

MAYOR OF LONDON

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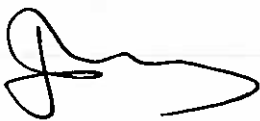
Dear Jane

I welcome the opportunity to respond to the consultation on banning letting agent fees issued by the previous Government. As you are aware the Mayor and I strongly support the move to ban letting agent fees, which have raised costs for renters in London and which can be both opaque and unfair. I am pleased to note that the consultation is wide-ranging, signalling the previous Government's intention to implement a comprehensive ban and address wider issues relating to deposits and enforcement.

The GLA's detailed comments on the consultation are set out below in annexe one. My overall view is positive: I consider this to be a set of proposals which will help to reduce the prohibitive 'transactional' costs associated with renting considerably. I would encourage the new Government to include a Bill relating to this proposal in the first Queen's Speech, and to make parliamentary time available for such legislation as soon as possible.

As the document suggests, there is more work to be done on the issue of letting agent regulation, not to mention wider problems relating to affordability, security of tenure, and standards and conditions in the private rented sector. After the general election I would welcome a broader conversation with civil servants and Ministers about what can be done to ensure the private rented sector in London is fit for purpose. If you wish to discuss the GLA's response further in the meantime your team are welcome to contact Rhona Brown in the GLA Housing and Land Directorate: rhona.brown@london.gov.uk.

Yours sincerely



James Murray
Deputy Mayor for Housing and Residential Development

Annexe one

Longer tenancies:

The GLA notes the suggestion that banning letting agent fees could help reduce 'churn' in the private rental market. Letting agents may have less incentive to encourage landlords to seek new tenants if agents were no longer able to accrue any additional fees from tenants by doing so. This could offer sitting tenants greater security. The GLA welcomes the fact that the previous Government used this consultation to highlight the issues around security of tenure in the private rented sector. Although steps to discourage 'churning' of properties are welcome, the impacts are likely to be relatively marginal since the main issue affecting security of tenure is landlords' recourse to 'no fault' evictions. The GLA would welcome a conversation with the next Government about more strategic steps that could be taken to improve security of tenure for renters, whilst offering appropriate protections for landlords.

Capping deposits

The GLA very much welcomes the previous Government's willingness to explore supporting tenants with the cost of rental deposits. Evidence given by Deposit Protection Service (DPS) to the DCLG Affordability and Security of Tenure Working Group earlier this year suggests that on average, since 2007, tenants have received back 75 per cent of their deposit value. In addition the DPS stated that the full deposit amount is returned to the tenant at the end of their tenancy in just over 50 per cent of all cases¹. The DPS research suggests that a much lower value deposit would still allow landlords to recoup any legitimate costs at the end of a tenancy in most circumstances. Given the fact that it is currently common practice in London for deposits to be set at six weeks' rent, we suggest that deposits could be capped at a maximum of three weeks' rent. In most cases this would still result in the majority of the deposit being returned to the tenant but would also allow for the possibility of a bigger than average deduction. Based on median rents in London at present, this would see renters paying just over £1,000 for a deposit as opposed to around £2,000. This still provides for double the average deduction to be made to the deposit, based on the DPS figures. The impacts of such a measure should be studied further with the assistance of deposit protection schemes and landlord stakeholders.

Other options for tackling deposit costs

The GLA has already supported the recommendation of the Affordability and Security of Tenure Working Group that the Tenancy Deposit Protection schemes, in conjunction with DCLG, should launch a market testing exercise targeted at landlords and tenants to test the feasibility of passporting tenants' deposits between tenancies. The GLA urges the next Government to undertake this exercise as soon as possible and would be keen to participate in any pilots. In addition the GLA would welcome the opportunity to explore with the next Government how tenancy deposit loan schemes, currently offered by a number of London employers, could be rolled out much more widely to ensure that all Londoners (and indeed all renters) can benefit from this support with up-front costs.

Holding deposits

¹ DPS evidence to DCLG Affordability and Security of Tenure Working Group

The GLA believes that holding deposits are a reasonable measure for agents and landlords to adopt to prevent renters making 'speculative' offers that can cause landlords to end up out of pocket. However the GLA considers that holding deposits should be capped so that they do not act as a barrier to entry for lower income renters who may be accessing support with a deposit and may therefore struggle to come up with a substantial holding deposit. While there is little evidence on average holding deposits, discussions with agents suggest they vary considerably. The GLA considers that a sensible cap should be set at the value of one day's rent for the property in question. Based on median London rents this would mean an average holding deposit of around £50. This should cover referencing costs, or recompense the landlord for a day's lost rent if another tenant needs to be found. A holding deposit based on rent levels will also ensure that low income renters will not be disproportionately disadvantaged as would be the case with a flat-rate holding deposit.

In-tenancy charges

The GLA's view is that there are a number of potentially legitimate costs a letting agent could incur during a tenancy for which the tenant may be liable, such as the cost of replacing a lost key. However, any loophole that permits in-tenancy charges could easily be open to exploitation and would be difficult to police given scarce enforcement resources. As the consultation points out, exemptions to the fee ban also complicate the policy, making it more difficult for tenants to understand. Instead, the GLA proposes that all legitimate in-tenancy charges incurred by the tenant should be deducted from the damage deposit at the end of the tenancy. Agents would be required to lodge receipts for services performed to the relevant tenancy deposit scheme in order to ensure that charges were legitimate and transparent. This would also have the added benefit of encouraging deposit protection as an incentive to ensure that any legitimate charges incurred by the agent can be recouped.

Bespoke services for high-end rentals

The GLA believes that there should not be an exemption for such services, both for the reason that this would be difficult to define and could be open to exploitation, but also because this could incentivise agents to encourage landlords to let properties as luxury short-term rentals instead of mainstream PRS accommodation.

Discrimination

The GLA welcomes the previous Government's clarification in the consultation document that the law does not permit discrimination against those with characteristics protected under the Equalities Act 2010. However, there are two ways in which such individuals are being discriminated against in the rental market, which the GLA strongly believes the next Government must address.

The first is the use of the outdated and discriminatory term 'No DSS' (or similar) in rental property adverts. Since households with children and also disabled renters are much more likely to be in receipt of welfare benefits this practice directly discriminates against them and should be banned. The same applies to buy-to-let mortgage clauses that specify landlords must not let to those in receipt of welfare. Many in the industry have recognised this is unacceptable and unenforceable and have removed such clauses. The next Government should prevail on all mortgage lenders to do the same. In addition in order to ensure this is properly enforced lettings sites such as Rightmove and Zoopla must be prohibited from showing adverts displaying such messaging.

Second, the Joint Council for the Welfare of Immigrants has produced significant evidence that the previous Government's Right to Rent initiative is resulting in discrimination against non-UK nationals². Given London's incredibly diverse rental market this policy is likely to lead to discrimination in the capital, whilst also placing considerable burdens on landlords forced to perform immigration checks for which they are not trained or resourced. The GLA urges the new Government to end this policy as a matter of urgency.

Tenant awareness

The recognition that in order for this measure to be successful renters must be made aware of their new rights is positive. However, simply updating the previous Government's 'How to Rent' guide will not be sufficient to ensure this. The GLA will investigate how the Mayor can support this objective in London and strongly recommends that the Government explores a more ambitious communications plan.

Improved data sharing

The GLA very much welcomes the recognition that data-sharing on letting agent enforcement will need to be improved to ensure that the new measures are impactful. The Mayor has already announced that the GLA will be launching the first phase of a new public database of criminal landlords and agents in autumn 2017. The database will have a second tier of information available only to local authorities, including Trading Standards, giving further information about criminal agents and landlords. The objective of the database is to empower renters to make a more informed decision before entering into a contract with an agent or landlord, but also to improve data-sharing amongst enforcement agencies. The GLA would therefore like to be included in any ongoing discussions on how to improve information-sharing on this issue.

Increased civil penalty notices

The GLA agrees that the level of financial penalties available to enforcement bodies for letting agent offences should be increased. At present the maximum penalty available to Trading Standards officers is £5,000. The Government has recently legislated to give councils the powers to hand out civil penalty notices to criminal landlords for up to £30,000. The GLA's view is that there should be parity in the level of penalties that can be handed out to both agents and landlords. The GLA recommends that the new Government works with local authorities and other stakeholders to produce detailed statutory guidance for both landlord and agent penalty notices to ensure consistency and discourage speculative appeals. In addition to retaining such fines, councils should also be required to ring-fence this funding for enforcement which is not currently the case with regard to letting agent fines. Again this would bring parity with the approach for landlords.

Enforcement and further regulation

The recognition in the consultation document that Trading Standards may need additional support to enforce new and existing regulation is positive and timely. Steps to improve enforcement should include:

² *Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England*, Joint Council for the Welfare of Immigrants, February 2017

- addressing the staffing shortages and lack of resources across the Trading Standards sector – one source of income could be ring-fenced fines from civil penalty notices;
- consulting closely with sector experts including London Trading Standards, National Trading Standards and Powys Council on further regulation that may be needed. One way of doing this could be to set up a task-and-finish group of relevant stakeholders to make recommendations to ministers. Representatives of the industry should also be included – a working group to consider this has already been convened by NALS. The GLA would welcome the opportunity to contribute to any such work;
- no new criminal offences – the GLA is not convinced it is necessary to create a new criminal offence of flouting the fee ban in addition to enhanced fines. According to London Trading Standards representatives, agents could already be prosecuted for flouting the ban under the Consumer Protection from Unfair Trading Regulations 2008. Significant civil penalties are likely to act as a strong deterrent to letting agents;
- permitting local authorities to ban agents who have been handed a criminal conviction; and
- the introduction of a Lead Authority for letting agent enforcement to bring parity with the Estate Agent industry, for whom Powys Council is the Lead Authority. This approach is beneficial because it ensures that experienced practitioners are providing support and guidance to the wider Trading Standards sector. It could also be beneficial to bring letting agents and estate agents together under a single authority. Discussions between DCLG, DBEIS and National Trading Standards would be needed to ensure this was appropriately funded.

Build-to-Rent and corporate landlords

The Mayor is highly supportive of the growing 'Build to Rent' industry, which is beginning to offer purpose-built, high quality, professionally managed rental accommodation across London. Many providers of such accommodation have been choosing to differentiate themselves from their competition by charging no up-front fees to renters. The GLA has already made it clear to the industry that this is the approach the Mayor favours. The GLA recommends that the new Government should support the Mayor in this by including corporate landlords in the ban on tenant fees. The ban must be broad enough to cover all up-front tenant fees, regardless of who is charging them.