Proposed Additional Licensing Scheme in the London Borough of Kingston upon Thames

National Approved Letting Scheme (NALS) Consultation Response

15 September 2017

An Introduction to NALS
NALS is an accrediting organisation for lettings and management agents in the private rented sector. NALS was established in 1999 by the Empty Homes Agency, with backing from the Royal Institution of Chartered Surveyors (RICS) the Association of Residential Lettings Agents (ARLA) and the National Association of Estate Agents (NAEA). NALS provides an overarching quality mark, easily recognised by consumers, with minimum entry requirements for agents.

NALS agents are required to:
- deliver defined standards of customer service
- operate within strict client accounting standards
- maintain a separate client bank account
- be included under a Client Money Protection Scheme

Agents must provide evidence that they continue to meet NALS criteria on an annual basis in order to retain their licence. The scheme operates UK wide and has 1500 firms with over 2000 offices, including a number of agents within the London Borough of Kinston upon Thames.

NALS was recognised by the GLA as an approved body for the London Rental Standard. We have also become a co-regulation partner with Liverpool City Council and a recognised training provider under the Rent Smart Wales scheme.

NALS also administers the SAFEagent campaign (www.safeagents.co.uk), the purpose of which is to raise consumer awareness of the need to ensure that landlords and tenants should only use agents who are part of a Client Money Protection Scheme which offers reimbursement in the event that an agent misappropriates their money. The campaign is recognised by Government and the SAFEagent logo appears in their How to Rent guide (www.gov.uk/government/publications/how-to-rent).

We very much welcome the opportunity to contribute to this consultation exercise.

Overview
We understand that Kingston Council is undertaking a consultation on proposals to extend the additional licensing scheme for a further five years.

The Housing Act 2004 and associated guidance places certain responsibilities on the council when consulting on a proposed licensing scheme. The consultation should include a detailed explanation covering the reasons for the designation,
how it will tackle perceived problems and how the licensing scheme would improve matters. Alternative options should also be explored.

We do not think that the council’s evidence base demonstrates a significant proportion of HMOs in the area are being poorly managed or what other courses of action have been considered that might provide an effective method of dealing with the problem. Following the rollout of new civil penalty powers to make housing enforcement action self-funding without the need for licensing, the report fails to consider this as a viable alternative option.

Regarding the consultation questionnaire, we believe the questions are so limited they provide no realistic prospect of generating any meaningful results.

In the absence of any clear business case for introducing a new additional licensing scheme, we object to the licensing proposal set out in the consultation.

As the council will know, Enfield Council had their additional and selective licensing schemes quashed in a Judicial Review after deficiencies were identified with their consultation exercise. Having regularly contributed to licensing consultations across the country, we feel there are deficiencies in the Kingston consultation exercise which may place the council at risk of legal challenge. We would urge the council to step back and think again, allowing time to develop a more comprehensive and meaningful consultation and engage constructively with all relevant stakeholders.

In addition to these overarching observations, we have further specific comments about the consultation, as outlined below.

**Government proposals to expand the mandatory HMO licensing scheme**

Following the government’s decision to expand the mandatory HMO licensing scheme to all properties with five or more occupants, the council’s business case for additional licensing needs to be much more focused on HMOs with only three or four occupants.

The evidence base needs to demonstrate what if any problems are associated with these lower occupancy properties when deciding whether an additional licensing scheme is needed. To date, no such evidence has been provided.

**Section 257 HMOs (certain converted blocks of flats)**

The consultation exercise does not explain whether section 257 HMOs are included in the proposed scheme. We understand they are excluded from the current scheme and have therefore assumed there is no proposal to change this arrangement.

As such, we welcome the council’s decision to exclude the licensing of section 257 HMOs from the proposed scheme.

**The evidence base**

We have examined the evidence base published on the council’s website. Whilst we are pleased the council strongly support accreditation schemes to help drive up standards in the private rented sector, we would draw your attention to our
accreditation scheme for NALS' members which has not been referenced in the report.

In section 7 of the evidence base the council have acknowledged the requirement to show:

- that a significant proportion of the HMOs in the area are being ineffectively managed to as to cause problems to the occupants or members of the public; and
- what other courses of action are available to the Council that might provide an effective method of dealing with the problem.

Whilst this is a fundamental requirement before an additional licensing scheme can be introduced, we can find no evidence to satisfy these requirements in the report.

We would not agree with the statement in section 6 that licensing is the principle tool for regulating standards in HMOs. It is one of many tools at the council’s disposal. Whilst only certain HMO are subject to licensing, all HMOs are required to comply with the HMO Management Regulations and the council has strong powers to tackle serious hazards in all rented accommodation through Part 1 of the Housing Act 2004.

The report indicates that the additional licensing scheme helps to protect 7,000 Kingston University students living in shared accommodation. The supporting table indicates there are 4,876 converted or shared dwellings in the borough. When the current scheme was implemented in 2012, we understand the council expected to license 500 to 1,000 properties. We cannot find any updated estimate in the report. We are concerned that section 9 of the evidence base indicates only 210 properties have been licensed since the scheme came into force. It seems that many landlords have not applied for a licence, which calls into question the value of the licensing scheme.

Section 10 lists issues that the licensing scheme was designed to address. The reports does not explain how successful the scheme has been in resolving these issues, which issues remain outstanding, why a further scheme is needed and why so little enforcement action has been taken against those that failed to apply for a licence.

We are unsure the reason for listing the Camden, Croydon and Hounslow licensing schemes in section 11, given there are 16 additional licensing schemes currently operating in London. Croydon ended their additional licensing scheme and now only operate selective licensing.

**Licensing fees**

We are pleased the council is proposing to set a lower fee for licence renewals. We think this is appropriate given that most information will already be known to the council and less work is involved when relicensing a property.

We note the council offers a discounted fee to accredited landlords and we are pleased that this discount has been extended to situations where either the licence holder or manager is accredited through an approved scheme. We would
request confirmation that the discount applies if the manager is an accredited NALS’ agent.

**Licence Conditions**
The council has not published a proposed list of licence conditions and so we have been unable to comment.

**Scheme evaluation**
When it comes to renewal of an existing licensing scheme, it is important to evaluate the previous scheme and establish how successful it has been in tackling perceived problems. Having looked on the council’s website, we can find no such evaluation report.

It is also important for the council to think about how any future licensing scheme would be evaluated. The council should publish a clear set of quantitative and qualitative criteria supported by baseline data against which scheme performance can be assessed.

We would request that the proposed evaluation methodology is set out in any subsequent Cabinet report, together with a commitment to publish an annual performance update throughout the life of any future licensing scheme.

**Inspection regime**
The consultation does not make clear the council’s proposed inspection methodology when receiving applications for new licences or renewals. We would ask the council to make clear their proposals in this regard.

In doing so, it is vital that the council has sufficient officers available to conduct any inspections in a timely manner so that licence approvals are not unreasonably delayed.

We would ask the council to publish clear service standards setting out the timescale for processing and approving licence applications and to publish regular updates so that performance in this area can be monitored.

**Delivering effective enforcement and compliance**
When the additional licensing scheme was implemented in 2012, we understand the council estimated there would be 500 to 1,000 properties that required licensing. A successful scheme should aim to license most properties whilst robust enforcement activity is targeted at those landlords and agents that seek to evade the scheme completely.

With so few licence applications submitted in Kingston, we would expect to see the council undertaking a high level of enforcement activity. However, figures published by London Property Licensing indicate that only one housing prosecution has been taken by the council in the five years from April 2011 to March 2016. Thus, it appears the scheme is being widely ignored with no perceived threat of enforcement action against those that fail to comply.

This creates unfair competition for NALS members who seek to comply with all their legal responsibilities. They are saddled with extra costs associated with the
licence application process and relicensing, whilst many others evade the scheme and operate under the radar.

Before seeking to implement a new licensing scheme, we would encourage the council to utilise the enforcement powers already at your disposal and demonstrate how a step change in enforcement activity would be achieved if a new licensing scheme was introduced. This should include utilising the new civil penalty regime introduced under the Housing and Planning Act 2016.

Recognising the important role of letting agents
Letting agents have a critical role to play in effective management of the private rented sector. We would encourage the council to explore mechanisms for effective liaison with letting agents and to acknowledge the benefits of encouraging landlords to use regulated letting agents such as NALS’ licensed firms.

Exploring opportunities for co-regulation
Following our successful co-regulation partnership arrangement with Liverpool City Council, we would encourage the council to consider adopting a similar approach in order to achieve more balanced and effective regulation of the private rented sector.

Co-regulation can facilitate a light-touch approach to monitoring compliance amongst regulated letting agents, whilst freeing up local authority resources to tackle the minority of rogue landlords and agents that seek to evade their responsibilities and place their tenants’ lives at risk. In describing this innovative co-regulation approach, a Liverpool City Council Councillor said:

“It is a win-win for everyone, because their members benefit from a reduced fee and we are able to target our resources at those landlords who we know aren’t meeting the standards.”

We would be very happy to meet with Kingston Council to explore options for developing a co-regulation model that helps to deliver better regulation of the private rented sector.

Regulation of letting agents
To achieve better regulation of the private rented sector and improve consumer protection, it is important that the council takes a holistic approach that extends far beyond the proposed licensing scheme.

Since October 2014, it has been a requirement for all letting agents and property managers to belong to a government-approved redress scheme. In May 2015, a further requirement was introduced requiring agents to display all relevant landlord and tenant fees, the redress scheme they belong to and whether they belong to a client money protection scheme, both in-store and on the company’s website.

We would like to see Kingston Council commit to proactive enforcement of these rules including, where appropriate, serving civil penalty notices, the income from which can help to fund the enforcement activity. By effectively regulating letting
agents that operate within the borough, it will help to ensure the properties are more effectively managed and improve consumer protection.

In June 2016, NALS published an Effective Enforcement Toolkit to assist local authorities with this task. The toolkit can be downloaded free of charge from the NALS website (www.nalscheme.co.uk).

Should you wish to discuss any aspect of this consultation response, please do not hesitate to contact me. Can you also please confirm the outcome of the consultation exercise in due course.

**Isobel Thomson**

**Chief Executive**

National Approved Letting Scheme
Cheltenham Office Park
Hatherley Lane
Cheltenham
GL51 6SH

Tel: 01242 581712
Email: Isobel.Thomson@nalscheme.co.uk
Website: www.nalscheme.co.uk

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