

**Call for Evidence**  
**Protecting consumers in the letting and managing agent market**  
**Response from ARLA Propertymark**  
**November 2017**

**Executive Summary**

- A new regulatory approach is needed for letting agents which should also include both block management and sales agents.
- Agents should be required to hold a specific residential lettings and property management qualifications at a minimum of Level Three in order to practice.
- There should be a single Code of Practice for everyone working in the industry.
- The framework for regulation should build on existing best practice through requiring membership of a professional body who are overseen by an overarching regulator.
- Statutory enforcement should be via Trading Standards with oversight from the overarching regulator.
- There should be a focus on protecting consumers through transparency of banned agents and publishing details of disciplinary action taken against them.
- A major communication campaign is required to increase awareness of any new regulatory regime and the additional consumer protection it provides.
- Government should align the timetable for regulation of agents with the proposals to implement mandatory Client Money Protection (CMP) and the tenant fees ban.

**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.
3. ARLA Propertymark represents letting agents and therefore we will only be replying to this consultation as it applies to the lettings industry.

## CHAPTER ONE: 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?**

4. This question relates to the leasehold sector rather than the lettings industry and therefore it is not applicable for us to reply.

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

5. Yes, ARLA Propertymark believes that a new regulatory approach is required for letting agents. We have long held the view that the Government cannot continue legislating in a piecemeal fashion. This approach is unmanageable and unenforceable as demonstrated by the significant increase in legislation governing the sector over the last few years but no corresponding increase in prosecutions. We believe that overarching statutory regulation of the whole sector is needed. Ensuring agents are suitably qualified and meet minimum competency standards is the only way to drive up standards of service for consumers and eliminate existing issues in the sector.
6. ARLA Propertymark is committed to ensuring consumers receive the highest levels of service when looking to buy, sell, rent or let a property. We believe that agents should be required to offer consumer protection through belonging to a Client Money Protection (CMP) scheme, holding appropriate professional qualifications and undertaking regular training as this form of mandatory regulation will give consumers confidence and reassurance whilst simultaneously improving the reputation of the industry.

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

7. We do not believe there are alternative means to regulation the Government should consider for driving up standards and professionalism in the sector. Indeed, rather than “aside from”, we believe the correct method is “in addition to”. Regulation in isolation will not work because, as with any industry, there will always be a minority who flout the regulations. Therefore, regulation must be combined with adequately resourced enforcement agencies who are not wasting their limited resources on administrative licensing schemes.
8. Currently, laws are passed but not enforced. Up to June 2015, there were 145 laws with over 400 regulations relevant to property lettings<sup>1</sup>. Despite the political will of successive governments to improve the situation for tenants, passing a continuous stream of new

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<sup>1</sup> [http://www.propertychecklists.co.uk/downloads/20170508\\_1](http://www.propertychecklists.co.uk/downloads/20170508_1)

laws only resulted in 428 landlords being prosecuted for housing offences in England during 2014<sup>2</sup>. Councils need to proactively monitor the private rented sector within their areas. However, to do this, they must be adequately resourced. Government has already made strong progress in this area by allowing local authorities to keep the fines that are generated by enforcement activities. However, in many cases this money is not going to further resource the enforcement teams and instead being diverted to fund other council services. Therefore, Government must ensure these fines are ring-fenced for further enforcement activity in order to create properly resourced enforcement bodies. Such a move would, for example, allow a local authority like Birmingham City Council to use its current five Environmental Health Officers, which are expected to cover a city of over one million people, to build and resource a much larger team through their own enforcement activities.

9. However, instead of taking this approach, many local authorities are choosing to introduce discretionary licensing schemes in an attempt to drive up standards. For example, in the last month alone, Manchester approved its second Selective Licensing scheme, Havering is introducing Additional Licensing and Walsall has announced plans to introduce Selective Licensing. Pressure on budgets mean that local authorities cannot resource both the administration of the schemes and the associated enforcement activity; causing the schemes to fail because councils have to expend so much staff time administering the scheme that there is very little left to enforce against those who do not get licensed. Local authorities are relying on the *introduction* of a scheme to act as a deterrent but in many areas, rogue landlords and letting agents are assessing the risk of prosecution to be so low that they ignore the requirement to get a license and continue to let sub-standard housing at high costs to tenants.
10. By way of example, in Warwickshire, a Borough Council employee has told us that if they choose the route of selective licensing, the local authority would require two new members of staff to administer a scheme for the 5,000 private rented properties in the area. As the Council does not have the resources to employ additional staff they are likely to divert existing staff from enforcement to administrative activities.

**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?**

11. Consumers currently benefit from those agents who already choose, voluntarily, to belong to a professional body, such as ARLA Propertymark, and in doing so, adhere to high standards and professionalism. Therefore, the focus of any new regulatory regime

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

must be on ensuring those same consumer protections exist across the whole industry rather than being provided solely by those agents who have chosen to be regulated through one of several professional bodies.

12. We believe that individuals, companies and officers should be treated differently. Similar to many other professions, in order to ensure there is a properly trained workforce who have the correct skills and the necessary understanding of the regulatory and legislative landscape in which they operate, we believe that individuals should be required to hold professional qualifications in order to practise. We will elaborate further on what these qualifications should be in this response to questions in Chapter Two.

13. For companies, we would argue they should be required to meet the following obligations:

- Be members of a Government-approved Client Money Protection scheme (see Propertymark's response to the DCLG consultation on Mandatory Client Money Protection Schemes for Property Agents)<sup>3</sup>;
- Have a properly-designated client account for their client funds which is independently reviewed on an annual basis;
- Hold Professional Indemnity Insurance with levels suitable to the size of their business;
- Belong to one of the three Government-approved redress schemes for letting agents
- Follow an approved Code of Practice.

14. We believe that the officers of companies (the Principals, Partners or legal Directors) must be held liable for complying with these company obligations. Regulation needs to acknowledge that employees cannot be held responsible for actions which are beyond their control and therefore liability for penalties and offences relating to company obligations must fall to those officers who are responsible for the business.

**ii. What types of services should be included? And should any types of companies or services be excluded?**

15. We believe that all companies engaging in lettings agency work should be covered. The types of services that should be included are those that fall under Clause 19 of the Draft Tenant Fees Bill<sup>4</sup>, which refers to:

- Work carried out for a landlord who wants to let their property to a tenant; or
- Work carried out for a tenant who is looking for a property to rent.

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<sup>3</sup> <http://www.arla.co.uk/media/1046600/mandatory-cmp-schemes-response-from-arla-propertymark.pdf>

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656274/Cm\\_9529\\_Tenant\\_Fees\\_Bill\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656274/Cm_9529_Tenant_Fees_Bill_Web_Accessible.pdf)

**iii. Should any other classes of people or property professionals be covered by any regulator?**

16. To ensure consistency in an industry with multi-disciplinary firms, the Government should widen the scope of regulation to include both sales agents and block management agents. Ensuring that the whole housing market is under the same regulatory umbrella will reduce confusion, inconsistency and cases of where services fall between different regulatory regimes.

## CHAPTER TWO – 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?**

17. We believe there should be minimum entry requirements for letting agents. This requirement should be both a fit and proper person test and a professional qualification.
  
18. We believe the professional qualification recommended for individuals in response to Q1.4 should be set at a minimum of a Level Three; a vocation qualification akin to an A-Level in academia; that covers the syllabus attached at Appendix One.
  
19. Setting entry criteria at this level would follow the requirements, which we fully support, that will shortly be introduced in Scotland under their agent regulation legislation. In Scotland, Propertymark Qualifications' equivalent qualification (Level Six Award in Residential Lettings and Property Management) is recognised as one of two acceptable qualifications.
  
20. With the raft of existing legislation governing the lettings industry, we firmly believe training courses that last from one-day to one-week for example are not enough to provide agents with the necessary understanding of the industry or legislative environment in which they operate. For example, Propertymark Qualifications estimate that it takes 120 hours of study to achieve their Level Three qualifications. This depth of knowledge (which we believe is necessary to practise) cannot be imparted or adequately assessed on a training course.
  
21. We firmly believe that any qualification or training course mandated by Government should never go below the minimum standard set by Government for the Housing and Property Management Trailblazer Apprenticeships. Established by and for staff in the social and private rented housing sectors and approved by Government, it operates at a minimum of a Level Two and therefore it would be inconceivable for Government to mandate lower qualification criteria for a business owner than an apprentice.
  
22. It is important to raise at this juncture the transitional provisions that will be required should Government choose to introduce minimum entry requirements for the sector. Where agents have achieved a suitable qualification in the three years preceding the introduction of qualifications they should be classified as meeting the requirements. However, if an agent has achieved their qualification more than three years before the introduction they should be required to do 20 hours of additional training related to letting agency work. This should be made up of 15 hours of formal training and five hours

of informal training as this would be in line with newly introduced requirements for letting agents in Scotland.

23. ARLA Propertymark only represents letting agents and we are replying throughout this consultation in this capacity only. However, in line with our answer to Q1.4, we believe that sales and block management agents should also be required to follow similar entry criteria to those suggested above in order to ensure consistent entry requirements across all property disciplines.

24. Finally, we do not believe this would stifle innovation. Indeed, we feel the opposite. Requiring agents to have greater knowledge of the industry and laws governing their profession will provide them improved visibility of the gaps in the market and thus a greater ability to innovate new solutions to existing problems.

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

25. We believe that any qualification should cover the topics taught in Propertymark Qualifications' Level Three Technical Award in Residential Letting and Property Management which are detailed at Appendix One (and regularly updated).

26. This industry-leading qualification has been designed and developed over a number of years by practitioners, lawyers and academics to provide letting agents with a comprehensive knowledge and understanding of the industry, best business practices and the legislative framework in which they practise. Its syllabus contains everything that those academics, lawyers the industry leaders believe are necessary for an agent to practise to a high professional standard. Broken down into four key themes the qualification teaches:

- General Law, Health and Safety, and Security in relation to Residential Lettings and Property Management;
- Legal aspects of Lettings and Management (the legal framework);
- Residential Property Lettings Practice (i.e. best business practice in the creation of a tenancy);
- Residential Property Management Practice (i.e. best business practice in the management of a tenancy).

27. Other providers of very similar qualifications for letting agents that would likely meet these requirements and include the City and Guilds Housing Property qualifications<sup>5</sup> and those offered by the Awarding Body of the Built Environment (ABBE)<sup>6</sup>.
28. In addition to specifying what any qualifications must cover, we believe that Government must also ensure that the companies providing the qualifications (Awarding Bodies) are sufficiently robust and free from any conflict of interest. Such requirements should include:
- The Awarding Bodies and qualifications being regulated by the Office of Qualifications and Examinations Regulation (Ofqual) in England;
  - The Awarding Bodies providing the qualifications should exist as stand-alone companies (i.e. separate legal entities to the professional bodies to avoid any suggestion of conflicts of interest);
  - Where an Awarding Body is affiliated to a professional body (as is the case with Propertymark Qualifications), the Awarding Body has its own governance arrangements and any learner data (information on those studying for qualifications) collected by the Awarding Body is kept entirely separate from member data again to avoid any suggestion of conflicts of interest.
29. If the Government chooses not to require qualifications to be fully Ofqual-regulated, we believe Government should set criteria for how qualifications are assessed to avoid any suggestions of abuse. Such abuses could include having one colleague take the assessment on behalf of another, taking learning materials into a closed-book exam or other commonly used methods of “cheating”. One method to avoid such abuses could be by requiring assessments to take place at recognised and authorised Test Centres; such as the Pearson Vue Test Centres currently used by the Driver and Vehicle Licensing Agency (DVLA) for the Driving Theory Tests.

**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?)**

30. We believe that the minimum qualification level for all staff involved in delivering lettings agency work should be a Level Three qualification designed by and specifically for the lettings industry.
31. However, such a significant change needs to be managed carefully and we recommend that Government adopts a long-term strategy to reach this goal; starting initially, as has been done in Scotland, with a requirement for the business owner to be qualified (or

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<sup>5</sup> <https://www.cityandguilds.com/qualifications-and-apprenticeships/built-environment-services#fil=uk>

<sup>6</sup> <http://www.abbega.co.uk/>

most senior person with day-to-day responsibility for the lettings practice, if not the business owner) together with at least one other person in every branch of the business. This will ensure there is sufficient knowledge in all branches. The second stage would be moving to a position, over a period of time, where all agents need to be qualified in order to practise.

32. Individuals should also be required to undertake at least 12 hours of Continuing Professional Development (CPD) per year. This will ensure that in addition to meeting initial requirements to join the industry, agents continue to learn and develop their skills and understanding as the industry and its associated legislative requirements change. ARLA Propertymark currently delivers over 70 events each year including regional meetings as well as both regional and national conferences to provide letting agents with industry updates, best practice advice and information on recently-introduced and forthcoming legislation<sup>7</sup>.

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

33. Please see our response to the previous questions in this chapter.

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

34. Yes, we believe that a Code of Practice does have a role in regulation. Legislation alone cannot cover all aspects of lettings agency work and therefore a comprehensive Code of Practice under which the industry is required to operate will allow both more detailed guidelines to be provided than that which can be set out in either primary or secondary legislation and the ability to amend the Code easily without statutory intervention when either other legislation affecting the industry or best business practices change.

35. However, at present, there are currently too many Codes of Practice in the sector:
- 2002 Rent-Only Code (the current Statutory Code which is so out of date it is unenforceable);
  - RICS Blue Book (a comprehensive Code but only followed by RICS members);
  - PRS Code (a comprehensive Code but not adopted as a Statutory Code as was envisaged when it was created resulting in it not being widely used);
  - The Property Ombudsman (TPO) Code (the most comprehensive of the Codes within the industry which is backed up by additional Guidance Notes to aid in compliance, accredited by the Chartered Training Standards Institute and the most widely used Code in the sector);

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<sup>7</sup> <http://www.arla.co.uk/events/>

36. It should be noted that ARLA had its own Code of Practice for members until 2014 but decided to drop this in favour of the TPO Code in order to harmonise the use of Codes within the sector. Now all ARLA Propertymark members are required to adhere to the TPO Code irrespective of whether they use TPO as their redress scheme. It must also be noted that of the three government-approved redress schemes under the Enterprise and Regulatory Reform Act 2013, only TPO has a Code of Practice for its members.
37. Multiple Codes create confusion both for the industry as to what Code they should be complying with and for consumers trying to understand their rights.
38. We believe there should be a single Code of Practice for everyone working in the industry. Indeed, we would go further and suggest that a set of key overarching principles should be set out in secondary legislation (which would allow them to be updated relatively easily in response to industry or other legislative changes by Statutory Instrument rather than requiring full primary legislation). These principles would cover the whole property industry (sales, lettings, block management) and would become the Statutory Code which would be used by the Courts to interpret housing legislation. Then, DCLG or a regulator (if this is the model chosen in response to the questions in the following chapter) would hold much more detailed industry-specific codes (one for lettings, one for sales, one for block management).
39. Consideration has been given to one single Code covering all disciplines but it is felt that this would be too difficult to create and too confusing when considering the diversity of work carried out under the various industry disciplines.

**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?**

40. We are answering on behalf of letting agents rather than managing agents and therefore it is not applicable for us to answer this question.

**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?**

41. Please see our response to Q2.5.

## CHAPTER THREE – 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?

42. ARLA Propertymark believe that Option A would be the simplest method of driving up standards and increasing consumer confidence in the sector at the lowest cost to Government. Several professional bodies are already established with membership demanding higher standards than current laws demand. By Government working with these bodies to achieve clear minimum entry standards, this will build on the existing infrastructure in the market and proven performance records. In addition, it would ensure a consistent level of consumer protection across the industry, negate the need to establish a new regulatory structure (thus reducing the costs of compliance for both business and Government) and reflects the way Government currently operates with the redress schemes, Tenancy Deposit Protection (TDP) schemes and the implementation proposals for the mandatory membership of Client Money Protection (CMP) schemes.

43. Therefore, it would be logical for Government to continue in its tried and tested formula of approving schemes (in this case, professional bodies) to ensure industry compliance with a new regulatory regime and ARLA Propertymark will support Government should it choose to implement this route. However, as outlined previously in this response, agencies are becoming increasingly multi-disciplinary and we believe that regulation should extend to the whole property industry (lettings, block management and sales). Therefore, whilst it would be possible for Government to administer approval processes of professional bodies for lettings, block management and sales as well as redress, TDP and CMP, it could become administratively challenging for Government and may be better if all these functions are delegated to an over-arching regulator for the whole industry; as suggested at Option B.

44. The benefit offered by Option B is that an over-arching regulator (such as the Lead Enforcement Authority as outlined in the Draft Tenant Fees Bill) would then have both oversight and enforcement powers for the whole property industry and the other functions within it (TDP, CMP and redress). In such a situation, we would also suggest this regulator would be the most appropriate authority to take charge over the Code of Practice outlined in response to Q2.5.

45. Professional bodies (and the providers of TDP, CMP and redress) should then be required to pay a fee to apply for approval for a license to operate which would cover the cost of the approval and review framework carried out by the regulator with the remainder of their revenue coming from the income received from fines generated through its own enforcement activity. This option therefore brings the two key elements of regulation and enforcement under one, self-funding body.
46. In addition, Option B also ensures the continuity of competition in the market as it will require the professional bodies to compete for members (therefore keeping costs to business low) whilst the regulator ensures standards are adhered to and enforced.
47. Finally, it is essential that the costs to business of any model take into consideration the fact that the industry is already under unprecedented pressure with the tenant fees ban; facing the loss of around 4,000 jobs and a reduction in turnover expected to be in the region of £200 million<sup>8</sup>. For this reason, we do not see the benefit of Option C as it will increase costs to business by duplicating the work of the professional bodies and add an additional unnecessary administrative burden on Government whilst provided no added consumer protection beyond that which is currently available through the professional bodies.

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

48. Ensuring regulation is effective, robust and free from conflicts of interest will be essential if it is to provide true consumer protection and have the confidence of consumers. Therefore, how any regulation is implemented will be of vital importance. In the following paragraphs we detail suggestions relating to the approval process for professional bodies, costs, corporate governance arrangements, other recommendations and the timescales that Government should consider when deciding on how regulation should be implemented.
49. Should Government choose to implement either Option A or B in response to Q3.1, we would suggest minimum criteria must be established against which professional bodies would be required to tender for approval to regulate their members. We would recommend, similar to tenancy deposit protection and the redress schemes, the tendering process should result in five-year contracts being awarded and only approved professional bodies could regulate their members.

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

50. Each professional body should report to DCLG or the regulator using Key Performance Indicators (KPIs). These would include the numbers of agencies in membership, verifications that members are complying with their regulatory requirements (i.e. being properly trained, have Client Money Protection, Professional Indemnity Insurance and are members of a both a redress scheme and tenancy deposit protection scheme). KPIs should also include the number of complaints received, timescales for resolution, details of how complaints were resolved and any sanctions imposed as well as details of those agents who have left the professional body or been expelled in order to allow the regulator to follow-up and ensure the agents are either not practising or take appropriate enforcement action (either themselves or via direction to a local authority enforcement agency).
51. As noted in response to Q3.1, in order to reduce costs to Government, we would suggest that professional bodies should be required to pay a fee as part of their application for approval. This fee would cover the costs of the regulator in administering the tendering / application process. The Legal Service Board, established under the Legal Services Act 2007, provides precedence for such a charging structure as they charge all new applicants £22,000 to apply as “an Approved Regulator” in the legal profession. In addition, the costs associated with administering the regulatory regime to agents would be borne by the professional bodies in Options A or B; whereas these costs would be borne by Government in Option C (probably recovered by charging agents to register which duplicates the work of the professional bodies and adds increased costs to business).
52. In terms of corporate governance, should Government choose to implement Option B, we would suggest the board of the regulator consists of both lay members and practitioners; following the structure which exists within the board of the Legal Services Board.
53. At professional body level, should Government choose to implement either Option A or B, robust corporate governance structures must also exist within the approved professional bodies and these structures should be tested through any tendering process. As with the previous paragraph, we would also suggest this includes a requirement to have a mix of practitioners and lay representatives sitting on professional body boards. In addition, to remove any suggestions of conflicts of interest, we would recommend that there should be clear separation between the membership and regulatory aspects of the professional bodies (such as having the regulatory aspects in separate legal entities to the membership aspects with their own board and governance structures). We would go further and suggest that the regulatory aspects of the professional bodies which handle complaints against members should be required to have Independent Disciplinary Tribunals consisting of both lay members and

practitioners in order to safeguard against the “risk that consumer confidence is undermined where conflicts of interest arise and the independence of the regulator is called into question” as outlined at paragraph 53 of the consultation document.

54. Further, should the professional bodies also provide the approved qualifications, these awarding bodies should operate separately from the professional bodies (again in separate legal entities with their own board and governance structures). This will be particularly important if Government chooses not to require Ofqual regulation for approved qualifications. Such structures will allow the various aspects of regulation to operate independently and impartially thus reducing conflicts of interest whilst ensuring consumer confidence in the regulatory regime.
55. Again, in order to assist with ensuring consumer confidence, as happened with the tenancy deposit schemes when they were first brought into force, we would recommend creating User and Provider Groups whilst regulation becomes established in the market to ensure that the professional bodies are operating as expected and any unanticipated issues are brought to light and dealt with swiftly and consistently across professional bodies.
56. There must also be General Data Protection Regulations (GDPR) compliant Data Sharing Agreements between all approved professional bodies and DCLG / the regulator to ensure that if an agent is expelled from one professional body they are prevented from joining another; as currently exists with the redress schemes.
57. Finally, in terms of timescales, we would like to see regulation brought into force at the same time as the tenant fee ban and mandatory requirement to join a Client Money Protection scheme as combined, this will provide a clear direction to the industry and an holistic approach across several different government interventions in the industry. Further, whilst combining the three interventions into one and bringing them into force at the same time would be a seismic shift in the industry, it would mean they only have plan and execute a change once rather than in a three-stage, piecemeal manner. However, we strongly believe Government should take the necessary time to ensure any regulatory regime is implemented in the best interests of both consumers and the industry and therefore, in light of commitments to implement the tenant fees ban “as soon as possible”, we appreciate that bringing all the interventions into force at the same time may not be practically feasible and therefore a staggered approach of mandatory CMP, tenant fees ban and then regulation may be necessary.

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

58. No, we do not believe that there are other regulatory models that the Government should be exploring.

59. However, there is precedent for the type of regulatory framework set out in Option B in other regulated industries. The most obvious example of which being the manner in which the legal profession is regulated. The Legal Service Board (LSB) is the independent body responsible for overseeing the regulation of lawyers in England and Wales. The Legal Services Board share their regulatory objectives with the “Approved Regulators” of the legal profession who have direct responsibility for the day-to-day regulation of the different types of lawyers. Importantly, their goal is to reform and modernise the legal services market place by putting the interests of consumers at the heart of the system (as is the proposal for agent regulation). The LSB, as super-regulator for the legal profession, would be akin to the overarching regulator as outlined in Option B. The LSB then has “Approved Regulators” to regulate individual solicitors (Law Society) and barristers (Bar Council). These would be akin to the professional bodies in the property industry; regulating based on property discipline.

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

60. Any new regulatory body would need powers in two separate fields. Firstly, it would require powers to grant, amend and revoke approvals for the professional bodies (as well as the TDP, CMP and redress schemes if brought under the same body) as well as impose sanctions on the organisations for any incidence of non-compliance and/or require the professional bodies to change procedures if necessary. It would also need powers to approve the detailed Codes of Practice for each property discipline if Government were to adopt this approach.

61. Secondly, it would need powers to prosecute individuals or agencies for non-compliance itself and/or have the powers to require local enforcement agencies to undertake the prosecutions on its behalf. It would also need to be able to keep any fines received from prosecutions in order to fund itself. Such powers are the same as set out for the Lead Enforcement Authority in the Draft Tenant Fees Bill and under the Client Money Protection consultation proposals. We believe this body could become the overarching regulator suggested at Option B in Q3.1 if the powers suggested in our first point above were to be granted to it.

62. In addition, should either Options A or B to Q3.1 be implemented, the approved professional bodies would also need to have the powers to impose additional training, fines or other disciplinary sanctions felt necessary (up to and including expulsion from

membership) on members in order to ensure compliance with the regulations (although such sanctions do not necessarily need to be drafted into legislation but could form part of the regulator's criteria for professional body approval).

**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 non-compliance?**

63. In the same way that regulation will only work when undertaken in conjunction with effective enforcement, we believe that effective enforcement can only take place in conjunction with regulation. This is because, at present, enforcing bodies must police the whole sector. If enforcing bodies can have the majority of the sector, who are operating professionally and in compliance with legislation, managed through a different process (the regulatory structure we are proposing in this response) then they can target their limited resources on effectively tackling the criminal element.

64. To do this, agents should be required to display their membership credentials in the same way as they are currently required to display their landlord and tenant fees, the redress scheme to which they belong and whether or not they have CMP (or to which CMP scheme they belong once the provisions within the Tenant Fees Ban comes into force).

65. Making it compulsory to display membership credentials effectively separates responsibility between the enforcing bodies and the regulator / professional bodies. These regulatory bodies would be responsible for their members and the local authority enforcement teams would be responsible for those who cannot provide evidence of membership.

66. Statutory enforcement would then be undertaken either by the regulator directly or through local authority Trading Standards departments using the powers outlined in response to the previous question. We believe that enforcement should be carried out at County Council level by Trading Standards as this would mean that enforcement responsibility is in line with other lettings law such as the legal requirement for letting agents to display all fees, charges and penalties under the Consumer Rights Act 2015. Furthermore, Trading Standards are designed to work with and enforce against businesses and whilst regulation will protect consumers, it is businesses which will be regulated.

67. Further, as we have noted previously in this response, where enforcement is carried out, the money collected from fines should go back to the enforcing body and be ring-fenced for further enforcement activities in order to adequately resource enforcing

departments and ensure the new requirements are complied with by the whole market and all consumers are protected.

68. It is vital that the fine reflects the responsibility agents have when carrying out work for landlords and tenants and that the likelihood of enforcement is an actual deterrent to rogue operators rather than being seen as “the cost of doing business”. Therefore, ARLA Propertymark believes that the penalty for non-compliance should be a civil penalty of up to £30,000 and a Banning Order offence. By ensuring that the penalty for non-compliance includes a Banning Order offence this would be consistent with the Government’s approach to enforcement under the Housing and Planning Act 2016; where Banning Orders have been extended to rogue landlords and agents who commit serious offences against tenants.

69. In addition, to make enforcement more effective, we reiterate our call for the list of banned letting agents to be publicly available to ensure that landlords and tenants know if they are using a banned agent. Even if not made publicly available, should Government implement either Option A or B in response to Q3.1, we would recommend that the approved professional bodies be granted access to the database in order to cross-reference their member databases in the first instance and then any new applications against the list to ensure robust compliance with Banning Orders and add another layer of consumer protection into the industry.

70. Furthermore, as we have outlined throughout this response many agencies are multi-disciplinary. As a result, many letting agents are also sales agents. To further highlight the need for regulatory consistency across the sector and to widen the scope of regulation 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. 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. Ensuring that the whole housing market is under the same regulatory umbrella would not only reduce this inconsistency, but further protect consumers.

**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.**

71. As outlined in previous responses, should Government choose to implement Option B in Q3.1, we believe they should establish one new over-arching regulatory body to cover the whole property industry (lettings, block management and sales) which approves professional bodies to regulate the industry in accordance with the criteria set by the regulator. This would ensure consistency across the whole housing market.



## CHAPTER FOUR – 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?

72. We are answering on behalf of letting agents rather than managing agents and therefore it is not applicable for us to answer this question.

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

73. The Tenant Fees Bill, once enacted, will ban letting agents charging fees to tenants and provides an enforcement route should agents flout the law which includes total reimbursement to tenants of any unlawfully charged fees. Therefore, we do not believe any further support is necessary for tenants.

74. We also do not believe that any further support is needed for landlords to be able to challenge unfair fees as existing statutory provisions provide sufficient clarity on the issue. For example, the Consumer Rights Act 2015 makes clear that all fees, charges and penalties levied on landlords as part of their terms of business must be clearly displayed in an agent’s office and on their website. Should these fees not be correctly displayed, a £5,000 fine can be levied by Trading Standards. In relation to how fees should be prominently displayed in offices, Primary Authority Assured Advice<sup>9</sup> states that agents should “use a poster no smaller than A4 in size, entitled ‘FEES’ that is displayed in a place that can be clearly seen by customers”. The Assured Advice also notes that “details of landlord and tenant fees would constitute ‘material information’ for the purposes of the CPRs [Consumer Protection from Unfair Trading Regulations 2008], and so failure to give it fully and comprehensively may also constitute a ‘misleading omission’ for the purposes of [CPR] Regulation 6”. Further, the Draft Tenant Fees Bill, at Clauses 13 – 15 requires said fees to be clearly displayed on third party websites (such as property portals).

75. In addition, The Property Ombudsman’s Code of Practice also provides a comprehensive route of redress for landlords by making clear at clause 5d that “you [the agent] must ensure that the landlord understands your Terms of Business, that all fees and charges are clearly stated and are drawn to the attention of the landlord”. Therefore, should an agent not comply with this, a landlord could approach TPO for compensation in the event they believe they have been charged fees unfairly.

76. Finally, should such provisions be continued into any over-arching single industry Code (as outlined in our response to Q2.5), landlords will be able to approach the Ombudsman about unfair fees charged by agents. The Ombudsman would then be able to adjudicate

<sup>9</sup> <http://www.propertymark.co.uk/media/1043864/how-to-correctly-display-agency-fees.pdf>

on the fees in question and if they uphold the landlord's complaint, the Ombudsman would then pass their adjudication to the agent's professional body who could undertake any necessary disciplinary action against the agent.

**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?**

77. We are answering on behalf of letting agents rather than managing agents and therefore it is not applicable for us to answer this question.

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

78. We believe that any regulator and the professional bodies should act as consumer champions but do not believe they need any additional powers in order to pursue this role other than those already set out in response to previous questions. In defining what we mean by "acting as a consumer champion", we believe the regulator and professional bodies must play a major role in building awareness amongst the general public of any regulation, the consumer protections that regulation provides and what it means to them, how to avoid using unregulated and unlawful agents, and how consumers can access redress when things go wrong.

79. Regulators and professional bodies undertaking this consumer champion role are already seen in other industries (such as the travel industry) and the property sector can learn from the confidence consumers place in ABTA (Association of British Travel Agents) and ATOL (Air Travel Organiser's Licence). The ATOL model is particularly relevant as it provides the same Client Money Protection<sup>10</sup> in the travel industry which the professional bodies offer in the property industry. The only difference being Government supports the pay-outs in the ATOL scheme whereas CMP in the property industry is self-financing by the industry itself.

80. We strongly believe that, as in the travel industry, the professional bodies in the property sector must act as consumer champions. This is why we launched Propertymark in February 2017. Our research showed that the industry was well aware of ARLA (and its four sister associations) and what we do; but the general public – landlord, tenants, buyers and sellers – had very low awareness. Thus, Propertymark was launched to move

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<sup>10</sup> If a travel company with an ATOL ceases trading, the ATOL scheme protects customers who had booked holidays with the firm. The scheme is designed to reassure consumers that their money is safe and provides assistance in the event of a travel company failure.

the organisation away from an industry-facing licensing to consumer-facing protection with the key emphasis being to raise awareness amongst the general public that our members voluntarily adhere to strict Codes of Practice, ensure they are at the forefront of developments in the industry and display the 'Propertymark Protected' logo to demonstrate they are actively ensuring maximum protection for their clients: that they are "Principled, Professional, Propertymark Protected".

81. To achieve this objective, in September 2017, we embarked on an advertising campaign to highlight the importance of using an agent offering Propertymark Protection. As well as the TV campaign which has already started to air across various channels including More 4, Sky and UKTV, we are investing in prominent advertising across digital and social media as well as the property portals (Zoopla and Rightmove). In total, the TV campaign alone has been shown around 3,500 times and has reached over 30 million people; carefully targeting those consumers likely to be using the services of either a sales or lettings agent in the near future.<sup>11</sup>
82. We would therefore strongly suggest that should Government decide to go forward with either option A or B in response to Q3.1, any approval exercise should include a requirement for the professional bodies to demonstrate a clear and adequately resourced strategy for improving consumer awareness of the new regulatory regime.

**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?**

83. Yes, regulatory bodies should have a role in providing information to consumers about the qualifications or performance of property agents. Consumers should be able to search on the websites of professional bodies to determine whether or not their agent (or an agent they are considering using) is trained, meets the necessary regulatory criteria and whether or not there have been any disciplinary judgments made against them.
84. For example, on the Find an Expert pages of the Propertymark website<sup>12</sup>, consumers can search for agents by name, postcode or area (i.e. Warwick). The search will either return the Propertymark Protected branches of the company (if searched by name) or agencies with branches in or around the postcode or area searched. By clicking on a branch, the page will display the name of the Principal, Partner or Director (PPD) of the company plus any qualified person allocated to that branch (if not the PPD) together with contact

<sup>11</sup> <http://www.arla.co.uk/news/september-2017/propertymark-tv-advert-goes-live.aspx>

<sup>12</sup> <http://www.propertymark.co.uk/#find-an-expert>

details for the branch. By clicking on the individual, it will display their qualification and professional body memberships. Both the individual's page and the branch page will also provide details for the company they work for together with a list of branches for that company. In addition, we also publish the outcomes of disciplinary hearings and details of members who have been expelled for any financial irregularities on our website.<sup>13</sup>

85. We would also suggest that the professional body websites should provide consumer guides, fact sheets, leaflets and other educational literature to assist consumers with their property transactions.

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

86. As we have outlined previously in this response, we believe that Government should focus its efforts on establishing a regulatory framework that provides consumer protection without unduly burdening either itself, agents or local authorities with additional bureaucracy and/or resource-intensive administration.

87. We believe the Government should look to the existing best practice in the industry together with the work which the professional bodies undertake in regulating their members and build on this work rather than "re-creating the wheel". By mandating membership of the professional bodies (through either Option A or B in response to Q3.1), this will provide a relatively low-cost solution to Government without unduly burdening the industry. This will separate the "wheat from the chaff" and allow Government and local authorities to target their limited resources on enforcing against those who continue to operate without either the oversight or consumer protection of the professional bodies. This will ensure that the correct emphasis is placed on enforcement rather than administration and ensure public resources are targeted on eliminating the criminal elements rather than administering the professional sector.

88. To provide examples of where we believe the balance between administration and enforcement has not been correct we must look to Rent Smart Wales; and where we believe they have achieved a much better balance, to agent regulation in Scotland.

**Rent Smart Wales**

89. Rent Smart Wales introduced a legal requirement for all landlords with property in Wales to register themselves and their rental property address(es). Landlords must be licensed to carry out lettings or property management activities or arrange for a licensed agent to undertake these activities on their behalf. Agents outside of Wales, carrying out letting

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<sup>13</sup> <http://www.propertymark.co.uk/complaints/tribunal-hearings-and-terminations/>

and management work at a rental property in Wales are also legally required to be licensed.

90. Minimum standards are very low (a one-day training course is suitable for an agent potentially managing hundreds of properties and holding hundreds of thousands of pounds in client funds) and the deadlines for implementation were too tight as landlords and agents were having to get registered, trained and licensed at the same time. Therefore, landlords looking to pass their properties to a licensed agent (because they did not want to get trained themselves) had great difficulty because agents could not get their licenses until they were trained. The Welsh Government should have licensed agents first and then required landlords to either get trained or use an already licensed agent (so that landlords could then find licensed agents through the Rent Smart Wales database).
91. In addition, while the authority has invested significant resources in the registration and licensing process, it is so administratively burdensome on both the authority and landlord/agent that the information provided is not necessarily always verified and is extremely difficult to keep up to date. This is because only the landlord can complete the registration and although valid for a period of five years, landlords must notify the licensing authority if there are changes to the landlord's name, any transfer of the landlord's interest in a rental property, changes to the appointment of the person who is to carry out the lettings or property management work on the landlord's behalf in respect of the property in question or the end of such an appointment. For agents, they have to provide details of every landlord and every rental property which they are managing and notify Rent Smart Wales every time any of these details change.
92. Rent Smart Wales replaced the existing voluntary Landlord Accreditation Wales Scheme and the Welsh Government vastly underestimated the size of the challenge they faced. The administrative burden of the scheme is so high that as of yet, some two years since its introduction, enforcement is almost non-existent. Cardiff Council who were designated as the single licensing authority to administer the scheme for the whole of Wales, have done the best job they can but are not property equipped or resourced to deal with the administration and public enquiries, let alone the enforcement of the legislation.
93. Furthermore, the communication programme for Rent Smart Wales has not reached enough people within the sector with many landlords and agents still unaware of the scheme requirements and others confused as to what they need to do. On 24 November 2017 it was reported that almost 4,000 landlords are still illegally letting properties after

failing to sign up to Rent Smart Wales<sup>14</sup>; highlighting further the vital importance of needing strong communications to raise awareness of any new regulatory scheme.

### Scotland

94. Whereas the Welsh Government's policy intention through Rent Smart Wales is looking at training and the registration of property, the aim of the Scottish Government's agent regulation is to ensure that every agent involved in lettings has the right skills to do the job and meets minimum training standards.

95. The Scottish Government, through letting agent regulation, are introducing obligations for individuals employed in the industry, along with wider obligations for agencies. All agencies will need to ensure relevant staff are qualified and that staff understand and follow the Code of Practice. The Scottish Government recognised that it is essential all letting agents are professionals offering high standards of service. Unlike the training requirement through Rent Smart Wales, achieving a qualification should never be a box ticking exercise. Completing the right qualification drives the credibility of the sector and equips agents with the tools to meet the challenges ahead which is why the Scottish Government required individuals involved in managing properties to have achieved an SCQF Level Six or above qualification (a Level Three qualification in England).

96. However, the Scottish Government have nonetheless created an administrative registration process which effectively duplicates the work already done by the professional bodies and whilst it is much less onerous than Rent Smart Wales, we continue to question its necessity when they could have chosen to require all agents to be members of approved professional bodies who would have borne this administrative burden themselves. Therefore, whilst the Scottish model of agent regulation reflects existing good practice in the industry and is the most sensible form of agent regulation that we have seen, there can be further improvements made to reduce bureaucracy, ensure robust consumer protection whilst simultaneously re-purposing resources from administration to enforcement.

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<sup>14</sup> <http://www.bbc.co.uk/news/uk-wales-42057603>

## APPENDIX ONE: Syllabus for the Level Three Technical Award in Residential Lettings and Property Management

Unit Code	Unit Title	Unit Reference
COM1	Health and Safety, Security and General Law	TBC
<p>This unit is about understanding the general concepts of law relevant to a property professional. It deals with the historical development of the law as well as current concepts, relevant statute and common law. It is designed to enable property professional understanding and carry out their duties to colleagues, customers and the general public. Health, safety and security issues are also covered including the legislation and best practice issues relevant to property professional in their duties within and outside their office when dealing with colleagues and customers and making necessary visits to other locations.</p>		
Learning Outcome	Assessment Criteria	Assessment Guidance
<i>The Candidate should be able to:</i>	<i>The candidate must:</i>	
1. Understand health and safety at work legislation and its relevance in and out of the workplace	1.1 Identify the duties of employers 1.2 Identify the duties of employees 1.3 Select correct procedures for carrying out a risk assessment for appointments and visits	Candidates in <b>England and Wales</b> should be familiar with the Health and Safety at Work etc. Act 1974.
2. Understand the issues around keeping safe when visiting property and maintaining a secure system when dealing with keys	2.1 Select appropriate procedures when securing property 2.2 Recognise a safe and secure set of procedures for dealing with keys 2.3 Identify how to ensure personal safety away from the office	
3. Understand the general legal concepts relating to the provision of property services	3.1 Recognise the different divisions of the law 3.2 Distinguish between common law and equity 3.3 Identify the remedies available under the law	
4. Understand the common law duties of agents and agents' authority	4.1 Identify the common law duties owed to clients 4.2 Identify the duties that apply to customers 4.3 Differentiate between the different types of authority to act and the relevant obligations	Candidates in <b>England and Wales</b> should be familiar with express authority, ratification, estoppel, agent of necessity.
5. Understand the basic elements of the law of contract	5.1 Identify the elements needed for a contract to exist 5.2 Interpret situations where a contract will have come to an end 5.3 Select appropriate remedies where there is a breach of contract	Candidates in <b>England and Wales</b> should be familiar with: the formation of a contract (offer, acceptance, consideration); discharge of a contract (agreement and breach); Remedies (damages, specific performance, injunctions, rectification); and specific rules

	5.4 Identify the special requirements relating to contracts relating to land and property	relating to contracts for the sale of land.
6. Understand the basic elements of liability outside the law of contract	6.1 Identify the elements needed for liability to be proved 6.2 Recognise situations where vicarious liability may apply 6.3 Identify situations where occupiers' liability may be relevant	Candidates in <b>England and Wales</b> should be familiar with negligence, occupiers' liability and vicarious liability.
7. Understand the basic concepts of land law	7.1 Distinguish between different rights to occupy 7.2 Identify the distinguishing features of rights over the land belonging to another person 7.3 Recognise situations where such a right may exist 7.4 Interpret when those rights will pass with property	Candidates in <b>England and Wales</b> should be familiar in the ways in which land can be held (freehold, <b>commonhold</b> , leasehold and licences) and be able to distinguish between agreements for more than 3 years from those of three years or less; rights over the land of others (easements and freehold covenants).
8. Understand the basic concepts of discrimination.	8.1 Identify what are protected characteristics 8.2 Analyse the circumstances when discrimination may or may not occur 8.3 Select the appropriate remedies where discrimination has occurred	Candidates in <b>England and Wales</b> should be familiar with the current legislation Equality Act 2010.
9. Understand the requirements of the data protection legislation	9.1 Recognise the data protection principles laid down in the legislation 9.2 Analyse situations to show compliance with data protection principles 9.3 Distinguish between those who can and who cannot be given protected data	Candidates in <b>England and Wales</b> should be familiar with current data protection legislation.
10. Understand the requirements of the legislation dealing with the handling of money	10.1 Analyse situations that may be deemed suspicious 10.2 Identify the procedures needed to comply with the legislation 10.3 Apply legislative requirement to possible suspicious situations	Candidates in <b>England and Wales</b> should be familiar with the current legislation such as The Proceeds of Crime Act 2002 and Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
<b>RLPM2</b>	<b>Legal Aspects of Letting and Management</b>	<b>T/602/5474</b>
<p>This unit concerns the law that is specific to carrying out the letting and management of residential property. It stresses the importance of the agent knowing, understanding and complying with common law and legislation concerned with the granting, administration, financial management and termination of the various types of residential tenancies.</p>		

<b>Learning Outcome</b> <i>The Candidate should be able to:</i>	<b>Assessment Criteria</b> <i>The Candidate must:</i>	<b>Assessment Guidance</b>
1. Understand the common elements of agreements to occupy residential properties	1.1 Identify the different types of agreements for occupying residential property in the private rented sector 1.2 Differentiate between market rents and rents which are subject to control	Candidates in <b>England and Wales</b> should be familiar with Housing Act 1988 and Housing Act 1996, Rent Act 1977 and non-Housing Act 1988 tenancies and the different types of occupancy rights such as under or over 3 years and fair rents.
2. Understand the requirements for regaining possession of let property and the protection available to the occupier	2.1 Apply the common law rules for regaining possession to a range of different circumstances 2.2 Apply the rules for regaining possession under statute 2.3 Summarise the protections given to occupiers	Candidates in <b>England and Wales</b> should be familiar with Protection from Eviction Act 1977; Housing Act 1988, Rent Act 1977.
3. Understand the statutory regulations of landlords and agents	3.1 Identify the ways in which information must be provided to an occupier 3.2 Identify the methods of controlling the activities of landlords and agents	Candidates in <b>England and Wales</b> should be familiar with Codes of Practice; Landlord and Tenant Act 1985 s1; Landlord and Tenant Act 1987 s47 and s48.
4. Understand the fitness standards for dwellings and the responsibility for repair	4.1 Summarise the requirements for a residential property to be deemed fit for letting 4.2 Apply the legislation to determine a landlord's repairing responsibilities. 4.3 Apply legislation and common law to determine remedies available to landlords and occupiers for disrepair	Candidates in <b>England and Wales</b> should be familiar with Housing Act 2004 Part 1 Chapters 1, 2, 3 relating to Housing, Health and Safety Rating System (HHSRS) and local authority enforcement procedures.
5. Understand the requirements for safety in let property	5.1 Identify the matters that are covered by safety legislation and other guidance 5.2 Apply the relevant matters to a range of specific circumstances	Candidates in <b>England and Wales</b> should be familiar with safety in properties: fire regulations; gas safety regulations; electrical regulations; furniture and furnishing regulations; legionella and deleterious materials and be aware of the differences between landlord and agent responsibilities.
6. Understand the legislation relating to Houses in Multiple Occupation (HMOs)	6.1 Apply the legislative tests to determine if a property is a HMO 6.2 Apply the legislative powers of enforcement authorities to determine action in a defined scenario relating to repair or licensing	Candidates in <b>England and Wales</b> should be familiar with Housing Act 2004 (HMOs) Part 2,3,4,7 and in <b>England</b> local authorities
7. Understand the legal requirements relating to tenancy deposits	7.1 Interpret common law and statutory requirements covering the handling and protection of tenancy deposits	Candidates in <b>England and Wales</b> should be familiar with Housing Act 2004 Part 2 and tenancy deposit scheme legislation.

8. Understand consumer and business protection legislation applicable to residential letting	<p>8.1 Apply the requirements of consumer and business protection legislation to define scenarios</p> <p>8.2 Apply the requirements to give a cooling off period to a range of situations where landlord instructions are taken</p> <p>8.3 Apply the rules to determine what is and what is/is not an unfair term.</p>	Candidates in <b>England and Wales</b> should be familiar with Consumer Protection from Unfair Trading Regulations 2008 and Business Protection from Misleading Marketing Regulations 2008, Accommodation Agencies Act 1953; Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; Consumer Rights Act 2015 Part 2.
9. Understand the key requirements of any transactional tax relating to residential property	9.1 Apply the regulations for transactional tax to a range of typical situations	Candidates in <b>England and Wales</b> should be familiar with the Stamp Duty Land Tax and Annual Tax on Enveloped Dwellings (ATED).
10. Understand the main criteria relating to the regulation of insurance based activities	10.1 Apply the insurance related regulations to range of defined scenarios	Candidates in England and Wales should be familiar with Consumer Credit Act 1974 and Financial Services and Markets Act 2000 and dealing with claims.

**RLPM3**

**Residential Property Letting Practice**

**R/602/5479**

**About this unit**

This unit deals with how letting agents should conduct themselves when carrying out the letting of residential property in order to comply with all relevant statute, common law and principles of best practice. It covers the agent's actions within and outside the office when dealing with landlords, tenants and colleagues and visiting residential properties. It includes the appropriate practices an agent should adopt in the taking and confirming of clients' instructions, the finding of tenants and the preparation of appropriate documentation.

<b>Learning Outcome</b>	<b>Assessment Criteria</b>	<b>Assessment Guidance</b>
<i>The Candidate should be able:</i>	<i>The Candidate must:</i>	
1. Understand the main principles of agency terms and agent's authority	<p>1.1 Summarise standard agency services for introduction only, let and rent processing or a full management service</p> <p>1.2 Distinguish between standard agency services and additional agency services requiring additional fees</p> <p>1.3 Apply the legislation relating to 'To Let' boards to specified circumstances</p>	<b>Candidates in England and Wales</b> should be familiar with the legislation relating to 'to let' boards to specified circumstances, express appointment, ratification, estoppel and agent of necessity.

<p>2. Understand the market appraisal process and the main factors affecting property rental value</p>	<p>2.1 Summarise the factors affecting property value                  2.2 Identify the information required about the property and the landlord                  2.3 Summarise advice to landlords regarding insurance                  2.4 Summarise factors related to finance, costs and tax in relation to buy-to-let property</p>	<p><b>Candidates in England and Wales</b> should be familiar with supply and demand; energy performance certificate guidance; physical effects on value based on location, property type and condition; planning and building regulations; occupancy restrictions on value; comparable transactions; changes to the state of the market or time of sale and the requirements of the landlord.</p>
<p>3. Understand the requirements for energy performance certificates for let property</p>	<p>3.1 Summarise the rules for the provision of EPCs for property to let                  3.2 Apply the criteria to determine if a property requires an EPC or not</p>	<p><b>Candidates in England and Wales</b> should be familiar with current energy performance certificate guidance.</p>
<p>4. Understand the agent's responsibilities to the landlord and applicants</p>	<p>4.1 Apply the various common duties, codes of practice and legislation requirements to defined situations                  4.2 Apply these duties to scenarios dealing with service and fee details, the need for client accounts, referencing, managing property and dealing with keys and security</p>	<p><b>Candidates in England and Wales</b> should be familiar with consents; codes of practice and personal interests and connected persons.</p>
<p>5. Understand the requirements for dealing with offers and the referencing of applicants and guarantors</p>	<p>5.1 Summarise the process with dealing with offers                  5.2 Identify any special requirements an applicant may have                  5.3 Summarise the responsibilities of guarantors                  5.4 Apply the obligations to consider reasonable adjustments in defined scenarios</p>	<p><b>Candidates in England and Wales</b> should be familiar with the information that can and cannot be given to landlords.</p>
<p>6. Understand the process of preparing tenancy documentation</p>	<p>6.1 Identify the documents that are required when creating an occupational agreement                  6.2 Summarise what clauses are required to protect the landlord's and tenant's interests and comply with common law legislation                  6.3 Clarify the information to be contained in inventories and schedules of condition                  6.4 Identify the information that must be given to an occupier</p>	<p><b>Candidates in England and Wales</b> should be familiar with the common terms in tenancy agreements; terms in other documents relating to the letting; Consumer Rights Act 2015 Part 2; discrimination legislation; reasonable adjustments and the different types of tenancy agreements.</p>

7. Understand the requirements of the housing benefit system and local housing allowance	7.1 Apply the entitlement criteria to defined scenarios relating to housing benefit or local housing allowance 7.2 Determine when housing benefit or local housing allowance can be clawed back and when it cannot	
8. Understand the procedures to be followed when handing over a property to a new tenant	8.1 Summarise the various information and documentation that should be given to relevant parties at the start of the tenancy 8.2 Apply best practice when agency instructions are withdrawn and a new agent is appointed	

<b>RLPM4</b>	<b>Residential Property Management Practice</b>	<b>Y/602/5483</b>
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This unit deals with how letting agents should conduct themselves when carrying out the management of residential property in order to comply with all relevant statute, common law and principles of best practice. It covers the agent's actions within and outside the office when dealing with landlords, tenants and colleagues and visiting residential properties. It also includes dealing with repair and maintenance and the appointment of contractors related to residential properties and the problems associated with the management of let property and with any duties an agent may have after the end of a tenancy including dispute resolution procedures.

<b>Learning Outcome</b>  <i>The Candidate should be able to:</i>	<b>Assessment Criteria</b>  <i>The Candidate must:</i>	<b>Assessment Guidance</b>
1. Understand client accounting procedures	1.1 Apply common law, codes of practice and contractual requirements to the processing of client monies 1.2 Identify practices and procedures for dealing with non-residential landlord monies 1.3 Apply best practice procedures to dealing with arrears	<b>Candidates in England and Wales</b> should be familiar with Finance Act 1995; common law and statutory requirements in the handling and protecting tenancy deposits and tax implications.
2. Understand the issues surrounding the management of repairs and maintenance of let property	2.1 Distinguish between the landlord's and the tenant's responsibilities in respect of repair to let property 2.2 Analyse contractual documents and warranties to determine responsibility for undertaking and paying for repairs and maintenance 2.3 Apply best practice when qualifying and instructing contractors 2.4 Summarise best practice relating to periodic visits of let property	

<p>3. Understand the need for statutory consents relating to development</p>	<p>3.1 Apply correct criteria to determine if a particular consent is required</p> <p>3.2 Apply the legislation relating to enforcement to defined circumstances</p>	<p><b>Candidates in England and Wales</b> should be familiar with Town and Country Planning Act 1990; The Party Wall etc. Act 1996; Town and Country Planning (Control of Advertising) Regulations 2007 and restrictions relating to conservation areas and listed buildings;</p>
<p>4. Understand matters relating to breaches of tenancy agreements</p>	<p>4.1 Apply contractual and statutory procedures in order for action to be taken where a landlord or tenant is in breach</p>	<p><b>Candidates in England and Wales</b> should be familiar with First Tier Tribunals</p>
<p>5. Understand the procedures to be followed when tenancy agreements are extended, renewed or terminated</p>	<p>5.1 Summarise the options available to a landlord when a tenancy agreement is coming to an end</p> <p>5.2 Apply contractual and statutory procedures to bring a tenancy to an end</p> <p>5.3 Apply contractual and legislative procedures relating to initiating and concluding rent reviews</p>	<p><b>Candidates in England and Wales</b> should be familiar with the procedures to obtain possession at the end of a fixed term or during a periodic tenancy; protected or statutory tenancies; notice requirements for landlords and those for tenants; common law rules relating to date of service when issuing notices; conduct; possession procedure available to landlords.</p>
<p>6. Understand the legal provisions covering issues relating to damages at the end of a tenancy</p>	<p>6.1 Summarise the main contents of an inventory and schedule of condition report</p> <p>6.2 Apply best practice and legal principles to the check-in and check-out procedures</p> <p>6.3 Apply the common law provisions relating to fair, wear and tear to assessments of damage claims</p> <p>6.4 Apply legislation and best practice to dealings with tenants' abandoned goods</p>	
<p>7. Understand the legislation relating to environmental matters.</p>	<p>7.1 Apply legislative provisions to seek remedies relating to environmental issues as they apply to a letting agent</p>	<p><b>Candidates in England and Wales</b> should be familiar with the Noise Act 1996; Noise and Statutory Nuisance Act 1993 and the Environmental Protection Act 1990.</p>
<p>8. Understand best practice guidelines relating to dispute resolution</p>	<p>8.1 Distinguish between statutory and voluntary dispute resolution procedures</p> <p>8.2 Summarise the powers and procedures of the redress schemes</p>	<p><b>Candidates in England and Wales</b> should be familiar with the rules regarding hearings and appeals.</p>