

Rogue Landlord Database Reform

UK Finance Response to MHCLG Consultation

Due Date: 12 October 2019

Sent to: PRSenforcement@communities.gov.uk

Introduction

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

We are responding to this consultation on behalf of our members who are buy-to-let (BTL) mortgage lenders. These lenders provide nearly £250 billion of lending to support landlords' acquisition of privately rented accommodation. We note that lenders were not identified as organisations expected to respond to the consultation; nonetheless we believe our interest in the private rented sector warrants a response.

Overall Views

BTL mortgage lenders recognise that there is a political drive to adjust the power balance between landlords and tenants so that tenants feel they have a greater degree of protection and landlords are held to a greater degree of responsibility. Lenders are supportive of measures which enhance trust between landlords and tenants, as this promotes long-term stability in the private rented sector, which improves investor confidence in the BTL sector. On this basis, we are wholeheartedly supportive of the proposal to widen access to the Rogue Landlord Database. To maximise its effectiveness, we would like to see access available to tenants and organisations with an interest in the private rented sector, including mortgage lenders, letting agents, etc.

One of the features of law is that if a landlord is subject to a banning order and if a management order is then put in place, rental income from that property is diverted to the local authority. If this property is backed by a mortgage, then the lender would typically not receive payments from the point that management is taken over. This then threatens the tenancy, as the mortgage lender will take possession using Section 8 when mortgage arrears build up to a sufficient level. The fact that rental income in these cases is not diverted to the mortgage lender is detrimental to both the mortgage lender and the tenant. Although this is not in scope of the consultation, we would like to see this area of the law reconsidered. A solution we propose is to allow the lender to appoint an LPA receiver in cases where a management order is placed on a mortgaged property. This would allow the lender to continue to receive mortgage payments from the proceeds of the rent and would allow the tenancy to remain in place.

Answers to specific consultation questions

Question 3: Do you think that the database should allow tenants and potential tenants access to the details of rogue landlords and property agents contained within it?

Our response: Yes

Question 4: Please give your reasons for allowing access to the database.

- Allows tenants to check they are not renting from a known rogue landlord or property agent
- Allows tenants to make an informed choice

- It will act as a deterrent to rogue landlords and property agents
- For tenant protection
- Other - please specify (there is a limit of 750 characters).

Max 750 characters

Other reasons: We agree there is a strong argument to make the database open to help protect tenants from unknowingly renting from a criminal landlord. We believe that the database should be open not only to prospective tenants but also to organisations with an interest in the private rented sector, including mortgage lenders and brokers, large letting agents and professional and sector bodies. We believe this would help raise standards in the private rented sector as unscrupulous landlords would then find it difficult to obtain financing and management services, which will help drive this minority of landlords out of the sector.

Question 5: (If tenant protection) Why do you think it is necessary for their protection (max 750 characters)?

Response: Without access to the database, tenants may have no way of knowing whether their current or prospective landlord has a track record of breaching of letting regulations. With access to the database, tenants will be able to make better-informed decisions when looking for a new home in the private rented sector.

Question 6: Do you think access to the database of rogue landlords and property agents would be a useful tool for tenants and potential tenants in making a decision on properties to rent?

Response: Yes

Question 7: (If yes) Under what circumstances do you think a potential tenant would make use of the database prior to a tenancy?

Response:

- Only if a tenant had concerns about the property
- If a tenant had concerns about a landlord
- As a matter of course (due diligence)

Question 8: Under what circumstances do you think a tenant would make use of the database during a tenancy?

- Only after attempting to have the landlord/agent rectify the issue
- As soon as the issue arises
- At the same time as complaining to the local authority

Question 9: Why do you think a tenant would not make use of the database?

- Would complain to the local authority about the issue
- The information held on the database would not rectify the issue.
- Other - please provide further information (there is a limit of 750 characters).

Response to Other: Prospective tenants will not use the database if they are not aware of its existence. We would like to see MHCLG actively advertise its existence to consumers when the database becomes available. Additionally, the consultation paper is silent on the potential cost of using the database. Imposing a cost would probably deter prospective tenants from using it. We would like to a database which is free of charge for users, as this would maximise the reach of it. Additionally, there is precedent for a free rogue landlord database as GLA already operates one for landlords in London.

Question 10: Who else might benefit from access to the database? Please also provide your

reasons (there is a limit of 750 characters).

Response: Access to the database should be open to organisations with an interest in the private rented, including mortgage lenders and brokers, letting agents and landlord representation bodies. With access, these organisations could more easily avoid dealings with unscrupulous landlords, making it harder for them to operate.

Additionally, mortgage lenders do not want to support lending to properties which are not fit to be rented. By allowing lenders to access the database and use the data therein to inform their lending decisions, unscrupulous landlords will find it difficult to obtain financing, which will help drive this minority of landlords out of the sector.

Question 11: To meet data protection requirements the database would require an access portal, which of the following options do you think would be appropriate?

- Signing up for a user account and providing your details such as name, address and email address.
- Sign up with an email address
- Access by entering your postcode and property number

Question 12: Should a redacted version of the landlord/agent's address be viewable to tenants, for example the local authority area, town, street and partial postcode?

Our response: Yes

Question 13: (If yes) Please provide reasons why a redacted version of the landlord/agent's address should be viewable to tenants (there is a limit of 750 characters).

Our response: Providing a redacted version of the landlord/agent's address would help to uniquely identify the landlord/agent. This would help eliminate confusion which would arise when an individual with a common name is added to the list. Given that the data privacy of the landlord/agent needs to be considered, a redacted version of the address, rather than the full address, feels appropriate.

Question 14: N/A as we answered Yes to question 12.

Question 15: Should potential or existing tenants be able to view the landlord/agent's full name?

Our response: Yes

Question 16: (If yes) Please provide reasons why a potential or existing tenant should be able to view the landlord/agent's full name?

Our Response: Showing the full name of the landlord would enhance the transparency, making the database more effective. Often a tenant does not know who their landlord is or may think it is someone else. Providing the landlord/agent's full name will help to mitigate this issue and help tenants make better informed choices.

Question 17: Do you think a landlord or agent should be required to disclose to an existing or prospective tenant that they are included on the database?

Our Response: No

Question 18: N/A as we answered No to Q17

Question 19: (If Q17 is no) Please give your reasons for why a landlord or agent should not be required to disclose to an existing or prospective tenant that they are included on the database.

- This is unnecessary if tenants have access to the database.

Other - please specify (there is a limit of 750 characters).

Question 20: Should full details of the offence a landlord or agent has been convicted of, including nature of the offence be viewable?

Our Response: Yes

Question 21: N/A as we answered Yes to Q20.

Question 22: How long should a landlord remain on the database?

As long as the conviction remains unspent and in line with the Rehabilitation of Offenders Act.

If there is there any reason to retain the information for less time than outlined in the Rehabilitation of Offenders Act, please provide further details in the comment box below (there is a limit of 750 characters).

Question 23: Do you agree with the list proposed additional offences contained at in annex B? (there is a limit of 1000 characters)

Our response: Yes

Question 24: In its current form, two or more Civil Penalties within a 12-month period are required for a landlord to be included on the database. Do you think that landlords/agents who receive a single civil penalty notice should be included on the database?

Our Response: No; It should remain two or more civil penalty notices

Question 25: Where a property is not up to the required standard a local authority can issue an improvement notice. An improvement notice is issued when a property contains serious hazards such as a category 1 or 2 hazard/s under the Housing Health and Safety Rating System (HHSRS) requiring the landlord to take remedial action in relation to the hazard. The notice will detail what the hazard is, what is causing it and the action required to remedy the hazard. Where a landlord/agent has been issued with an improvement notice, should they be included on the database?

Our Response: No

Question 26: Does not apply as we answered No to Q25.

Question 27: Are there any other offences not listed in the annexes that should be included? Please specify and give your reasons for inclusion (there is a limit of 750 characters).

Our Response: None

Question 28. Before granting a licence, a local authority must carry out a fit and proper person test on the prospective landlord. A fit and proper test is not universal, and it is up to individual local authorities to decide upon the detail of the test. Should landlord/agents who fail a fit and proper person test be included on the database?

Our Response: Yes.

Question 29: If yes, please provide your reasons why landlords/ agents who fail a fit and proper person test should be included on the database.

Our Response: Knowing that a landlord has failed the test may inform the tenants' expectations of their relationship with their future potential landlord. If the tenant is progressing a dispute and finds

that the landlord has previously failed the test in a different local authority, that may influence how the tenant continues with that dispute. However selective licensing varies across local authorities, so a landlord could be deemed “fit and proper” in one location and not in another. Users of the database who are not aware of this may find it confusing. For this reason we would also support a standardised “fit and proper” person test.

Question 30: Should the reason for failing the fit and proper person test be included and viewable?

Our response: Yes, this would help to provide context around the landlord’s track record.

Question 31: Local authorities currently have discretion on how they assess who is a fit and proper person. The functioning of the fit and proper person test will not be addressed directly as part of this consultation. However, we are interested in your views as they relate to the question of inclusion of failure of the test in the database. Would it be helpful to introduce a standardised fit and proper person test?

Our Response: Yes

Question 32: Please provide further detail on why you think it would be helpful to introduce a standardised fit and proper person test (there is a limit of 750 characters).

Our Response: Introducing a standardised approach to assessing a fit and proper person would reduce the burden of compliance landlords need to meet if they rent properties in different areas which currently have different standards. Survey research suggests that landlord are deterred from investing in the sector due to increasingly complex compliance burden. Streamlining this burden would improve investor confidence and help mitigate the risk of a constrained supply of rented property due to overregulation.

Question 33: Does not apply as we said Yes to Q31.

Question 34: Where a landlord/agent has a licence to let a House in Multiple Occupation, or a property subject to selective licensing denied or revoked, should the landlord or agent be included on the database?

Our Response: Yes

Question 35: (If yes) Please give your reasons why a landlord/agent who has had a licence to let a House in Multiple Occupation or a property subject to selective licensing denied or revoked should be included on the database. (there is a limit of 750 characters)

Our response: Having a licence revoked is an indication that the landlord is not operating with due regard to the law. As a result they should appear on the database.

Question 36. Should the reason for a licence being denied or revoked be viewable?

Our Response: Yes, to all users

Question 37: In relation to question 34, please give further details (there is a limit of 750 characters)

Our Response: No additional comments

Question 38: Under the Housing Act 2004 a local housing authority can make management orders in respect of houses in multiple occupation and other privately rented property. These include certain conditions that need to be met that are linked to the conditions and management of a

property. Should a landlord or agent whose property is subject to a management order be included on the database?

Our Response: Yes

Question 39: Please give your reasons why a landlord or agent whose property is subject to a management order should be included on the database (there is a limit of 750 characters).

Our Response: Mortgage lenders would need to know if a management order was placed on one of the properties which they lent against, as this would be an indication that mortgage payments would not be maintained, as the rent would no longer be collected by the landlord. This greatly increases the likelihood that the mortgage lender will take possession, which is burdensome to the lender, but more importantly leads to the tenancy being terminated and the tenant being evicted. We would like to see this area of the law revisited. A solution we propose is to allow the lender to appoint an LPA receiver in cases where a management order is placed on a mortgaged property. This would allow the lender to continue to receive mortgage payments from the proceeds of the rent and would allow the tenancy to remain in place.

Question 40: From 1 October 2014 all property agents have been required to belong to a redress scheme. Government intends to make membership of a redress scheme mandatory for all private landlords when parliamentary time allows. Should landlords and property agents who are expelled from a redress scheme be included on the database?

Our Response: Yes

Question 41. (If yes) Please give your reasons why landlords and property agents who are expelled from a redress scheme should be included on the database (there is a limit of 750 characters).

Our Response: Being expelled from a redress scheme is an indication that the landlord is not operating with due regard to the law. As a result they should appear on the database.

Question 42: Should local authorities retain access to information held on the database after it is no longer available for tenant access, for specific purposes such as legal and/ or audit?

Our Response: Yes

Question 43: Please provide further detail for your answer to question 42

Our Response: Allowing local authorities to retain information would improve their ability to build up a case and take action against rogue landlords. This lead to a better functioning private rented sector.

Question 44: Any further comments?

Our response: We want to reiterate the importance of mortgage lenders having access to the database, and particularly the ability to see when a management order is placed on a property. A management order on a mortgaged property would likely lead to the lender taking possession, which would terminate the tenancy. However, if an LPA receiver were appointed when a management order is put in place, this would help mitigate the risk of a tenancy ending as a result of a landlord being issued with a management order.

If you have any questions relating to this response, please contact Carla Sateriale, Manager, Mortgages. (Carla.sateriale@ukfinance.org.uk)