond adequately to complaints, and to prevent criminals from operating in the sector.

The letting agency must be licensed. A licence could be revoked if the agent was not registering tenancies or found to be charging illegal fees.

The agency's directors and other principals should be covered, plus any agents who have access to client money and properties.

**Entry Requirements**

**Q2.1 Is there a need for minimum entry requirements for managing agents, similarly to the commitment to introduce such requirements for letting agents? If so, what should these requirements include – a fit and proper person test and/ or qualifications or training? Are there any risks, for example that this might stifle innovation?**

Anyone who runs/is a director of a letting agent must pass a fit and proper person test, which would preclude anyone whose previous business became insolvent. This would prevent agents deliberately winding down their company to avoid paying creditors/evade legal action, and then re-emerging with a new company.

Anyone employed by a letting agent who handles client money or has access to properties should pass a criminal record check.

**Q2.2 If qualifications or training are required, what should they cover? What qualifications or courses already exist and are they necessary and sufficient?**

A licensed agency must employ someone who has had a certain level of training in tenancy law, and provide their name to the regulator.

**Q2.3 Should any qualifications and training requirements differ depending on role and service offered? (E.g. different requirements for company officers, or differing requirements for repairs compared to contract negotiations?)**

Yes.

**Q2.4 What are the core elements that should be covered in setting appropriate standards for letting agents and for property managing agents?**

Criminal background, business and financial history (for directors) and consumer law.

**Q2.5 Do Codes of Practice have a role in any future regulatory approach?**

We feel that any desired behaviour on the part of letting agents should be enshrined in law. Any involvement of separate Codes of Practice might render a tenant's position in a given situation unclear. We may find that one organisation's Code of Practice protects the tenant while another does not, which would be unfair.

**Q2.6 Could Codes of Practice (or any other reforms) have a role in addressing service charge abuses? Could and should they be used to tackle conflicts of interest which might arise, perhaps from connected companies?**

No view.

**Q2.7 How should a future system build on the existing codes? What elements of existing codes would be useful to retain? Are there elements that could go further?**

Codes can provide a baseline of good practice that can be built upon. Where they fall short of providing sufficient protection for the tenant, these elements could be addressed in the Tenants' Fees Bill and reforms that address security of tenure.

### **Approaches to enforcement and regulation**

**Q3.1. Which of the following options do you believe would have the greatest impact in driving up standards and increasing consumer confidence in the sector:**

- a. **Requiring all letting agents and managing agents to be members of a relevant professional body. This would require professional bodies or organisations to be approved by Government, possibly operating to one Code of Conduct.**
- b. **As above, but with oversight from a regulatory body, established or approved by Government.**
- c. **Government establishing or approving a new regulatory body, which agents are required to sign up to, with membership of a professional body optional?**

We believe only a new regulatory body with a direct relationship with agents would provide the structure needed to register individual rented properties. This work would be a lot to ask of professional bodies and might also suffer from fragmentation that would undermine service to tenants.

**Q3.2 What implementation issues would need to be considered e.g. cost, corporate governance requirements, timescales for introduction?**

The regulator would need to be set up by the time the letting fee ban and the longer tenancies measures came in. It is likely to supersede the Property Ombudsman and other schemes, so a review

of these schemes should be carried out in order to gather institutional intelligence that can be transferred. The body should also manage landlord redress in order to register properties not managed by an agent. The costs could be covered by the rental property registration process, especially if standard ASTs commanded a higher fee.

**Q3.3 Are there other regulatory models that the Government should be exploring? Please give details.**

The Residential Tenancies Board performs similar functions in Ireland to the regulator described above.

**Q3.4 What powers would any new regulatory body require to enforce its standards?**

Powers to:

- Issue and revoke licences, and apply for banning orders
- Levy fines and award compensation
- Handle complaints from consumers (and landlords)
- Publish a list of banned landlords and letting agents, and outcomes of criminal proceedings
- Publish data on complaints
- Collect and manage a database of tenancies, and provide information to consumers who request it
- Pursue criminal prosecutions

**Q3.5 How could the requirement to be a member of an approved or regulatory body be effectively enforced? Should enforcement responsibility sit with any new regulatory body? What would be an appropriate penalty for noncompliance?**

An agent operating without a licence would be prosecuted and fined. The penalty would need to be at least £30,000 and rise for repeat offences. The regulatory body would rely on tenants and other members of the public to report noncompliant agents. Rent Repayment Orders might therefore be an appropriate additional penalty to encourage tenants to come forward.

**Q3.6 Should the Government establish a new regulatory body to cover all the issues within leasehold and private rented management, lettings and, potentially, estate agency? Or should separate bodies be established? Please explain your answer.**

Yes, there is a significant amount of overlap in business activities within the sector so it would be more efficient to have a single regulator dealing with the whole industry. Issues about an agent's leasehold management activities would be better dealt with by the same organisation that was investigating the same agent's lettings business. We imagine that most agents would prefer to deal with a single regulator.

**Rights to switch agents and challenge charges**

**Q4.1 What changes could be made to ensure that consumers are protected from unfair fees and charges, including major works?**

Consumers should be able to make a complaint about an agent who had charged – or tried to charge – them unfair/illegal fees direct to the regulator, who could then investigate and award compensation as appropriate.

**Q4.2 How can we support consumers to challenge unfair fees and ensure that they have a route to redress?**

Assuming that the existing principles for redress for tenants remain in place, the award of compensation will be binding on the agent. If payment is not forthcoming then the tenant may have to make a claim in court. In such situations, the regulator should prompt the tenant to take action when appropriate. We would also like to see the regulator cover any court fees which may be too high for the tenant to pay themselves.

**Q4.3 How can we make it easier for leaseholders to access their right to manage? What further measures are required to make it easier for consumers to choose or switch agent? Should we introduce a power of veto for leaseholders over a landlord's choice of managing agent?**

No view.

**Q4.4 Could and should a regulator act as a consumer champion? What powers might they need to support this?**

Yes. As outlined above, it should review complaints against agents, and then support tenants to collect any award.

It should also provide information online including details of individual properties' tenancy terms, and banned landlords and letting agents. It should be possible to check addresses to see if they are owned by a banned landlord.

**Q4.5 Should regulatory bodies have a role in providing information to consumers about the qualifications or performance of property agents? If so how could information be of the greatest benefit for consumers? What information should be provided? Should it be public?**

As we see it, each agent would be listed on the regulator's website already. Publishing information about qualifications might encourage agents to get their staff trained. Publishing performance statistics would be valuable – for example the number of complaints upheld as a proportion of the number of properties managed.

Banned landlords and agents should be on the website. It is conceivable that a banned landlord or agent could continue to operate. Tenants should be able to check their status before applying for a tenancy with them. If every property is registered then this information would be part of it.

**Q4.6 Are there other issues relating to the regulation of letting and managing agents that we should consider? Please explain.**

We frequently hear from renters that letting agents will refuse to pass on details of the landlord to a tenant who has a complaint. This is an alternative to complaining to the redress scheme – the landlord might be able to exert more immediate influence over the agent if they are made aware of bad practice.

Although there is a legal obligation to provide the landlord's details, it might be difficult to obtain something useful in practice, especially where the landlord lives overseas. Contacting the landlord by post in such circumstances is expensive and time consuming.

We would therefore suggest that letting agents are required to submit an email address of the landlord at the very least. There may be valid reasons for the landlord not to want the tenant to have this at the start of the tenancy, but upon receipt of a complaint, the regulator should be able to

give the email address to the tenant in case communication between the tenant and the landlord improves the chances of a speedy resolution.

We would also stress that one of the main reasons that tenants do not exercise their rights or complain is the fear of an unreasonable rent rise or a no-fault eviction. The government must address these fears in order to sufficiently empower renters.