



## **Response to UK Government's 'Cutting Red Tape review of Local Authority enforced regulation' from National Association of Estate Agents (NAEA) and Association of Residential Letting Agents (ARLA)**

**May 2016**

### **Background**

The Association of Residential Letting Agents (ARLA) is the UK's foremost professional body for letting agents. ARLA represents over 8,000 members from more than 2,500 companies in over 7,500 branches. ARLA campaigns in the best interests of consumers – for mandatory regulation, client money protection, independent redress and professional indemnity insurance. Using an ARLA Licensed Member provides landlords and tenants with high professional standards and greater financial safeguards than the law demands.

The National Association of Estate Agents (NAEA) provides consumers with high professional standards and integrity in all property transactions. NAEA has a high media profile, analysing market trends and speaking on property issues on behalf of more than 7,000 estate agents including 3,500 Principals, Partners and Directors from across the UK property sector.

### **Comments**

Members of both NAEA and ARLA are regulated by an organisation called the National Federation of Property Professionals (NFoPP) Regulation. We previously asked PPD (Principal, Partner or Director) members to register their details to become a part of the Primary Authority partnership. However, to ensure everyone benefits we have automatically registered details of PPDs who do not already belong to the Primary Authority partnership and have not contacted us wishing to remain excluded from the scheme.

### **Trading Standards**

In 2013 when the rules for Primary Authority were updated NFoPP Regulation took advantage of this and entered into an agreement with Warwickshire County Council Trading Standards Department (WCC Trading Standards). As a result, WCC Trading Standards operate as the Primary Authority for eligible members of NAEA and ARLA. Assured Advice has recently been extended in relation to certain regulations in Scotland.

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 ARLA and NAEA members.



As a result of our agreement organisations who have registered with NFOPP Regulation 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 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. Organisations that are not registered cannot rely on such protection.

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.

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 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 or to tell them to find it for themselves.

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 estate agents and their requirement to register with an independent redress scheme. However, currently it is the local authority housing department that have been given these powers in regard to letting 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.

#### Enforcement of current regulations

More broadly we believe that there is very poor enforcement of current regulations particularly in the lettings 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.

Another example of poor enforcement is around the introduction of mandatory smoke and carbon monoxide alarms in privately rented property and the requirement from October 2015



that they need to be tested at the start of each new tenancy. It is very difficult for enforcing bodies to monitor whether an alarm has been tested on the first day of a tenancy. As a result we feel strongly that a greater emphasis must be placed on the practical implementation of current rules against the working practices of letting agents before more extremely prescriptive legislation is introduced.

#### Regulation of Estate Agents and Letting Agents

Ultimately both ARLA and NAEA believe 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.

In the lettings sector there are now over 145 laws that apply to a landlord when they come to let a property. However, according to Shelter only 428 landlords in England were prosecuted in 2014 for housing offences. Therefore more needs to be done to resource local authority enforcement teams rather than creating new legislation that won't be enforced. We think it is essential that prosecuting bodies are given the powers to become revenue generators for local authorities rather than revenue drains. We recommend that the fines collected as a result of housing breaches should be ring-fenced with the money going towards further enforcement.

#### Licensing and accreditation schemes

A further issue around enforcement is local authority licensing of privately rented property. ARLA is not supportive of 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.

We acknowledge that an exception to the rule has been the scheme operated by the London Borough of Newham Council. We know that since licensing was introduced in 2013, Newham has prosecuted more than 500 landlords and issued more than 300 cautions. However, more recently the scheme has come into difficulties and concluded that the scheme has not achieved its aims. Therefore ARLA believes that Parts 2 and 3 of the Housing Act 2004 should be removed and replaced with mandatory training and accreditation for all landlords.

ARLA would also advocate that local authorities adopt collaborative approaches to tackling issues within the private rented sector rather than introducing licensing schemes. As an example of such an approach, ARLA was appointed by the Mayor of London to be one of the accrediting bodies for the London Rental Standard. This is 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 separates 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.

#### Housing Health and Safety Rating System (HHSRS)

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. This is because 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.

#### Minimum Energy Performance Standard Regulations (MEPS)

Another area that needs to be looked at is the Minimum Energy Performance Standard Regulations (MEPS) for the Private Rented Sector because they were predicated on the availability of Green Deal Finance. The Government's decision to end funding to the Green Deal Finance Company is disappointing and it is likely that the Minimum Energy Performance Standard regulations will become impossible to implement. This is largely because the Green Deal allowed landlords to make their properties energy efficient at no upfront cost.

Consequently, the withdrawal of financial incentives to improve the energy efficiency of properties and the fact that the MEPS will almost be entirely unenforceable means that the improvements hoped for in the energy efficiency of private rented properties are unlikely to become a reality. It is not sensible for these regulations to go ahead and because they are due to come into force in 2018 and 2020 it is unlikely they will be complied with.

#### Planning and Environmental Health

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 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.

#### Statutory Guidance

We 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 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.

#### Enforcement and sector regulation

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.

#### Houses in Multiple Occupation (HMOs)

The Coalition Government amended planning law around Houses in Multiple Occupation (HMOs) which allowed landlords to change their properties from a C3 (Dwelling House Use Class) to C4 (HMO) without the need for planning permission. However, the amendment also means that local authorities have the power to remove permission for the change of use from C3 to C4 by way of an Article 4 Direction. It is our opinion that Article 4 Direction should be removed from planning law because local authorities are using the rules to designate whole areas. This is limiting the number of HMOs in places where there is a desperate shortage of these types of property. As a result this is putting up rents for those who can least afford it.

#### Housing and Planning Bill 2015-2016

The Housing and Planning Bill 2015-2016 has been introduced to make provision for housing, estate agents, rent charges, planning and compulsory purchase. Part two of the Bill introduces new financial sanctions for use against rogue landlords who break the law. The Bill also enables local authorities to identify rogue landlords within their localities and place them on a database. Local authorities will also have the ability to remove the worst offenders from the sector through banning orders.

With these new measures in mind many letting agents are also sales agents and therefore regulated under the Estate Agents Act 1979. Therefore the planned measures under the Housing and Planning Bill provide an opportunity to remove the current situation where an estate agent can be banned from selling properties but is still legally allowed to undertake lettings activities.



Both NAEA and ARLA believe the body responsible for running the Estate Agents Act regulation should also run the banning orders and blacklisting of letting agents under the Housing and Planning Bill. This will ensure consistency that someone banned as a letting agent cannot start practising as a sales agent or vice versa. The new provisions outlined in the Housing and Planning Bill for letting agents should be brought into force as soon as possible.

#### Client Money Protection (CMP)

It should be compulsory for letting agents to be members of a Client Money Protection (CMP) scheme. It is estimated that letting agents currently hold approximately £2.7 billion in client funds and yet, if they are not covered by CMP, both the landlord and tenant stand to lose their money. The Government has introduced an enabling power into Housing and Planning Bill, which provides a power to make regulations to require letting agents and property management agents to belong to a CMP scheme. When the Government reviews its property transparency measures later this year we urge the Government to make CMP mandatory for all property agents in the UK.