

**A DRAFT FRAMEWORK FOR
A STATUTORY SCHEME FOR LICENSING
LETTINGS AND MANAGEMENT AGENTS**

Prepared by The National Approved Letting Scheme



Foreword

The National Approved Letting Scheme (NALS) has prepared this Framework document to provide detailed ideas for a licensing scheme to raise the standards of service from managing and letting agents to give greater consumer protection. NALS has received government support to provide an independent, voluntary, accreditation scheme since 1999, with backing from the Association of Residential Letting Agents (ARLA), now part of the National Federation of Property Professionals (NFOPP), and the Royal Institution of Chartered Surveyors (RICS). The NALS scheme requires good quality standards from its members, including signing up to an independent Ombudsman redress service. But despite progress in helping landlords and tenants to identify agents of good quality, clearly a voluntary accreditation scheme will never cover all agents and do away with poor practice.

In the summer of 2009, NALS organised two Consultative Forum meetings for representatives from the private rented sector and interested parties, including consumer groups, to take soundings on its proposals for a comprehensive licensing scheme. I was delighted to chair these sessions and I pay tribute to NALS for organising these events.

Our discussion was underpinned by the statement in Julie Rugg's report for the Communities and Local Government department: "*properly licensed managing and letting agencies would be a valuable addition to the [private rented] sector and offer greater levels of consumer protection to landlord and tenant*".

The Rugg Review suggested, as one of six "policy directions of travel", full, mandatory and independently-led regulation which, together with enhanced training within the sector, would provide greater consumer protection. The government's response has been to suggest it is persuaded by the arguments in this Review - and also put forward by the Law Commission and Sir Bryan Carsberg - for "mandatory regulation of private sector letting and managing agents".

This line was strongly endorsed by stakeholder soundings and received full backing from our Consultative Forum meetings.

The starting point for the proposed framework that follows, therefore, is wholehearted agreement that mandatory regulation is needed for the protection of consumers. I hope the detailed points here provide the basis for the next stage in devising a national licensing scheme that will reward good practise and drive out poor performance in this sector. I am delighted that the CLG has set up Task and Finish groups to take the process forward and I conclude with sincere thanks to all the participants in the NALS consultation exercise."

Richard Best.

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Definition of a letting and management agency firm

A lettings and management agency firm is one that for any consideration takes instructions from a house or flat owner to introduce a tenant/s to occupy the premises and/or provides a property management service for the owner/landlord of their premises during the tenancy or at other times, which may or may not include collecting the rent.

EXECUTIVE SUMMARY

- 1 Following the Rugg and other Reviews there is broad agreement across Government, the private rented sector and consumer organisations that statutory regulation of letting and management agency firms is desirable. This paper sets out in some detail how such licensing might be structured and taken forward.
- 2 The aim is to create a licensing scheme that provides confidence for landlords and occupiers that a licensed letting and managing agency firm upholds good practice standards. It should be achievable by all well-conducted firms of letting and managing agents without imposing an unreasonable burden on practitioners.
- 3 This paper proposes a model and detailed arrangements for licensing including a draft Code of Conduct (Part 1) and describes the nature of a licensing body (Part 2)
- 4 All licensed agency firms will have to adopt the statutory over-arching Core Principles of Conduct; the firms will also have to be members of an OFT approved Ombudsman scheme, whose Code for lettings provide the detailed definitions of proper service standards and performance to be delivered to the customers. A licence will be a legal requirement for providing a lettings and management service.
- 5 Part 1 describes the key essential detailed criteria and conditions for the grant of a licence to a firm including client money protection and professional indemnity insurance, a low-cost licence fee, a simple on-line application process, annual compliance re-evidencing and monitoring including financial probity, sanctions for non-compliance, a public information web-site with details of all licensed lettings agency firms, including details of those whose license has been withdrawn or converted to a conditional licence, a complaints system with an independent appeals process for any firms of letting agents who are refused a license and regular reports to Government.
- 6 Part 2 describes a body to implement and administer the licensing scheme which will be independent of the industry, not-for-profit, sponsored by Government, self-funding (from licence fees and other sources) and accountable to a Consultative Council of stakeholders.

Introduction

- 7 This is a proposed framework for setting up and establishing a statutory scheme for the regulation of all letting and managing agency firms operating in England, as indicated in the Rugg Review. The Rugg Review urged that *“properly licensed managing and letting agencies would be a valuable addition to the [private rented] sector and offer greater levels of consumer protection to landlord and tenant”*. Following this and other reviews there is broad agreement across the private rented sector and consumer organisations that regulation is desirable and this paper sets out in some detail how such licensing might be structured and taken forward.
- 8 The aim is to create a licensing scheme that provides confidence for landlords and occupiers that a licensed lettings and management agency firm or sole trader upholds good practice standards. It should be achievable by all well-conducted firms of letting and managing agents without imposing an unreasonable burden on practitioners. The licence will be for a prescribed minimum basic level of service in which the customers can have proper confidence; it will provide a portal to legal operation and an entry-level standard platform of quality – a number of agencies and sole traders will already have significantly higher qualifications and standards for example membership of a professional body or a BTEC or similar qualification.
- 9 All licensed agency firms and sole traders will have to adopt the statutory over-arching Core Principles of Conduct; the firms will also have to be members of an OFT approved Ombudsman scheme, whose Code will provide the detailed definitions of proper service standards and performance to be delivered to the customers.
- 10 The statutory licence for a firm would be granted to the firm and via licensing the principal and all those partners and directors of the firm who have responsibility for controlling and administering the firm and who as licence holders would have responsibility for the entire agency’s compliance with the criteria for holding a licence. In the case of a sole trader, the proprietor would be the licence holder. This will be a legal requirement for providing a lettings and management service.
- 11 There will be key essential detailed criteria and conditions for the grant of a licence to a firm or sole trader, a low-cost licence fee, a simple on-line application process, annual compliance re-evidencing, a public information web-site with details of all licensed lettings agency firms, including details of those whose license has been withdrawn or converted to a conditional license, a complaints system with an appeals process for any firms of letting agents who are refused a license and regular reports will be made to Government.
- 12 A statutory licensing scheme will have to be capable of modification as necessary in response to changes in the business and the operating environment.
- 13 The body to implement and administer the licensing scheme will be independent of the industry and sponsored by Government.
- 14 This paper proposes arrangements for:

Part I Licensing

- the licensing scheme
- the Code of Conduct for agency firms and sole traders

- the criteria and requirements for gaining a licence
- the application process
- the process for re-evidencing compliance
- quality assurance systems
- criteria for and process of refusing a licence
- criteria for and process of withdrawing a licence
- criteria for and process of conditional licences
- the imposition of fines
- the process of appeal
- complaints against the Licensing Body
- auditing compliance of licensed agents
- unlicensed agencies
- customer satisfaction surveys of the performance of agents
- a web-site of information
- a system for collating, analyzing and reporting on information on licence-holders

Part II The Licensing Body

- independent and government sponsored
- vision
- mission
- structure and governance
- financial framework
- key performance indicators
- the Consultative Council

Part I Licensing

The statutory licensing scheme

15 A licence will provide the legal basis for operation; agency firms will be licensed by a licence under which all principals, partner/s and/or directors will be responsible. It will be conditional upon demonstration that the firm's operations fully meet all the essential statutory criteria and detailed requirements for a licence, including belonging to a prescribed redress scheme. The licence will be subject to regular and appropriate re-evidencing of compliance. The agency firm will receive a licence number for display on all their documentation and an authorized logo to display in all their offices and all their material; they will be required also to display the names of all licensed principals, partners and directors.

Code of Conduct

16 It will be a statutory requirement that all letting and management agency firms must adopt the statutory over-arching Core Principles of Conduct which will set out their commitment to providing their customers (landlords and tenants) with a good quality and responsive service, value for money, customer protection, openness, fairness, equality and transparency. The Core Principles define what consumers can expect and the quality of service to be delivered.. The details of service delivery will be set using as a basis the standards in the Codes of the prescribed redress bodies for example the Property Ombudsman's Code of Practice for Letting Agents which is awaiting OFT approval and almost 6,000 letting agents firms have signed up to it or the

Surveyors Ombudsman Scheme Code. Further development work is being progressed to define the precise standards required to obtain a licence. An additional consideration is whether a licensed agency firm should be required to refuse to let or manage property in a poor condition and how this relates to requirements that may be placed on landlords under any statutory landlord registration scheme.

- 17 All licensed firms will be expected to display prominently copies of the Core Principles of Conduct in their offices for their customers.

Draft code of conduct

Core Principles for Letting and Managing agents

1. We will observe our legal duties as a licence holder in delivering our services to landlords and tenants
2. We will conduct our business with integrity, decency and honesty
3. We will provide clients with clear written terms of business and charges before entering into a contract
4. We will keep the affairs of each client confidential
5. We will provide a good quality, fair and transparent service to each client and our staff will have the skills and knowledge to deliver this
6. We are members of a Ombudsman scheme for client's complaints
7. We will hold all client monies separately and it will be fully insured
8. We will have professional indemnity insurance to protect clients
9. We will not discriminate improperly in relation to any person

- 18 Property management agents of leasehold property will need to come under the licensing regime with an appropriate code of conduct. This will be put forward in a separate paper.

- 19 Licensing of management companies of leasehold properties under the right to manage, head lessors and commonhold arrangements will also need to be considered.

- 20 Further consideration will need to be given to whether bodies related to or part of an RSL (registered social landlord) group operating in the private lettings market will require licensing for the protection of the consumer.

The Criteria and Requirements for gaining a licence

- 21 The criteria and requirements for the grant of a licence will cover the following in addition to the Core Principals of Conduct above:
- Prescribed standards of service
 - Verification that principals, partners or directors of firms have not been subject to an OFT warning or banning order or are undischarged bankrupts or been a director of a company which has entered into liquidation (except for the purpose of amalgamation or reconstruction of a solvent company) nor entered into an arrangement or composition with creditors
 - protection of all client monies in addition to any deposit money
 - Professional indemnity insurance (with a minimum limit of indemnity to be defined)
 - Annual certified audit reports by a recognized independent qualified accountant
 - Clear complaints handling procedures
 - Membership of an independent redress scheme
 - Participation in independent customer satisfaction assessments
- 22 These criteria provide a proven and widely-accepted basis for public protection which is achievable by and accessible to all well-run firms of lettings and management agents. The provision of insurance to protect client monies for an increased number of licensed agency firms is being confirmed - it will be similar to the statutory Tenants Deposits schemes where agents hold the deposits which have insurance to cover any missing money.
- 23 In time, the aim will be to progress to a requirement for training and qualifications, with continuing professional development, but given that many of the agents currently trading do not have specific qualifications an initial requirement for qualification could be overly restrictive and result in a large number of agencies being put out of business.

The application process

- 24 The application process will be primarily on-line. The application must be personally certified by all principals, partners or directors of the firm . The application must cover all offices of the lettings and management agency firm. The process will be based on current application processes, which work economically and efficiently. It is anticipated that turnaround of complete applications will be within a reasonable timescale. Guidance for completion of the application process will be on-line and in published leaflets. There will also be an advice line for assistance. Consideration will be given to the need to provide the application processes and the advice line in various languages.
- 25 Those agency firms affiliated to one of the professional bodies or accredited by NALS, upon proof of their current membership or affiliation with appropriate notification of details of all principals, partners and directors of the individual firms will be automatically licensed. This will be at a nominal licence fee. The licence will continue with annual confirmation that the firm remains affiliated to one of the professional bodies and confirmation of the designated license holders.
- 26 Agents who are neither accredited nor affiliated will need to go through the full application process to demonstrate that they meet in full the statutory criteria and requirements before they will be granted a licence.

The Process for re-evidencing compliance

27 Each year all licensed firms will be required to re-evidence compliance with all of the statutory requirements for gaining a license and confirmation of the designated license-holders. Firms will be notified individually of their due date for submission of their required evidence. Evidence of continued membership of a professional body will qualify for re-evidencing with confirmation of the identity of license-holders. Failure to demonstrate full compliance by the due date will initiate the licence withdrawal process and/or the possible imposition of a fine (see below). Completed and compliant submissions will be processed within 7 working days.

Quality assurance systems

28 Quality assurance will be of paramount importance and robust systems to ensure that no licences are granted erroneously will be put in place.

29 Incomplete applications will be returned promptly confirming the information still required before a licence can be granted. Applications where there are concerns about the criteria being adequately met will be dealt with by a senior member of the staff team. There will be systems for safe handling of payments, with relevant audit processes.

Criteria and process of refusing a licence

Existing firms

30 A licence will not be granted if the detailed criteria and requirements are not met in full. Existing firms or sole traders that apply and that do not meet the requirements would in most cases be offered a Conditional Licence (see below). Support and guidance will be offered to the firm or sole trader with the opportunity to reapply for a licence within strict and specified timescales.

New or start-up firms

31 A licence will not be granted if the detailed criteria and requirements are not met in full. A refused application will be returned with an explanation of the grounds for refusal (together with the licence fee payment). Encouragement to re-apply will normally be given together with information about available resources such as training and courses.

Criteria and process for withdrawing a licence

32 If the Licensing Body becomes aware at the annual compliance re-evidencing check or at any other time that the agency firm is failing to continue to meet the published criteria and requirements for a licence, all principals, partners or directors or in the case of a sole trade, the proprietor will, after due process, be held responsible. Possible actions that could result include:

- the complete withdrawal of a licence for the most serious breaches (a tariff will be set defining serious breaches leading to withdrawal)
- removal from the licence of one or more of the designated licence-holders
- the replacement of the licence by a conditional licence (as described below)
- the imposition of a fine for less serious breaches (a tariff will be set of fines relating to defined breaches)

33 This will be dealt with by the Chief Executive Officer and reported to the Board.

Complete withdrawal of a license

- 34 This is the most serious step that the Licensing Body can take and due regard will be given to the possible consequences for landlords, tenants and employees. Arrangement will need to be put in place where a licence is removed from a firm which is trading and from a firm which has already ceased trading. An impact assessment will be undertaken before withdrawal is implemented. When a licence has been withdrawn a notice will be placed on the web-site and in local papers.

Conditional licence

- 35 In the first year of licensing a refused applicant agency firm or sole trader, or at any time a licensed agency firm or sole trader that does not continue to meet the statutory criteria and requirements, may be granted a conditional licence for a limited and specified period of time so that the business can continue and the license-holders can rectify the failure/s. The issue of a conditional licence will be the responsibility of a senior executive of the Licensing Body and reported to the Chief Executive Officer and the Board. The agency firm or sole trader will be required to notify all of their customers that they have now received a conditional licence and its term so that they can inform their customers of the action that they propose to take. The Licensing Body will place information about all conditional licences on its web site.
- 36 If at the end of the limited and specified period the agency firm or sole trader has still not fulfilled the published criteria and requirements, their conditional licence will expire. This action will be the responsibility of the Chief Executive Officer and reported to the Board. At this point the agency firm or sole trader will have to cease trading as a letting and management agent. The body will offer to assist landlords and tenants affected to transfer their business to another local licensed firm. A public advertisement of this will be placed in the local media and on its web site by the Licensing Body. An agency firm may re-apply for a licence but they will have to satisfy The Licensing Body that they can now fully meet the statutory requirements.
- 37 The Licensing Body will have discretion to extend a conditional licence in exceptional circumstances; this also will be the responsibility of the Chief Executive Officer and reported to the Board.
- 38 Consideration will be given to a means of mitigating the effects on the public of refusal or withdrawal of a licence; such mitigation processes exist in other commercial spheres subject to licensing, for example the legal profession.
- 39 The criteria and basis for any refusal or withdrawal will be clearly defined within the application information.
- 40 There will need to be quick and effective liaison with each of the Tenancy Deposit Schemes to inform them of an agency firm losing their licence or receiving a conditional licence.

The imposition of fines

- 41 Fines will be imposed for compliance failures such as delays in submitting full re-evidencing information, lapses in membership of an Ombudsman scheme, or delays in renewing insurances. There will be a published statutory tariff of fines for different degrees of failure.

The process of appeal

- 42 There are five main areas where the license-holders of an agency firm can appeal against a decision of the Licensing Body:

- a refusal to grant a licence
- withdrawal of a licence
- the removal of one or more license-holders
- issue of a conditional licence
- refusal to extend a conditional licence
- the imposition of a fine

43 Appeals may be dealt with by an approved and appointed independent arbitrator or there may be the requirement for a further judicial process. The process for appeals will be published and the license-holder/s of the letting agency firm concerned will be notified of their right to appeal and the process for making an appeal when any of the above sanctions are applied.

44 Appeals must be made in writing together with payment of the published charge (to be determined) to the appointed independent arbitrator within 6 weeks of the above notification. The arbitrator will have 10 working days within which they may disallow the appeal on the grounds of its being frivolous, vexatious or there being no case to answer, and must notify both parties of the decision. Costs of successful appeals will be borne by the Licensing Body. Any reasonable decision of the arbitrator will be binding on the Licensing Body. If the Licensing Body does not implement the decision of the arbitrator, the license-holder/s of the letting agency firm have recourse to judicial review.

Complaints against the Licensing Body

45 Complaints can be made by anyone including service users such as agents, landlords, tenants, local authorities and consumer bodies. There will be a multi-stage procedure for the internal management of complaints against the Licensing Body similar to that of other appropriate bodies.

Auditing compliance of licensed firms of agents

46 The certification by all principals, partners or directors of the agency firm or the proprietor of a sole trader applying for a licence is an important step in insuring compliance with the criteria and requirements for gaining a licence. The further steps that the Licensing Body will implement to assess compliance will be:

- cross data verification checks
- random telephone inspections
- independent accountants' reports from a member of an approved panel of accountants
- announced or unannounced inspection visits

47 Consideration will be given to the auditing of agents who have an unacceptably high number of findings against them by one of the redress bodies.

48 There will be a regime of announced and unannounced inspection visits. Announced visits will follow a published schedule and agency firms will pay for these on a sliding scale that reflects their size and operation. Unannounced visits will be paid from the licence income. Unannounced visits and other aspects of compliance assurance will reflect the perceived degree of risk to the consumer of particular agency firms, eg a high volume of complaints against an agency firm.

49 Whilst public complaints against licensed letting agency firms are properly the remit of the Ombudsman and will be forwarded to them, such complaints received by the Licensing Body will be noted and where appropriate acted upon through auditing compliance.

Unlicensed agencies

50 Letting agency firms or sole traders trading without a statutory licence will be trading illegally. In the first instance the firm or trader should be given the option of becoming licensed within strict and defined timescales. In any event, any reports of such agencies to the Licensing Body will be referred to the appropriate authorities eg Trading Standards and/or police. All related organisations such as tenant deposit protection schemes will require a licence number as a condition of entry for the letting agency firm. A legal requirement for all tenancy agreements to contain letting agents licence numbers would be an added safeguard.

Customer satisfaction surveys of the performance of agency firms

51 Independent bi-annual customer satisfaction surveys will be commissioned by the Licensing Body from a leading University or research body. Agents' agreement to participate will be a requirement of the application process.

52 The survey will include developing a relationship with local authorities through their housing intelligence function to improve the evidence base as outlined in the Rugg review in order to assess improvements in standards.

53 The development of a system for quick surveys that will provide regular comparable data on the sector is currently under active discussion.

Web-site of information

54 The Licensing Body will have a web-site with at least the following main functions:

- information about the body – its structure, governance and contact details
- information for agents
- portal for applications and re-evidencing compliance reports
- “find-a-licensed-agent” facility including conditional and withdrawn Licenses
- consumer information – for landlords and tenants
- key documents e.g. core principals of conduct, regulation detailed criteria and requirements for a licence
- news and information about the sector

System for collating, analyzing and reporting on information on licence-holders

55 The Licensing Body will create and maintain a database with information on licence-holders which will be freely available. The database will include details of licensed agency firms, offices and individual licence-holders in the firm, the size of the agencies, licensed sole traders, the geographical spread and other appropriate information held by the Licensing Body.

56 A detailed annual report on the lettings management market will be made to Government. This will include the Customer Survey findings. Once Department for Communities and Local Government (CLG) have received and approved the report, it will be published on the Licensing Body's web-site.

Part II The Licensing Body

57 The body to implement and administer the licensing scheme will be independent of the industry, not-for-profit and sponsored by Government.

Vision statement

58 A licensing service that is respected by lettings and management agency firms and trusted by their customers.

Mission statement

59 To deliver a licensing service for letting and management agency firms which provides them with a fair market place and inspires a high level of confidence amongst landlords and occupiers that a licensed agent upholds good practice standards.

Structure and governance

60 The Licensing Body will be a legal entity which will discharge the licensing functions so long as it has the relevant Government sponsorship. It will be fully independent of the lettings and property management industry. It will have a Board that will be accountable to Government, and scrutinized by a Council of representative interests. The Board will be responsible for the licensing process and for ensuring that the process is efficient, effective and transparent and provides value for money with measurable outputs; the key performance indicators, business plan and budgets will be agreed annually with Government. The licensing criteria and requirements will be reviewed regularly with Government. The budget, business plan and out-turn performance will be reported annually to the Council. The Licensing Body will have a staff complement and an office.

Financial framework

61 The Licensing Body will be not-for-profit and self-financing, all its on-going expenditure being covered by its income from licence fees and sale of goods and services (publications, web placements, etc)

- i. the level of licence fees will be competitive, affordable and good value for money
- ii. there will be a low-cost initial administration charge
- iii. there will be Client Money Protection for non-affiliated agents
- iv. any surpluses will used to support and further the work of the Licensing Body

Key performance indicators

62 The exact number of letting and management agents in England and Wales is not known and turnover in the industry implies that the total will not be constant. The introduction of licensing will help to establish a more accurate assessment of the numbers.

63 The key performance indicators for the Licensing Body will be agreed with the Consultative Council (see below) and Government. The KPIs will be measurable with targets and will be reviewed regularly with Government and the Consultative Council.

The Consultative Council for Licensing

- 64 The Council will have a formal constitution and rules agreed with Government and be chaired by an independent President. It will comprise a balance of representatives of:
- the private rented industry
 - consumer bodies
 - local authorities
 - other interested parties.
- 65 The role of the Council will be to advise the Board on policy, receive the annual budget and business plan, monitor and scrutinize the performance of the Licensing Body and act as a channel of communication between stakeholders and the Licensing Body. Membership of the Council would be widely advertised.
- 66 The Council will meet periodically and receive reports from the Directors of the Licensing Body. These reports will include an analysis of the performance of the Licensing Body, highlighting areas of note and any issues of concern. The Chair and CEO of the Licensing Body will attend Council meetings to answer any questions from members.

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NALS CONSULTATIVE FORUM INCLUDED REPRESENTATIVES FROM THE FOLLOWING ORGANISATIONS:

ARMA
Brent Tenants Rights Group
ARLA
NLA
LACORS
TPOS
NACAB
BPF
Guild of Lettings and Management
NALS
NUS
RICS
CIH

Shelter
Crisis
Property Standards Board
Foxtons
Goldschmidt & Howland
Savills
Belvoir Franchising