

Cabinet Members' Decisions

made in March 2015

Date Issued: 26 March 2015

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London Borough of Hammersmith & Fulham

CABINET MEMBER'S DECISION

MARCH 2015

H&F ICT TRANSITION PROGRAMME MANAGEMENT	
Report of the Cabinet Member for Finance – Councillor Max Schmid	
Open Report	
Classification - For Decision Key Decision: No	
Wards Affected: All	
Accountable Executive Director: Jane West, Executive Director of Finance and Corporate Governance	
Report Author: Jackie Hudson, Director of Procurement and IT Strategy	Contact Details: Tel: 020 8753 2946 E-mail: Jackie.Hudson@lbhf.gov.uk

AUTHORISED BY:
The Cabinet Member has signed this report.

DATE: 10 March 2015

1. EXECUTIVE SUMMARY

- 1.1. The Hammersmith and Fulham Bridge Partnership (HFBP) service desk provides online self-service and telephone support to H&F users for support and resolution of reported ICT incidents, problems, fulfilment of service requests and deals with security incidents, among other things.
- 1.2. The HFBP distributed computing function provides desktop services; devices, MySmartDesktop Bring Your Own Device and other related services.
- 1.3. HFBP also provide data centre services ie a secure resilient environment for the desktop services, all 120 major applications and other services including the ability to login, security and firewalling, telephony.

- 1.4. In December 2013, Shared Services ICT awarded three framework contracts for ICT; the distributed computing and data centre contracts to BT Global Services Ltd and the service desk contract to Agilisys Ltd.
- 1.5. Westminster City Council (WCC) have already called off from the three frameworks. The transition was smooth and WCC users report themselves as more satisfied with the current service.
- 1.6. By changing these three services to new service providers earlier than end of contract, H&F will be able to reduce the effort, costs and risk in the transition and will provide the opportunity for a single service desk providing a consistent user experience for staff, particularly H&F staff, leading to a more integrated service and consequently higher council staff productivity.
- 1.7. An early transition of the HFBP service desk will reduce the effort, cost and risk associated with a full transition of ICT services at the end of the HFBP service contract on 31 October 2016. It will also allow H&F to offer improved levels of service and availability for H&F users earlier than originally planned. Transition of the other two services will be less visible to users but will have the effect of achieving the council's saving targets.
- 1.8. This paper proposes that, in order for H&F to call off Lot 1 Distributed computing; Lot 2 service desk; Lot 3 data centres from the ICT frameworks and move the service to new service providers, Agilisys and BT, over the next 18 months, programme management is procured.
- 1.9. Phase 1 consists of programme definition work to be done in collaboration with HFBP and will take up to three months, around 57 person days at a cost of £39,843, after which the transition activity should be better defined.
- 1.10. This role in Phase 1 will therefore set out the high level resource plan for the council. This will allow the programme to set out the wider resource need in early 2015/16, based on the council having developed a high-level business case by April 2015.

2. RECOMMENDATIONS

- 2.1. That approval be given to the costs of delivering Phase 1 programme management for the transition to new providers during 2015/16. Approval is sought for a total of £39,843 to be funded from the IT Enablers fund.

3. CONSULTATION

- 3.1. This approach has been discussed at the Shared Services ICT Divisional Leadership Team (DLT) board.

4. EQUALITY IMPLICATIONS

- 4.1. This report is requesting funding of £39,843 to provide a programme management resource to the proposed project. There are no direct

equalities impacts on any protected group resulting from the proposals made by this report.

4.2. Procurement regulations indicate that for Interim Management “providing temporary cover for specific management resources and skills in a period of transition....within the organisation in a situation where a permanent role may be unnecessary or difficult to find at short notice....Interim managers may be appointed directly by the Council or be appointed through an agency using the Council’s agency recruitment system”.

4.3. Any subsequent recruitment of a specific individual should be carried out with all due regard to Equalities legislation but that process lies outside of the specific subject matter of this report.

4.4. Implications completed by: David Bennett, Acting Head of Change Delivery. Innovation and Change Management – 0208 753 1628

5. LEGAL IMPLICATIONS

5.1. The appointment of a programme manager would not be subject to the public procurement regime and the council will therefore have to comply only with its own internal rules forwarding contracts.

5.2. Implications verified/completed by: Keith Simkins, Principal Solicitor 020 7361 2194

6. FINANCIAL AND RESOURCES IMPLICATIONS

6.1. Funding of the one-off amount of £39,843 will come from the IT Enablers Fund.

6.2. Implications verified by: Andrew Lord, Head of Strategic Planning and Monitoring, ext 2531.

7. RISK MANAGEMENT

7.1. Successful delivery of the ICT Shared Services programme is critical to the ongoing success of the council and programme management of the transition programme relates to risk number 12 on the strategic risk register, decision making and maintaining reputation and service standards. This opportunity risk seeks to deliver wider benefits to staff, particularly H&F staff, leading to a more integrated service and consequently higher council staff productivity and ultimately to the end user, the public.

7.2. Implications verified by: Michael Sloniowski, Tri-borough Risk Manager ext 2587.

8. PROCUREMENT AND IT STRATEGY IMPLICATIONS


8.1. There are no procurement related issues as the recommendations in this report refer to funding for the provision of resources.

8.2. Implications verified by: Mark Cottis, Procurement Consultant (TTS) 020 8753 2757

LOCAL GOVERNMENT ACT 2000

LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Tri-borough ICT strategy (published)	Jackie Hudson Director for Procurement and IT strategy	FCS HTH 3 rd floor

	<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET MEMBER'S DECISION</p> <p align="center">MARCH 2015</p>
<p>APPOINTMENT OF A COUNCIL REPRESENTATIVE TO THE WESTERN RIVERSIDE WASTE AUTHORITY</p>	
<p>Report of the Leader of the Council – Councillor Stephen Cowan</p>	
<p>Open Report</p>	
<p>Classification: For Decision</p>	
<p>Key Decision: No</p>	
<p>Wards Affected: All</p>	
<p>Accountable Executive Director: Jane West, Executive Director Finance and Corporate Governance</p>	
<p>Report Author: Kayode Adewumi, Head of Governance and Scrutiny</p>	<p>Contact Details: Tel: 020 8753 2499 E-mail: kayode.adewumi@lbhf.gov.uk</p>

<p>AUTHORISED BY:</p> <p>The Leader has signed this report.....</p> <p>DATE: 5 March 2015</p>

1. EXECUTIVE SUMMARY

- 1.1. This report records the Leader's decision to appoint Councillor Larry Culhane as a Council representative to the Board of Directors of the Western Riverside Waste Authority, which falls within the scope of his executive portfolio.

2. RECOMMENDATION

- 2.1. To note the resignation of Councillor Michael Cartwright from the Western Riverside Waste Authority Board of Directors with immediately effect.
- 2.2. That Councillor Larry Culhane be appointed as a Council representative on the Western Riverside Waste Authority Board of Directors from 27th February 2015 with the appointment expiring on 31st March 2015.
- 2.3. That Councillor Michael Cartwright be appointed to replace Councillor Larry Culhane on the Western Riverside Waste Authority Board of Directors from the 1st April 2015 until 16th June 2018.

3. REASONS FOR DECISION

- 3.1 This appointment is to ensure that the Council fully represented at the meetings of the organisation.

4. INTRODUCTION AND BACKGROUND

- 4.1 The Council appointed Councillors Michael Cartwright and Wesley Harcourt as the Council's representatives on the Western Riverside Waste Authority (WRWA) Board of Directors at its Annual meeting held on 16th June 2014. Councillor Cartwright will not be able to attend the next Special WRWA Board meeting which has been called at short notice. The organisations' constitution does not allow substitute members to be nominated. Therefore, Councillor Cartwright has stepped down from the Board as a Council representative while Councillor Larry Culhane is being proposed as a temporary replacement.
- 4.2 In order for there to be continuity of representation on the Board of this key organisation, the Leader is of the view that Councillor Cartwright should be reappointed back to the Board to continue to provide a positive contribution to the work of the organisation at the end of March 2015.

5. PROPOSAL AND ISSUES

- 5.1 As above.

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1. Not applicable.

7. CONSULTATION

- 7.1. Not applicable.

8. EQUALITY IMPLICATIONS

- 8.1. Not applicable.

9. LEGAL IMPLICATIONS

- 9.1 The Council Constitution gives the Leader the power to appoint representatives to outside bodies. Item 1.9 ('Scope of portfolio') states the following: "Appointing or nominating and where appropriate removing the Authority's representatives on appropriate outside bodies."
- 9.2 Implications completed by: Tasnim Shawkat, Bi-Borough Director of Law. Tel: 020 8753 2088.

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. Not applicable.

11. RISK MANAGEMENT


- 11.1. Not applicable.

12. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 12.1. Not applicable.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	None		

	London Borough of Hammersmith & Fulham CABINET MEMBERS' DECISION MARCH 2015
REDRESS SCHEME FOR LETTINGS AGENCY AND PROPERTY MANAGEMENT OPERATORS	
Joint Report of the Cabinet Member for Environment, Transport & Residents Services and the Cabinet Member for Housing	
Open Report	
Classification - For Decision	
Key Decision: No	
Wards Affected: All	
Accountable Executive Director: Nigel Pallace, Executive Director of Transport and Technical Services	
Report Author: Valerie Simpson Bi-borough Head of Environmental Health (Licensing and Trading Standards)	Contact Details: Tel: 020 8753 3905 E-mail: valerie.simpson@lbhf.gov.uk

AUTHORISED BY:

The Cabinet Member for Environment, Transport & Residents Services has signed this report.
DATE: 16 March 2015

AUTHORISED BY:

The Cabinet Member for Housing has signed this report.
DATE: 20 March 2015

1. EXECUTIVE SUMMARY

- 1.1. This report seeks approval to make arrangements for the implementation and enforcement of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 which makes it a legal requirement for all letting agents and property management operators in England to join one of three Government approved schemes.
- 1.2. This Order is made under the Enterprise and Regulatory Reform Act 2013 and is a delegated function of the Director for Environmental Health, under the Council's Scheme of Delegation.

2. RECOMMENDATIONS

- 2.1. To delegate the implementation and enforcement of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 to the Director for Environmental Health.
- 2.1. To note that the day to day enforcement of the Order will be undertaken by officers in the Trading Standards Service in accordance with the existing authorisation in the Council's constitution.
- 2.2. To agree that the monetary penalty for non-compliance with the Order be set at the maximum sum of £5,000 in line with the recommendations of the final Department of Communities and Local Government (DCLG) guidance.
- 2.3. To authorise the Director for Environmental Health to make amendments to the amount of the monetary penalty, in accordance with the guidance where the enforcement authority is satisfied that there are extenuating circumstances taking into account any representations made by the lettings agent or property manager during the 28 day period, following the authority's notice of intention to issue a fine.

3. REASONS FOR DECISION

- 3.1. The Council has a duty to enforce the Order and in that regard to determine the level of monetary penalty to impose on letting agents and property management operators, who do not comply.

4. INTRODUCTION AND BACKGROUND

- 4.1. The Order came into force on 1 October 2014, making it a legal requirement for all letting agents and property management operators in England to join one of three Government approved schemes.
- 4.2. The effect of the Order is that tenants and landlords with agents in the private rented sector and leaseholders and freeholders dealing with letting agents and property management operators in the residential sector can now complain to an independent person about the service they have received.
- 4.3. The scheme was brought into effect as part of the Government's response to the Communities and Local Government Select Committee inquiry into the private rented sector published on 18 July 2013.
- 4.4. As part of this inquiry, evidence was gathered about tenant consumer detriment and the business practices of letting agents.

- 4.5. The requirement to join a redress scheme was identified as one of the recommendations to improve standards in the sector.
- 4.6. Definitions of what constitutes letting agency and property management work is found in the Enterprise and Regulatory Reform Act 2013.
- 4.7. There are three Government approved schemes as follows:
 - a) Ombudsman Services Property (www.ombudsman-services.org/property.html)
 - b) Property Redress Scheme (www.theprs.co.uk)
 - c) The Property Ombudsman (www.tpos.co.uk)
- 4.8. [Business guidance](#) for Letting Agents and Property Management Operators was published by the DCLG on 8 October 2014.
- 4.9. The DCLG guidance for local authorities, attached as Appendix 1, will be used to develop/implement the scheme locally.
- 4.10. A maximum penalty of £5,000 may be imposed by the enforcement authority where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. The level of penalty is to be determined by the enforcement authority.
- 4.11. There are strict procedures and a series of mandatory stages to follow before a penalty may be imposed.
- 4.12. The authority may at any time by giving notice *reduce* or *revoke* a fine.
- 4.13. Other London Authorities have been consulted and there appears to be common agreement within London to levy the maximum penalty of £5,000.
- 4.14. Attached at Appendix 2 is the impact assessment of regulation of letting and management agents by an independent body conducted at consultation stage.

5. PROPOSAL AND ISSUES

- 5.1. The desired outcome is to ensure that all letting agents and property management operators in the borough belong to a redress scheme which offers an independent investigation of complaints about hidden fees or poor service.
- 5.2. Day to day enforcement of the Order will be undertaken by officers in the Trading Standards Team, in accordance with the existing authorisation in the Constitution and local authority guidance.

- 5.3. The guidance issued under the order states that the expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.
- 5.4. A consideration for reducing the £5,000 fine would be where compliance is achieved, the fine is disproportionate to the turnover/scale of the business which could lead to an organisation going out of business or where there is some other negative consequence as a result, e.g. health impact.
- 5.5. The enforcement authority must take into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine.
- 5.6. The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.
- 5.7. The penalty fines received by the enforcement authority can be used to cover the officer costs associated in enforcing this new requirement.
- 5.8. Where an enforcement authority intends to impose a penalty they must follow the process set out in the Order. Any enforcement action taken will be in accordance with our enforcement policy.
- 5.9. A project proposal has been developed. In summary, the key steps are detailed below:
 - To identify all letting agents and property management operators in the Borough.
 - To update the Council website with guidance and advice on the requirements under the Order and other legislation relevant to this business sector.
 - To send a letter and questionnaire to all letting agents and property management operators in the Borough which outlines their legal obligations and collate any relevant information in relation to their business, which will be used as a local register.
 - To consult Finance and ICT on how to administer the Notice regime.
 - To consult the redress scheme providers, to identify businesses that do not have membership.
 - To visit letting agents and property management operators and target those where there have been complaints and/or where they are not members of any redress scheme.
 - To take follow up action on those who fail to meet the requirements of the Order and issue notices where necessary.
 - To manage the recovery element of any unpaid fines.

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1. This is a statutory duty for the Council. The recommendations allow for the monetary penalty to be varied in accordance with the guidance where there are extenuating circumstances.

7. CONSULTATION

- 7.1. Colleagues within the Council's Private Housing team have been consulted.

8. EQUALITY IMPLICATIONS

- 8.1. The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in s149 of the Equality Act 2010 (the Act). A screening for the equalities impact assessment has been carried out on the effect of the Order. The Order has low relevance in relation to its impact on the protected characteristics as all businesses will be contacted, not just a sample and this work will contribute towards the corporate priorities of the council.

9. LEGAL IMPLICATIONS

- 9.1. The Council has a legal duty to enforce the Order and in that regard to determine the level of monetary penalty to impose on Lettings Agents and Property Managers.
- 9.2. By implementing this legislation, the Council will be in a position to take action against businesses that are not members of an approved scheme which will be for the benefit of local private sector tenants and also businesses that have joined a scheme.

Implications to be verified by: Tasnim Shawkat, Bi-borough Director for Law – TTS/ELRS, 020 8753 2700

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. The cost of the additional enforcement will be met through re-prioritising existing resources with no additional cost to the Council.
- 10.2. It is envisaged that resources will need to be diverted initially which may impact on the delivery of other work. Any penalty fines received should offset the overall cost of enforcement activities within the service.

Implications to be verified by: Mark Jones, Director for Finance and Resources – TTS/ELRS, 020 8753 6700

11. IMPLICATIONS FOR BUSINESS

- 11.1. The aim of the Trading Standards Service is to help local businesses to thrive and to ensure that consumer and business interests are safeguarded. This includes ensuring that there is a level playing field for businesses and that non-compliant businesses do not have an unfair advantage over compliant businesses. See the impact assessment at Appendix 2.
- 11.2. The implementation and enforcement of the Order will include providing advice and guidance to help businesses comply and to follow a “stepped approach”, in line with our enforcement policy, to tackle non-compliant businesses, which will include; advice, guidance, warnings, serving a notice of intent and the issuing of penalty notices.

12. RISK MANAGEMENT

- 12.1. The Failure to meet new and existing statutory requirements is specifically addressed in the Environmental Health Service Group’s risk register. Controls in place to mitigate this risk include training, internal auditing, periodic updates of the scheme of delegation and the business planning process.

13. PROCUREMENT AND IT STRATEGY IMPLICATIONS

- 13.1. None

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	NONE		

LIST OF APPENDICES:

Appendix 1 - Department of Communities and Local Government Redress Scheme guidance for Local Authorities

Appendix 2 - Department of Communities and Local Government Impact Assessment of the regulation of letting and management agents by an independent body conducted at consultation stage



Appendix 1 -
Redress Scheme guid



Appendix 2.pdf

Guidance for Local Authorities

on

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Introduction

This Order makes it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme by 1 October 2014.

This now means that tenants, prospective tenants, landlords dealing with lettings agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service received. This will make it easier for tenants and landlords to complain about bad service and prevent disputes escalating.

The requirement will be enforced by local housing authorities (see section 3 for more details) and this note provides guidance for local authorities on who the requirement applies to and how it should be enforced. It is designed to cover the most common situations but it cannot cover every scenario and is not a substitute for reading the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (SI 2014 No. 2359) which can be found at: <http://www.legislation.gov.uk/uksi/2014/2359/contents/made>

Enforcement authorities (local authorities) will be able to ascertain whether an agent or property manager has joined a redress scheme, as all three schemes publish a list of their members on their website. It should be possible to determine if someone is acting as an agent either through a consumer complaint or through the equivalent of a mystery shopper exercise. Neither of these approaches requires new powers.

SECTION 1: LETTINGS AGENTS

What do we mean by 'lettings agency work'

'Lettings agency work' is defined in the [Enterprise and Regulatory Reform Act 2013](#) as things done by an agent, in the course of a business (see Section 2 below), in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 except where the landlord is a private registered provider of social housing or the tenancy is a long lease.

In the Act, lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided; and
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector because a local authority is already a member of the Housing Ombudsman Scheme.

The intention is that all “high street” and web based letting agents, and other organisations, including charities, which carry out lettings agency or property management work in the course of a business will be subject to the duty to belong to an approved redress scheme.

Exclusions from the requirement to belong to a redress scheme – lettings agency work

Employers who find homes for their employees or contractors: Article 4(2) of the Order excludes things done by an employer where the prospective tenant is an employee, or a contractor. It excludes the person the prospective tenant provides work or services to where the prospective tenant is a worker, or a contractor, or is on secondment. It also excludes the hirer where the prospective tenant is an agency worker.

This is because an employer may either directly, or via a third party, help an employee find accommodation as a way to attract and then retain workers, especially in areas of high labour demand. This would fall within the definition of lettings work but, to avoid discouraging organisations from providing housing assistance to those who work or provide services for them, they have been exempted from the requirement to belong to a redress scheme.

Higher and further education establishments: Article 4(3)(a) of the Order excludes higher and further education establishments. Universities, for example, often provide a service for their students to help them find property to rent. While this is lettings agency work as per the definition, the housing teams are not acting as independent

agents and have a wider duty of care for the students at their institution. If an individual student feels that the housing teams have not provided a good service there are existing channels for students to complain to including the students union.

Legal professionals: Article 4(3)(b) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. Legal professionals could be considered as carrying out lettings type work, for example, when they draft tenancy agreements. They are excluded from the duty as they are already heavily regulated and complaints about their services can be made to the Legal Ombudsman.

The Order does not exclude charitable organisations because any charity that is operating not as a business will already be exempt from the requirement. It is important that where charitable organisations are operating in the course of a business and especially where they are dealing with the most vulnerable that those most in need of support are not denied the opportunity to seek redress where things have gone wrong.

SECTION 2: PROPERTY MANAGEMENT

What do we mean by 'property management work'

In the Enterprise and Regulatory Reform Act 2013, property management work means things done by a person in the course of a business (see Section 2 below) in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

However, it does not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme by Schedule 2 to the Housing Act 1996.

For there to be property management work, the premises must consist of, or contain:

- a) a dwelling-house let under a long lease - "long lease" includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases;
- b) an assured tenancy under the Housing Act 1988; or
- c) a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas, corridors, stairwells etc.) that contains flats let under a long lease or let to assured or protected tenants.

The legislation will apply to people who in the course of their business (see Section 2 below) manage properties, for example, high street and web based agents, agents managing leasehold blocks and other organisations who manage property on behalf of the landlord or freeholder.

Exclusions from the requirement to belong to a redress scheme – property management work

Managers of commonhold land: Article 6(2) of the Order excludes managers of commonhold land even if one of the units is subsequently let on an assured tenancy. This is to avoid the manager having to join a redress scheme if one of the units on the development was let under a relevant tenancy type, when this is not something they are likely to be aware of. A relevant tenancy type means:

- a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;
- b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977; or
- c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies.

The exemption for managers of commonhold land only applies to the manager of the whole development- where an agent manages an individual dwelling-house in such a development, the duty to belong to a scheme will apply.

Managers of student accommodation: Articles 6(3) to (7) of the Order exclude student accommodation; in particular, halls of residence (which may be run privately), accommodation provided to students by education authorities and charities; and accommodation provided by any landlord where the students are nominated by an educational establishment or charity. Educational institutions will often rent bed space from trusted private providers (frequently agreeing a certain number of beds for a number of years and hence guaranteeing a level of rental income for the private provider) and then give that provider a list of names (nominated students) who will actually take up residence each year. The legislation is not aimed at university managed accommodation which is already well regulated and students have other mechanisms to complain, including through the students union.

Managers of refuge homes: Articles 6(8) to 6(10) of the Order exempt organisations that provide accommodation (refuge homes) for people who are fleeing from actual, or threat of, violence or abuse including controlling, coercive or threatening behaviour, physical violence or abuse of any other description (including both physical and mental). Where those organisations are not operated on a commercial basis and the costs of operation are provided wholly or in part by a government department or agency, a local authority, or the organisation is managed by a voluntary organisation or charity then there is no requirement for the managers of the building to join a redress scheme. The management and letting of such properties goes significantly wider than property management per se and the person living in such a property will not be occupying it as their permanent residence.

Receivers and insolvency practitioners: Article 6(11)(a) of the Order excludes work done by a person (“A”) in the course of a business where the property is subject to a mortgage and A is the receiver of the income of it. When a borrower defaults on a mortgage the receiver is appointed as agent for the mortgagor and steps into their shoes. As such it would not be appropriate to treat the receiver as a managing agent and require them to join a redress scheme.

Other authorities: Article 6(11)(b)(i) of the Order excludes authorities where Part 3 of the Local Government Act 1974 applies, as these authorities will already be subject to investigation by the Local Government Ombudsman. Such bodies include a local authority as not all local authorities are social landlords, a National Park authority, police and crime commissioners, or fire and rescue authorities etc. The requirement to belong to a scheme under this Order does not apply to work carried out by these authorities.

Right to Manage companies: Article 6(11)(b)(ii) excludes Right to Manage companies who acquire the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002 as they are in effect long leaseholders who have taken direct management of their block of flats from the landlord.

Legal professionals: Article 6(11)(b)(iii) of the Order excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. This is because they are already heavily regulated and complaints by relevant persons about their services can already be made to the Legal Ombudsman. (Where a property management firm is part of a joint venture with a legal firm but is operating under its own identity and is carrying out property management work then it will have to join an approved or designated redress scheme as under these circumstances it will not be authorised or licensed under the Legal Services Act 2007.)

Managers instructed by local authorities and social landlords: Article 6(12) of the Order excludes things done where a Local Authority or a social landlord have

instructed the person undertaking the work. Again this is because local authorities and registered social providers are already heavily regulated and consumers already have guaranteed access to an Ombudsman.

If a person is exempt from the redress scheme as they are not operating in the course of a business but they are collecting rent they will still have legal responsibilities as “manager” where the property is a [House in Multiple Occupation](#).

Head tenant as a manager: where a leaseholder receives a reduced service charge in exchange for maintenance work around the property for example gardening in a block of flats, or cleaning and maintains common areas such as stairwells, car parks and corridors. In such cases they are not required to be part of a redress scheme, as they are not doing the work in the normal course of business. In cases where the level of service is deemed to be sub-standard, other leaseholders can complain to the main agent or freeholder that their subcontractor is not up to standard.

Implicit exclusions from the requirement to belong to a redress scheme

Landlords are not explicitly excluded by the Order but are not generally caught by the Enterprise and Regulatory Reform Act as they are not acting on instructions from another party.

Resident management companies are not explicitly excluded by the Order although, in many cases, these are not caught by the Enterprise and Regulatory Reform Act 2013. Resident management companies can arise in different circumstances, but where the residents’ management company owns the freehold and manages the block itself there is no requirement for the company to join a redress scheme. This is because, under the definition in the Act, property management work only arises where one person instructs another person to manage the premises and, in this case, the person who owns the block (and is responsible for its management) and the person managing the block are one and the same.

Likewise, where a resident management company does not own the freehold but is set up and run by the residents and manages the premises on behalf of the residents this would also be excluded as the work is only in respect of the residents’ own premises and would not be operating in the normal course of business.

What do we mean by ‘in the course of business’

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work ‘in the course of business’ [as referred to in sections 83 and 84 of the Act](#). The requirement will therefore not apply to ‘informal’

arrangements where a person is helping out rather than being paid for a role which is their usual line of work. Some examples of 'informal arrangements' which would not come under the definition of 'in the course of business' are set out below:

- someone looking after the letting or management of a rented property or properties on behalf of a family member or friend who owns the property/properties, where the person is helping out and doesn't get paid or only gets a small thank you gift of minimal value;
- a friend who helps a landlord with the maintenance or decoration of their rented properties on an ad hoc basis;
- a person who works as a handyman or decorator who is employed by a landlord to repair or decorate their rented property or properties when needed;
- a landlord who occasionally looks after a friend's property or properties whilst they are away and doesn't get paid for it;
- a joint landlord who manages the property or properties on behalf of the other joint landlords.

Whilst it is not possible to cover all eventualities in this note one of the key issues to consider when deciding what could be considered an 'informal arrangement' is whether the person doing the letting or property management work is offering their services to genuinely helping out a friend or acquaintance, instead of being paid for their services..

Charities - the Order does not exclude charitable organisations because any charity that is not operating as a business will already be exempt from the requirement, Charities which find accommodation for homeless people in the private rented sector often deliberately mirror the activities of a letting agent but only work with homeless people. Unless they are charging a fee for this service it is likely that the charity could argue that is not operating in the course of a business and therefore be excluded from the duty.

SECTION 3: ENFORCEMENT

In order for the requirement for lettings and property management agents to belong to a redress scheme to be effective there needs to be a process for ensuring compliance and for there to be a fair and effective penalty where the requirement is not met.

Enforcement authority

The enforcement authority for the purposes of this Order is a district council, a London Borough Council, the Common Council of the City of London in its capacity as a local authority, or the Council of the Isles of Scilly. These are all local housing authorities but this does not limit the enforcing role to housing officers. Where Trading Standards services sit within one of these enforcing authorities, trading

standards officers will be able to enforce the regulations and issue the penalty notices, as well as housing officers.

For failure to publish prices on a website, the enforcement authority will be the local authority in whose area the head office of the lettings agent or property manager who has not complied with the requirement.

Penalty for breach of requirement to belong to a redress scheme

The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined.

The three government approved redress schemes are:

Ombudsman Services Property (www.ombudsman-services.org/property.html)

Property Redress Scheme (www.theprs.co.uk)

The Property Ombudsman (www.tpos.co.uk)

Each scheme will publish a list of members on their respective websites so it will be possible to check whether a lettings agent or property manager has joined one of the schemes.

The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.

The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

Where an enforcement authority intends to impose a penalty they must follow the process set out below.

Enforcement process:

Step 1: Notice of Intent

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

- i) the reasons for the penalty;
- ii) the amount of the penalty; and
- iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate). It is up to each local authority to decide who should serve the notice.

The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 2: Representations and Objections

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

- i) why the fine is being imposed;
- ii) the amount to be paid;
- iii) how payment may be made;
- iv) the consequences of failing to pay;

v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- i) the decision to impose a fine was based on a factual error or was wrong in law;
- ii) the amount of the fine is unreasonable; or
- iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf>

Step 5: Recovery of the penalty

If the lettings agent or property manager does not pay the fine within the period specified the authority can recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the enforcement authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.



Impact Assessment of regulation of letting and management agents by an independent body



Impact Assessment of regulation of letting and management agents by an independent body

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Summary: Intervention & Options

Department / Agency: Communities and Local Government		Title: Impact Assessment of regulation of letting and management agents by an independent body	
Stage: Consultation		Version: Partial	Date: 15 May 2009
Related Publications: The Private Rented Sector: Professionalism and Quality. The Government Response to the Rugg Review			

Available to view or download at:

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Contact for enquiries: PRSreview@communities.gsi.gov.uk

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What is the problem under consideration? Why is government intervention necessary?

Industry sources suggest at least 8,000 letting and management agents (LMAs) in England. We estimate that around 4,000 belong to at least one of the professional bodies. The rest are completely unregulated, with no mandatory qualifications. The current regime provides no mechanism by which a consumer can check agents' expertise; financial backing; professional indemnity insurance (PI); or client money protection (CMP). There have been cases of misappropriation of client funds without CMP in place, and negligence not insured by PI. These have sometimes been linked to agents going bankrupt, but there is currently nothing preventing such agents re-opening for business at a later date.

What are the policy objectives and the intended effects?

Increased security of funds held in agents' client accounts. Greater security and redress for customers (both landlords and tenants). Better standards of conduct (including requiring basic standards of maintenance and facilities in properties to let). Greater skills and knowledge of markets to support landlords. Increased protection for agents and clients in case of losses resulting from negligence. An independent complaints procedure and linked redress.

What policy options have been considered? Please justify any preferred option.

1. Do nothing. 2. Independent, regulatory body for letting and management agents, with mandatory membership.

We already effectively have voluntary regulation, with around half the estimated numbers of letting and managing agents having chosen to join a professional body (RICS, ARLA, NAEA and NALS). The industry are keen that we should create a level playing field, so that those who are responsible are not penalised for being so. We are keen to draw on the existing frameworks in place when delivering the new regulatory framework.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

During consultation we will work with stakeholders to ensure a proper balance of costs and benefits in developing a detailed, final policy proposal. A post implementation review framework will be developed, and outlined in the final impact assessment.

Ministerial sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



20 May 2009

..... Date:

Summary: Analysis & Evidence

Policy Option: 1. Full regulation	Description: Full, mandatory regulation of all letting and managing agents
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' There are anticipated to be set up costs for a regulator of £650,000, and annual running costs of £750,000. These will be covered by initial admin fees and annual membership fees for LMA's. Costs of mandatory CMP across the sector are estimated at £1.2m per annum.	
	One-off (Transition) Yrs		
	£ 650k	1	
	Average Annual Cost (excluding one-off)		Total Cost (PV)
	£ 1.95m	Other key non-monetised costs by 'main affected groups' Associated costs of meeting basic membership hurdles. Costs in fees to agents for landlords currently using unregulated agents. However, the latter will be voluntary, as landlords may choose not to use agents. Increased costs of indemnity protection, and administrative costs.	

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' CMP claims may be around £1,400 per tenancy agreement affected. Across the estimated 900,000 tenancies to be brought under regulation, we assume around 0.2 per cent may be subject to such a claim per annum. There will be associated benefits in terms of avoided losses for landlords and tenants.	
	One-off Yrs		
	£ 0		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)
	£ 2.5m	Other key non-monetised benefits by 'main affected groups' Greater confidence in LMA's by landlords and tenants, and increased "soft" enforcement of basic standards. Improved enforcement will be backed up by common codes of conduct. Benefits to good agents through improvements in stature and a level playing field. Increased rates of indemnity protection.	

Key Assumptions/Sensitivities/Risks

Half of agents currently unaffiliated to a professional association. 900,000 additional tenancies to benefit from CMP protection. 0.2 per cent annual claim rate against CMP, from which benefits derived in form of avoided tenant/ landlord losses. Sensitivity testing with a 0.4 per cent p.a. CMP claim rate, and higher average annual costs of £4.2m.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ 4m – £6m	NET BENEFIT (NPV Best estimate) £ 4m
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		Subject to legislation		
Which organisation(s) will enforce the policy?		Subject to legislation		
What is the total annual cost of enforcement for these organisations?		£ covered by fees		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ n/a		
What is the value of changes in greenhouse gas emissions?		£ n/a		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro £400	Small £400	Medium £400	Large £1000+
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Introduction

This impact assessment is one of two covering key regulatory proposals in the Government's response to the Rugg Review. The response was issued for consultation on 12 May and the deadline for comments is 7 August 2009. The impacts of the proposals contained in the response will also be discussed in depth by key stakeholders as part of task and finish groups set up by Communities and Local Government to explore specific proposals set out in the response.

Background

Key facts

In 2008, just over 14 per cent of all English households were housed in the private rented sector (PRS)¹. The Rugg Review estimated that the PRS in England contained around 2.6 million properties in 2006, up from 1.8 million in 1988². The sector has continued its growth since 2006, and more recent estimates suggest that, by the end of 2008, there were over 3 million English households in the PRS.

The sector is dominated by small landlords – in 2006 73 per cent of all landlords were individuals or couples and a little over 70 per cent of all landlords owned less than 10 properties (84 per cent of individual/ couple landlords owned 10 or fewer properties)³.

In 2006, around 60 per cent of private landlords used one of the estimated 8,000 letting and/or managing agents in England⁴. There has been a general industry concern about the quality of the service offered by agents and lower tenant satisfaction levels (71 per cent) were recorded where a property was managed by an agent rather than a landlord (81 per cent satisfaction) (Rugg Review, p63). 71 per cent of agents that responded to the English House Condition Survey's landlord survey of 2006 were members of an existing professional body. Industry estimates suggest this approximates to an actual membership rate of around 50 per cent. In fact, a 50 per cent membership rate is an upper bound estimate, as approximately 4,000 letting and management agents belong to one or more of the existing professional bodies (RICS, ARLA, NAEA and NALS), whereas there are at least 8,000 letting and management agents in England.

¹ CLG analysis of ONS Labour Force Survey data.

² "The Private Rented Sector: its contribution and potential", Julie Rugg and David Rhodes, Centre for Housing Policy, University of York, 2008 (page 39).

³ See Rugg Review, tables 2.1 and 2.5, respectively.

⁴ See Rugg Review, table 3.8.

The Rugg Review

In January 2008, the Government commissioned an independent review of the private rented sector from Julie Rugg and David Rhodes at the Centre for Housing Policy at the University of York. The review was commissioned partly in response to concerns about the stock condition and the activities of some unscrupulous landlords and letting and managing agents in the sector expressed by reports from the CAB, Shelter, RICS and the Law Commission, and partly to complement Sir John Hills' review of the social rented sector.

The Rugg Review's findings were published on 23 October 2008. Overall, the review pointed to a sector that performs an important role in the housing market; a sector that is responding flexibly to changing circumstances, both for individuals and structurally; and a sector that continues to offer quality and choice for those choosing to rent, as well as a safety net for those unable to access other types of housing.

However, the Rugg Review also highlights weaknesses. Whilst it finds that most landlords are well-intentioned and deliver a good service, it also finds that some simply do not view their role professionally and, therefore, fail to obtain sufficient knowledge to provide a satisfactory level of service. Others – a minority – are ill-intentioned and seek to operate outside and against the current regulatory framework, often exploiting the most vulnerable and allowing anti-social behaviour to take place in neighbourhoods, causing misery for many households. At the same time, local authorities are not always able to focus their resources in order to use the extensive enforcement powers provided in the Housing Act 2004 against the worst landlords.

The review sets out a series of high level "policy directions of travel" to tackle the weaknesses it identifies in the sector. Proposals for full, mandatory and independently-led regulation of letting and managing agents form a key part of those in the review to improve the quality and professionalism of management within the sector

Regulation of letting and managing agents

The proposals for regulation of letting and managing agents in this Impact Assessment derive directly from the Rugg proposals. They also reflect proposals in the work by Professor Carsberg in a review of the subject commissioned by the Royal Institution of Chartered Surveyors and the Law Commission's report – *Encouraging Responsible Letting* – both published in 2008.

Many of the measures proposed in the government's response to Rugg are designed to encourage landlords to become more professional. However, it is important to accept that some will simply not have the resources to act as full-time landlords or have become landlords through circumstances not of their choosing. For these 'amateur' or 'reluctant' landlords, letting and managing agents have a vital role in providing the professional input and support that the landlords lack. In many cases, even where a landlord has the basic skills and

knowledge needed to carry out his or her business, there will still be advantages in using an agent because of the increased resources and coverage they can offer and, most importantly, the additional expertise they bring to the process of letting and managing a property. However, as the key facts above highlight, whilst this is true of the best letting and managing agents, it is unfortunately far from the norm, particularly in the current economic climate.

It is still possible to set up a letting or management agency with no qualifications whatsoever, with no need to conform to requirements as to conduct or to provide mandatory safeguards for the consumer. We do not think that this is desirable or appropriate in the modern age. We are aware of cases where quite large and well-established agencies have run into difficulties and, because they had no client money protection, both landlords' and tenants' money was lost. In some cases, this has not prevented those associated with the defunct business subsequently resuming their activities. At the same time, even where agents are not at financial risk they do not necessarily offer the type of service that it is perfectly reasonable for consumers to expect – for instance, the 2006 English House Condition Survey of landlords found that 41 per cent of dwellings where a landlord had used an agent were non-decent.

The absence of regulation for letting and managing agents also does not seem right both in the context of the regulatory framework already in place for estate agents (who often also act as letting and management agents) or in the context of the greater consumer focus and transparency which underpin the general thrust of the government's proposals for the private rented sector.

Policy objectives

Full regulation is likely to comprise a number of elements:

- entry requirements
- code of practice for members
- requirements to have in place business and consumer protection measures (such as client money protection (CMP), independent complaints procedures and linked redress, professional indemnity insurance(PI))
- monitoring of compliance by the regulatory body
- enforcement powers and the ability to put in place sanctions.

We would envisage that the regulatory regime for letting and management agencies would encompass all these elements.

We do not wish create unnecessary additional bodies to carry out these functions. We would rather draw on existing frameworks to deliver the new regulatory framework and we would wish to work closely with the industry as we develop our proposals within the parameters set out here.

Through the requirements of full, mandatory, independently-led regulation we could ensure that:

- all agents had the proper consumer protections in place
- they could no longer let and manage sub-standard properties
- in working with landlords to bring potential lets up to a basic standard, they could also take some of the burden of enforcement away from local authorities
- in cases where things go wrong, there would be a transparent and independent means for consumers to complain and obtain redress; and
- those without the expertise or experience to offer a proper service to consumers would no longer be able to trade.

Links to other policy areas

Our proposals link closely with the work that the Department of Work and Pensions has been doing as part of its internal review of housing benefit and with the Department of Energy and Climate Change's work to improve the energy efficiency of the private rented sector.

Options

Given the findings of the Rugg Review and the concerns of our stakeholders, making no change to the current arrangements is not a sensible option. As already explained, "voluntary" forms of regulation do not achieve the take up levels that we would need in order to ensure that landlords and tenants are not put at risk.

Cost/benefit analysis (where quantifiable)

Coverage

1. Industry sources suggest there to be at least 8,000 letting and management agents in operation in England, of which 4,000 are members of at least one professional body (RICS, ARLA, NAEA and NALS).
2. The 4,000 letting and management agents who are currently members of a professional body all currently have client money protection (CMP) and professional indemnity insurance (PI) in place. They are therefore assumed not to incur additional costs as a result of the CMP and PI that would be mandatory under an independent regulatory body.
3. The remaining, 4,000 currently unaffiliated agents do not currently have CMP (although most are likely to have PI at present). We therefore assume all 4,000 incur additional costs in the form of CMP premiums⁵.

4. Sixty per cent of landlords currently make use of a letting or management agent. We have no intelligence to suggest these are disproportionately large or small landlords, with some cases of very large landlords using management agents for their properties. We therefore assume the regulatory body will cover 60 per cent of tenancies.
5. At the end of 2008, there were just over 3 million English households in the PRS. 1.8 million (60 per cent) of these would therefore be covered by the new regulatory body, given the 60 per cent of landlords estimated to use letting and management agents. Given that existing professional bodies cover at most half of letting and management agents it is therefore assumed that an additional 900,000 tenancies will be covered by the mandatory regulatory body.

Costs

6. There are a number of options regarding the final form of an independent regulatory body, and exact costs will depend upon the final decision following consultation. Current estimates suggest net up-front set up costs could be around £650,000, with annual running costs in the range £600,000 - £900,000 (central assumption: £750,000).
7. These cost estimates are consistent with a joining fee of around £180 for agents who are not currently members of a professional body (the 4,000 who are currently members of a professional body would be "passported" in without additional charge), and an average annual fee of £120 for all the estimated 8,000 letting and management agents. Both these figures are inclusive of VAT, and may vary by size of firm.
8. Industry sources suggest client money protection (CMP) costs around £300 per annum for small and medium sized agents. For the 4,000 agents for whom mandatory CMP would apply under this policy proposal, this equates to an annual cost of £1.2m. For larger firms with greater numbers of branches, CMP premiums may be considerably higher, and are generally upon application to an insurer. However, the numbers of such firms who do not currently have CMP are expected to be small. Where claim rates are higher, costs of CMP are also likely to rise (see sensitivity testing).

Benefits

9. From consultations with industry, an estimate of client funds misappropriated per tenancy is £1,400, when claims against CMP are made, typically a combination of both landlord and tenant funds. By making CMP mandatory, protection against such instances of misappropriation can be extended across the sector.

⁵ It is likely that CMP providers will require PI as a pre-condition for coverage

10. For the 900,000 tenancy agreements we estimate to not currently be protected by CMP, a conservative assumption would be that 0.2 per cent per annum may be subject to fraud or misappropriation, CMP would cover claims of $900,000 * \pounds 1,400 * 0.2\% = \pounds 2.5\text{m}$ per annum. Of course, given this is a 'grey' area of the lettings and management sector, this figure may in fact be higher, especially given potentially higher fraud risks in the current economic climate. Sensitivity testing is carried out with a claim rate of 0.4 per cent per annum, with higher associated benefits from CMP.

Generic assumptions

11. The appraisal time frame is 10 years.
12. All one-off costs incurred up-front, with annual costs and benefits accruing over years 1 to 10.
13. Costs and benefits are expected to rise with inflation over time, and are therefore expressed in real terms.
14. These are then discounted at a real discount rate of 3.5 per cent to derive net present values (NPV's).

Key unquantified costs and benefits

15. Given the widespread existing use of PI in the industry, meaning the additional coverage brought about will be small, costs and benefits are not quantified. Nonetheless, where agents are uncovered by PI, they may be left unable to pay claims awarded against them, forcing them in to bankruptcy, leaving the landlord and/ or tenant out of pocket. There is a reasonable degree of choice for agents in respect of PI, and a competitive market is assumed to operate. In such a situation, insurers are likely to price premiums in line with expected claims. Such a market delivers the usual benefits of insurance, given that agents, tenants and landlords are reasonably assumed to be risk and loss averse. It will also help ensure that landlord and tenant interests are adequately protected, helping overcome issues caused by information asymmetries between agents and their clients. There will therefore be offsetting benefits to the additional costs of PI.
16. Improvements in the quality of stock, letting and management practices arising from members' code of practice.
17. Reduced dispute costs and fairer outcomes due to an independent complaints service and improved redress. Improved management of risk for agents, tenants and landlords.
18. A more level playing field, whereby those agents practicing higher standards (e.g. taking protection in the form of CMP and PI) are not

Table 1a: Option 1, central assumptions

Year	0	1	2	3	4	5	6	7	8	9	10
Regulator set up costs, £m	-0.7										
Annual running costs/ CMP premia £m		-2.0	-2.0	-2.0	-2.0	-2.0	-2.0	-2.0	-2.0	-2.0	-2.0
Annual benefits - losses covered by CMP, £m		2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Net annual cost/ benefit, £m	-0.7	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6

Implementation arrangements

The proposal is set out in the government's response to the Rugg Review (The private rented sector: professionalism and quality). It is subject to a full public consultation process, including detailed discussion of key proposals by task and finish groups set up for that purpose and involving representatives of all key stakeholders. A central task for these groups will be consideration of costs and benefits.

We welcome comments from all consultees on the costs and benefits of our proposals. The deadline for responses to the consultation exercise is 7 August 2009. A summary of responses will be published following that deadline and more detailed proposals emerging from that process will be published for consultation in a White Paper in the autumn. Full regulation of letting and managing agents would require primary legislation which would not be in place until 2011 at the earliest.

Enforcement arrangements

Detailed enforcement arrangements are yet to be developed. The current consultation exercise will form an important input to that process. The Hampton Principles will also be a key input to consideration of enforcement activity.

Post implementation review/post legislative scrutiny arrangements

Rigorous arrangements will be put in place to review any legislation and measures once they have been finalised and implemented. Given the early stage of these policy proposals, full details are not yet available. A framework for post implementation review will be included in the final IA.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Results of specific impact tests – these should all be seen in the context of the overall outcomes associated with the regulation of letting and managing agents of improved protection for consumers (both landlords and tenants); a more level playing field for responsible letting and managing agents; and better enforcement against poor landlords leading to improved stock quality.

Competitive assessment – no impact. Proposed measure will apply across the sector and bring poor letting and managing agents up to the standard of those who already provide safeguards for their customers.

Small firms impact test – impact. There are considerable numbers of small firms that would be affected by these proposals in the form of both letting/ management agents and landlords. There will be both costs and benefits for these. Small landlords, for example, are presently more likely to be caught out by a poor letting or managing agent either through the agent offering an inadequate service or, in some cases, through the agent running into financial difficulties. The proposed regulation would provide better safeguards for small landlords allied with redress across the sector. However, the proposed policy may increase agents' costs, and care needs to be taken in the final policy design to ensure that small agents are not disproportionately affected. However, there will be offsetting benefits for firms currently performing best practice, as there will be a level playing field to ensure they are not competitively disadvantaged. There will be a full small firms' impact test at the final impact assessment stage, drawing on evidence gathered during consultation.

Legal aid – no impact/possible reductions in costs. Neither landlords nor letting and managing agents are generally eligible for legal aid. So changes in the legal framework for them would have no impact on legal aid payments. Where a tenant is engaged in a dispute with an agent (or a landlord using an agent) we would expect the improved complaints and redress processes to mean a reduction in court activity with matching reductions in legal aid where it is supporting a tenant's involvement.

Sustainable development – positive impact. Not the main focus of these proposals. But would expect improvements in the quality of the stock that they are intended to deliver to impact positively on sustainable development outcomes.

Carbon assessment – positive impact. Marginal but, where this measure secures improvements in stock quality, we would expect this to be linked to improved energy efficiency and reduced carbon emissions.

Other environmental – positive impact. Again, marginal but improved stock quality and more professional management should mean improvements in other environmental outcomes such as other greenhouse gas emissions, water consumption and noise pollution.

Health impact assessment – positive impact. Marginal, but improved stock quality would lead to better health for tenants.

Race equality – positive impact. Marginal. Ethnic minority groups tend to be disproportionately represented in lower quality rented stock. Landlords in this sub-market tend not to use agents, but, where they do, we would expect this measure to secure improvements for this group.

Disability equality – neutral. The proposed measure is neutral towards those with disabilities. We are not currently aware of evidence that they are disproportionately represented in the sector. Securing improvements in agents will have no specific impacts on this group.

Gender equality – Neutral. The proposed measure is gender neutral. We do not have any evidence to suggest that specific genders are disproportionately represented within that part of the private rented sector that is let or managed by agents. Therefore impacts flowing from the proposed measure should not have gender specific outcomes.

Human rights – positive impact. By securing better redress and more professional management standards, will improve tenants' right to suitable accommodation and to undisturbed enjoyment of their home. Reduced client exposure to unanticipated and unfair financial losses.

Rural proofing – neutral. There are relatively fewer private rented properties in rural areas than in urban ones. However, we would expect the same impacts as outlined elsewhere to emerge.

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