Friday 22nd August 2014

Dear Sir/Madam,

**Barton & Eccles – Salford Council Selective Licensing consultation**

I am writing on behalf of the Residential Landlords’ Association (RLA), to make representations in response to the Council’s proposal to designate a selective licensing scheme in Barton & Eccles wards of Salford.

The RLA is keen to work with Salford City Council (LCC) on looking at ways to improve standards and increase demand in the Private Rented Sector (PRS). We do however; feel that further Selective Licensing in Salford is not the answer. We would like to submit in greater detail our Co regulation model, which we feel will be more effective at engaging with landlords and other partner organisations to combat these issues in Barton & Eccles. (See Appendix 1) Even if the Selective Licencing scheme does go ahead we would still like to discuss how Co Regulation could operate alongside licencing in Salford.

1. **The RLA has a number of general concerns about mandatory licensing**

   The RLA has several areas of concern in regards to selective licensing, namely;

   i. Worrying trends are emerging in the case of discretionary licensing. Licensing entails a huge bureaucracy and much time, effort and expense is taken up in setting up and administering these schemes; rather than spending it on the ground and flushing out criminal landlords.

   ii. Increasingly, discretionary licensing is being misused to fund cash strapped housing enforcement services. The recent Westminster sex shop Court of Appeal (*Hemming (t/a Simply Pleasure) Limited v Westminster City Council*) has brought such funding into question (see paragraph 1).
iii. Discretionary licensing is not being used for its intended purpose of a short period of intensive care; rather it is being used by the back door to regulate the PRS.

iv. The level of fees which are ultimately passed on to tenants to pay is a major worry so far as it affects landlords.

v. Despite high fee levels local authorities still lack the will and resources to properly implement licensing.

vi. Little has been done to improve property management. Opportunities to require training have been ignored. As always it has become an obsession with regard to physical standards with very detailed conditions being laid down. No action is taken against criminal landlords.

vii. We believe that a significant number of landlords are still operating under the radar without being licensed.

viii. As always it is the compliant landlord who is affected by the schemes. They pay the high fees involved but do not need regulation of this kind.

ix. Licensing is not being used alongside regeneration or improvement of the relevant areas. Insufficient resources are being employed to improve the areas.

x. Where areas are designated for selective licensing this highlights that they can be “sink” areas. This could well mean it would be harder to obtain a mortgage to buy a property in these areas.

xi. Schemes are not laying down clear objectives to enable decisions to be made whether or not these have been achieved. Proper monitoring is not being put into place to see if schemes are successful or not.

xii. There is little use of “fit and proper person” powers to exclude bad landlords.

The RLA objects to the proposed designation, on the following basis:

2. The fee structure and the projected budget may be contrary to the European Services Directives and the ruling of the Hemming (t/a Simply Pleasure) Limited v Westminster City Council Court of Appeal case

The decision of the Court of Appeal in the Westminster Sex Shop Fees case (Hemming (t/a Simply Pleasure) Limited v Westminster City Council) has radically altered the landscape so far as fixing fees for regulatory authorisations such as for HMO and selective licensing is concerned.

1 http://cases.iclr.co.uk/Subscr/search.aspx?path=WLR%20Dailies/WLRD%202011/wlrD2013-203
The court case looked at the way in which the European Services Directive (ESD) operates to curtail the ways in which domestic UK legislation provides for fees to be charged by local authorities to landlords for such licences.

When setting licensing fees the following principles should now apply:

- The Council cannot include the costs of enforcing the licensing scheme against unlicensed landlords in the licence fee. This is prohibited by the ESD.

- A Council can only charge for HMO licensing or selective licensing for:
  - The actual and direct administrative costs of investigating the background and suitability of the landlord applicant; and,
  - The cost of monitoring the compliance by licensed landlords with the terms of their licences.

- Fees must be reasonable and proportionate.

- Under the ESD the fee must not exceed the cost of the authorisation procedures and formalities together with the monitoring costs (for licensed landlords).

- The Council can require an application to be accompanied by a fee fixed by the local authority. This is provided for under the Housing Act 2004 which stipulates that the Council, in fixing the fee, may take into account all costs incurred by the authority in carrying out their licensing functions. Importantly, however, the ESD curtails these powers.

- Surpluses and deficits for previous years in relation to permitted elements for which a fee can legitimately be charged can be carried forward, although this is questionable in the case of a standalone scheme, i.e. for discretionary licensing. Surpluses and deficits cannot be carried forward in respect of elements which are not properly chargeable.

- Fees can only cover the actual cost of the application process (plus monitoring); i.e. only the cost of processing the application and monitoring can be charged.

- Set up charges for the scheme cannot be recovered.

- Overheads and general administrative costs cannot be recovered. This means that the running and capital costs of the relevant council department cannot be charged as part of the fee.

- Fees can only be charged for the procedures themselves; i.e. steps which are followed in processing the application for a licence or for its renewal (plus monitoring of the licence holder) which means that the administrative costs involved for vetting applications and for monitoring compliance with licence terms.
- The Council is not allowed to make a profit.

- A formula can be used to set charges so long as it is based on the cost of the actual authorisation process (plus monitoring costs).

The Council must act lawfully and in accordance with any guidance given to it by the Court as to how the fee is to be determined. If it is necessary as a result for the Council to re-determine a fee then the same principles apply in relation to the re-determination.

Furthermore, it was always clear that costs associated with enforcing the Housing Health and Safety Rating System which operates alongside licensing could not be recovered via licensing fees.

A number of local authorities charge extra fees if an application is submitted late. This has always been highly questionable as a disguised penalty but it would appear that this would now be largely outlawed by the ESD. Discounted fees are often allowed for early applications. It may now have to be shown that the normal application fee is no more than the actual processing cost so that fees for an early application would have to be genuinely discounted.

It should also be noted that any element of the fee that cannot be recovered must fall on the Council Tax payer, i.e. the Council’s general fund; not the general body of licensed landlords.

The ESD also deals with the time to be taken in processing applications. It requires local authorities to publically state the time to be taken to process the application. There is provision for extending the time limit in a case involved complexity. Subject to this if the authority failed to process the application within the stated time then the applicant can automatically assume that the application is granted.

Finally, should Salford Council chose to ignore the ESD and implement selective licensing scheme[s] in the borough based on a proposed budget that does not adhere to the ESD, any impermissible overcharge can be recovered by way of a claim for restitution. The time limit for such a claim is six years and the normal three month time limit which applies to judicial review does not apply in this instance. As part of the process the Council may have to re-determine what is a reasonable charge in line with any guidance given by the Court. The amount overpaid will then have to be calculated. Giving credit by way of carry forward does not apply to an impermissible overcharge so it has to be refunded. Interest is payable in addition.

3. **Selective licensing is ineffective at reducing incidents of anti-social behaviour**

Landlords are not responsible for the behaviour of their tenants, and attempting to impose a licensing scheme on them to resolve anti-social behaviour will not work.

As a House of Commons briefing note recently stated, “As a general rule, landlords are not responsible for the actions of their tenants as long as they have not ‘authorised’ the
anti-social behaviour. Despite having the power to seek a court order for eviction when tenants exhibit anti-social behaviour, private landlords are free to decide whether or not to take action against their tenants. The question of whether a landlord can be held liable for the nuisance of its tenants has been considered in a number of cases."²

The paper continues, “It is established that no claim can be sustained in nuisance where the nuisance is caused by an extraordinary use of the premises concerned, for example by the tenants being noisy or using drugs on the premises. The rationale behind this approach is that it is up to the victim of the nuisance to take action against the perpetrator. To found an action in negligence against a landlord the victim must show that there has been a breach of a duty of care owed by the alleged perpetrator.”

The briefing paper also notes the court decision of O’leary v London Borough of Islington³ case, in which, “…it was held that a term to enforce nuisance clauses could not be implied into a tenancy agreement. This indicates that landlords cannot be sued for breach of contract unless there is an express term in the tenancy agreement that obliges him or her to “take all reasonable steps to prevent any nuisance”. Even where such a clause exists, the courts have been reluctant to find the landlord in breach.”

4. Denigrating the area/mortgage loans

One of our main concerns (and a reason for our opposition in principle to selective licensing) is that it involves drawing a red line around an area and telling the residents of that area, but more importantly the wider world, that this is a “problem” area. As a result mortgage companies will not make loans on properties located in selective licensing areas. Although you are proposing to introduce selective licensing in various spots across the area, this will simply drive landlords into other parts of Salford or Greater Manchester as Landlords look to buy in areas where they can get a mortgage and not have the pressure of having to manage the behaviour of their tenants.

As there is such a demand for housing in general from those tenants who would normally live in social housing there will still be demand from these tenants in other parts of Salford not just those that are in the Barton/Eccles. Demand is high for low rental accommodation in the private rented sector all over the country due to the wider problem of housing shortages and chronic housing waiting lists. Selective licencing will not solve this problem by curbing ASB in one area. If landlords are to eventually evict recurrent ASB offenders – where will they then go? The Council needs to look at the causes of ASB and the offenders not the landlords who take the risk to let their accommodation to them.

5. Displacement effect

We believe that there is a very real likelihood that those who are excluded from the area as a result of these measures will simply be displaced into other areas and that the problems which the Council say are apparent in this area will be transferred elsewhere to the detriment of the residents of those areas.

6. Outcomes

The proposal document fails to specify what the desired outcomes of selective licensing are in these areas with clarity. No targets or objectives are set other than generalised ones. There are no figures or forecasts of how much the scheme will cost to operate.

7. Monitoring

Not only are no outcomes specified but there is no suggestion of any kind of effective monitoring for the success or otherwise of the scheme. In relation to selective licensing scheme in Leeds we worked closely with officers of Leeds City Council to put in place monitoring agreeing with them on various measures for example, improvements in property values and increases in rental levels. They put in place a control area which was the most appropriate area to monitor the same measures to give some idea of the achievements as a result of selective licensing. If the Council has ambitions to extend selective licensing unless there are proper defined outcomes and monitoring it would seem hard to justify an extension if you failed to measure the effectiveness of the current proposals should they be implemented.

8. Size of the Areas

Although we have objections in principle to the concept we would consider that if it the scheme is likely to succeed then it needs to be confined to a small area, as opposed to areas Salford Council is proposing. We are always concerned with the danger that areas are too large simply to secure a larger fee income for landlords. It would seem far more sensible to concentrate on just one area if the scheme is to be introduced in the first instance rather than dissipate resources which the Council admits are scarce across a wider area. This is particularly important because of the Council’s apparent inability to provide additional resources and deal with matters such as environmental improvements.

9. Resources and other measures

Your consultation document does very briefly outline that there is current engagement activity within Salford of landlords with a dedicated Home and Communities Agency (HCA), a team to deal with empty properties and the Salford Landlord Accreditation Scheme (LAS) to help and encourage landlords to improve the management of and condition of private rented sector.
Regular landlord forums and hands-on information sessions are also admirable strategies to engage with Landlords. However, it is well recognised that selective licensing will only work where there is some intense application of resources from external agencies including the Council itself. You talk of existing schemes in relation to anti-social behaviour and empty properties reduction but if these are in place already will selective licensing itself add anything extra? We believe not, other than to superimpose an expensive bureaucracy.

10. A critique of Salford Council consultation documents

The following is a critique of Salford Council’s consultation document

The critique is taken from Salford Council’s Selective Licensing consultation document for Barton and Eccles, which can be found here: http://www.salford.gov.uk/bartonandeccles.htm

Each critique is taken directly from the document.

Introduction:

Pg1: “The purpose of such schemes is to improve standards of property management in the PRS”

What is a selective licensing scheme

Page 2: “When applying for a licence, landlords will have to provide evidence that they are ‘fit and proper persons’ and that they manage their properties correctly, including taking appropriate action against tenants who are causing anti-social behaviour.”

RLA response:

First and foremost, Government has released a document stating that landlords are not responsible for the anti-social behaviour of their tenants. However, if the council wanted to support landlords in this manner, would there be a support system to aid landlords in dealing with these tenants? For example, aid in the eviction process and registration of ASB tenants so that these tenants cannot continue their bad behaviours in other properties.

Page 4: Statistics and percentages surrounding increasing size of PRS

- Why is a rise in the number of PRS properties a basis for selective licensing schemes? Greater Manchester attracts many students and young working professionals. The PRS is crucial for these groups and can provide immigrants and families the flexibility to find more suitable living arrangements before they commit long-term.
Page 4: Changes in the overall percentage of privately rented accommodation:

- 2001: 5.1% of residential accommodation in Barton/Eccles/Winton area was privately rented
  o By 2007 the figure had risen to 11.5% in Eccles
  o By 2010 the proposed licensing area (predominantly in Barton ward) had risen to 27.1% compared to 22.2% across the city and 16% nationally.
  o In Barton 50% of identified vulnerable households live in the private rented sector

RLA response:

This rise in privately rented accommodation seems to be in line with the rest of the city. Private renting provides those who are unable to get onto the property ladder the option to live where they chose. Additionally, the role Manchester plays for professional development and student populations could attribute strong correlation to these numbers.

The figures from Eccles post 2007 are conspicuously absent.

The statistics fail to properly define the term ‘Vulnerable’.

- This statistic actually backs up the role of the PRS as private landlords are providing DOUBLE the accommodation for vulnerable groups. Thank you for recognising the good work that private landlords are doing for vulnerable tenants.
- Charging landlords £500 to rent out their properties may result in £1,000s of pounds in licensing fees for landlords with more than one property…to pay these costs upfront could cause landlords money troubles and result in increased rents. Vulnerable tenants need help; support and consistency…these sorts of changes impact tenants as negatively as landlords.

Why do we need a Selective Licensing scheme?

Page 6: “This high turnover of tenants does not assist in promoting community cohesion and building a sustainable community. Residents cite high tenant turnover as one of the major causes low level anti-social behaviour…Selective Licensing when combined with other measures as detailed with this document is an effective way of dealing with these issues.”

RLA response:

The RLA has found that this is not the case…a House of Commons library paper explains that private landlords are not liable for their tenants’ behaviour. Does the council have any evidence that Selective Licensing schemes are able to reduce incidents of ASB?

Anti-social in private housing – Commons Library Standard Note
The council mentions meetings where local landlords describe their discontent with ‘rogue’ (these are criminals posing as landlords, and not rogues) landlords operating in the area. Why does the council choose to licence good professional landlords and allow these criminals to continue unabated? We feel that our Co regulation model (see Appendix 1) would free up resources within the local authority enforcement team to effectively tackle ‘Rogue’ landlords and this would avoid the need to continue blanket licensing of good landlords which will inevitable deter landlords from investing in these areas altogether.

Page 6: “Selective Licensing will play a vital role in this intervention by ensuring that the increasing numbers of rented properties in the proposed area which are operated by landlords are well managed. Without Selective Licensing, the number of inexperienced landlords lacking appropriate skills and knowledge of private renting will continue to grow, despite the work undertaken as part of the Council’s Landlord Accreditation Scheme. Additionally, without the introduction of Selective Licensing the Council’s ability to effectively challenge the behaviour of irresponsible or ‘rogue’ landlords will continue to be limited.”

RLA response:

Does the council mean to imply that it will be monitoring and working with new landlords in the area? Training for landlords is incredibly important so that they know their rights and responsibilities; however, the current proposal of charging to allow landlords the right to conduct their business is a strange method in ensuring they have the necessary tools to provide good service.

- The RLA would argue that training, accreditation, and incentives from the council – say freedom from licensing fees – would result in greater commitment from landlords to improve their standards.

- The issue remains with criminals posing as landlords. The council should work, and acknowledge the good, professional landlords in the area. The current measures simply compel those who are already inside the law to be more tightly controlled – a potentially unattractive position for some – and those who flout the law can continue to do so unabated.

Page 6: “This investment needs protecting and building on. Experience through talking to community groups & representatives and stakeholders at meeting and events, tells us that Selective licensing promotes confidence, not only in the community but in investors by ensuring that the private rented sector remains well managed and that all landlords are operating within the law, which contributes to the improvement of social and economic conditions in the area.”
RLA response:

The RLA remains unconvinced that lenders would be more confident with licensing of private landlords. We refer you back to point three of this document ‘Denigrating the area/mortgage loans’.

While it makes sense to suggest that more professional landlords will result in greater confidence in the area, the council could solidify this position by a greater commitment to these professional landlords.

What are the local factors which show that the proposed area is suffering from low demand?

Page 6-7: From the statistics and evidence obtained, it appears evident that the proposed area for Selective Licensing is suffering from low demand. In particular, the below evidence indicates low property value when compared with similar premises in comparable areas, a transient tenant population resulting in high turnover of occupiers, a lack of mixed communities with high incidences of privately rented properties and low owner occupation, and high levels of unoccupied properties that are prevalent across the proposed area.

RLA response:

The RLA is still having trouble accepting that the ‘comparable area’ (Irlam O'th Height) is truly representative of the area in question…specifically that Irlam O'th Height currently does not have a selective licensing scheme in place…

- This is an important consideration because the Council places information on graphs side by side with Salford arguing that licensing will bring up property values to those in Irlam. I question the validity in this comparison.

Selection of comparator area

Page 7: It is simply not possible to have a comparable area which is identical in terms of geographical size and containing the same number of property type. However, the area that has been chosen is comparable when considering the factors listed within the guidance…

RLA response:

The guidance includes: types of housing; local amenities; and availability of transport as ‘factors’ to create comparability.

We take great issue with this, for example why haven’t the council chosen an area that is also under Selective Licensing? The council is proposing a Selective Licensing scheme, one could assume, because of ‘success’ elsewhere…why not use this example? The fact of the matter is that there is no comparable area that has enjoyed success from Selective
Licensing schemes…they are costly for landlord and council, and do not result in the benefits proposed.

Conclusively, the links between areas designated in Salford for Selective Licensing schemes are in no way comparable to Irlam O’th Height, thus negating much of the Council’s arguments for the licensing scheme.

Page 8: Figure 5.1 Value of two bedroom terraced properties

RLA response:

It would be interesting to see longer economic comparison of these sites; into the 1990s for example when house prices were at their highest. One would assume that Salford would have lower prices regardless of time period…this is an important factor based on the ‘evidence’ the council is putting forward as criteria for licensing schemes.

Page 9: “These values [represented in tables] appear to be low due to a number of factors. In particular, the proposed licensing area has a disproportionately high level of privately rented properties which can deter owner occupiers from buying in the area. A high concentration of poor quality rented accommodation can have a negative impact upon an area and lower property prices.

RLA response:

The area proposed might be more suited to ‘transient’ (as the consultation refers to them) residents in regards to people moving to the area looking for more permanent accommodation or students.

Charging landlords for licences, and then expecting them to make improvements to their properties is counter to the goals that the council is aiming to achieve. The council should concentrate on ensuring private landlords are aware of their responsibilities and make their houses safe to legal requirements…working with landlords would be preferable to deciding for them.

Turnover of occupiers of residential premises evidence

Page 9: “Over the past three years, the turnover rate in both privately rented properties and owner-occupied properties have increased significantly from very low base levels…However, throughout this period the number of new Council Tax accounts being opened in relation to privately rented properties has been higher than that in the owner occupier sector despite the fact the owner-occupied market in that area is more than 2.5 times larger than the private rented sector.
**RLA response:**

Is the council suggesting that turn over in the PRS being higher than that in the owner occupier sector is a contributing factor for the need of Selective Licensing? Surely this is in line with common logic, that owner occupied properties change far less than PRS properties? This is an unconvincing argument.

**Page 12: Figure 5.7 Private Sector empty properties**

*In April 2011, the Council introduced a “hot spot” approach to dealing with empty properties across the city. There were two “hot spot” areas within the proposed Selective licensing area, one in Barton ward and one in Eccles ward. Each hot spot area was active for 12 months and employed intensive on the ground engagement with property owners and the community. The results of this intervention can be clearly seen in the figure above (5.7) where the number of private sector empties reduced significantly over the 12 month period.*

**RLA response:**

One of the main reasons the Council want to implement a Selective Licensing scheme on private landlords in parts of Salford is the number of empty properties in the area. The Council suggest that engagement and on the ground working – notably away from licensing schemes – has resulted in dramatic improvements in these numbers. In this light, the Council should continue these successful campaigns rather than changing tactic. A main premise of licensing schemes is that they should be a last resort.

The council has the evidence that particular strategies work; they should exhaust this approach before attempting other methods.

**Page 13 - Property Conditions**

**RLA response:**

Using the ‘Decent Home Standard’ within the PRS is an unfair comparison to make. The Decent Homes funding was only accessible to social landlords. It is unfair to expect that private landlords will have the funding or resources to match the same standard as social housing without any additional funding to assist. Small scale local landlords do not have the same investment from public money, resources or expertise as social housing providers; therefore it is unfair to compare them using the same standard.

Despite such inequalities, in funding, the English Housing Survey (EHS) shows that more private sector tenants are ‘satisfied’ (84%) with their properties than social tenants. In addition, the EHS states that more private rented tenants are satisfied with the repairs undertaken on their properties than social tenants⁴.

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Anti-social behaviour and Criminal activity

RLA response:

This is effectively dealt with in point 2 of the response above, specifically in terms of Selective Licensing being ineffective at reducing incidents of anti-social behaviour.

The numbers and figures presented in tables and graphs in this document endeavour to prove that private renting housing apparently contributes to anti-social behaviour and other nuisances for local residents. Many factors that may contribute to these statistics are overlooked form the point of view of the RLA. For example:

- When are these incidents of anti-social behaviour most likely to happen? If the incidents occur during the weekend or at night time, the proximity to the centre of town and other night life hot spots may directly influence the frequency and extremity of incidents.
- Additionally, several items are lower in the wards proposed for licensing schemes than across the city as a whole.
- Finally, Manchester City Council previously used Selective Licensing and decided not to renew the scheme.

Page 15: “Our previous experience of operating Selective Licensing shows that it can make a significant contribution to the reduction of this problem [fly tipping; environmental crime] both by deterring landlords and, where an issue arises, allowing it to be dealt with more quickly and effectively as the perpetrators are quickly identified and educated on the correct procedures for disposing of refuse.”

RLA response:

If the council is already aware of whom is conducting this form of anti-social behaviour – i.e., fly tipping and other environmental crime – it seems that a Selective Licensing scheme is unnecessary at challenging this situation. Licensing schemes are not supposed to generate any profit so how the council will provide this enforcement should be detailed.

Page 15: Selective Licensing ensures that landlords can be easily identified and be notified immediately when a complaint is received regarding their tenants and anti-social behaviour, and this early intervention can reduce the number of repeat complaints. Furthermore, the licence conditions ensure that the landlord takes appropriate steps or face enforcement action.

RLA response:

As outlined above, private landlords are not responsible for the actions of their tenants. No landlord wants individuals in their properties that are going to cause nuisance and issues in
and around the property. What would a landlord be expected to do when confronted with problematic tenants? Give them a stern warning via text or email? Landlords don’t expect to have to take on this level of responsibility when deciding to enter the sector; they are not housing officers as you might get in the social housing sector, many have professional

More thought should be given to putting together a robust tenancy referencing system for those that are guilty of ASB as opposed to simply putting all responsibility on Landlords.

Page 15: “Selective Licensing will help to ensure that landlords fulfil their statutory duties regarding tenancy management; the Landlord Licensing team can offer advice and support to landlords to ensure that they take appropriate and effective action where they receive a complaint about their tenants. It is important to recognise that the private rented sector provides housing to many of those excluded from other sectors of the market and these can be the most vulnerable sections of society, with issues such as alcohol or drug misuse and a history of anti-social behaviour affecting their ability to sustain a tenancy.”

RLA response:

The council is saying, all but explicitly, that landlords are expected to be social workers for anti-social tenants. These are not the responsibilities of private landlords. Many private landlords take on vulnerable tenants and provide important accommodation choices those groups who may traditionally be part of social housing, always with a degree of risk and with little back up if these tenancies start to fail because of a build up of rent arrears or disrepair caused to their property.

The council planning to implement Licensing restrictions on private landlords will only serve to make the lives of vulnerable tenants more difficult. Landlords charged hundreds of pounds may not be so willing to take on tenants who would ordinarily be housed in local authority accommodation, if they have to pay licensing fees in these areas as well as take on the risks that come with tenants that may have complex needs.

Page 16: “By having appropriate conditions on a licence, we can continue to work in tandem with landlords on the issue of anti-social behaviour”

RLA response - We would like to know if the council intend to work with anti-social tenants. Again, we feel that the Council need to invest in the community of these areas not just impose a licensing scheme. Licensing in these areas won’t be effective on its own in tackling anti-social behaviour.
**Page 16: Neighbourhood management**

**RLA response:**

Selective Licensing is wholly unnecessary if you simply make it possible for landlords to feedback into this scheme.

**Page 16: Private rented sector measures**

**Page 16:** “The Landlord Licensing Team forms part of the council’s Housing Market Support team which also includes teams dealing with:

- Mandatory HMO Licensing
- Landlord Accreditation
- Empty Property Enforcement
- Housing Standards – Housing Health and Safety Rating System (HHSRS)

**RLA response:**

This section is unclear. The assumption is that these teams already exist in the council’s Housing Market Support team?

If these teams already exist, the implementation of a Selective Licensing scheme remains redundant. Coupled with other tactics already employed by the council, Selective Licensing would serve as an admission from the council that their current initiatives are not working effectively. This would be questionable considering the success that the Council have outlined in their consultation document.

**Page 17:** “…Selective Licensing will raise awareness amongst private landlords about property condition (although enforcement will rely on other statutory powers such as Housing Health and Safety Rating System)”

**RLA response:**

We would argue that the responsible landlords in these areas who will buy their licences will not be those that Environmental Health Enforcement teams should be worried about and it is unlikely that those who will comply with licensing will have category 1 hazards present in their properties. What is really needed is an effective strategy to tackle those that lease properties in the worst condition, ultimately this comes down to more funding and resources to Enforcement teams who can then proactively use their powers under HHSRS to
Prosecute the worst offending landlords. Our model of Co Regulation would enable this. (See Appendix 1)

**Page 17:** The Salford Landlord Accreditation Scheme (LAS) continues to support Selective Licensing in Salford and currently has in excess of 550 landlord members who have signed up over 1600 properties city wide. The scheme has a good working relationship with managing agents providing advice, support and recognition for those promoting the accreditation scheme property standards and management arrangements. The scheme relies on landlords voluntarily engaging with the team, in order to sign up to the code of standards and make improvements in their property standards or management arrangements.

**RLA response:**

It is interesting to note the large numbers of landlords and properties registered in the LAS...why doesn't Salford City Council continue to engage and work with landlords this way and build on the already successful relations it has established with landlords rather than burden them with cost and risk them pulling out of this market altogether.

**Page 18:** “The Rental Bond Scheme is promoted to licenced landlords and aims to provide assistance to people who can't afford to pay cash deposits. By granting non-cash deposits in the form of a written bond guarantee, we can provide people looking for a home with access to private accommodation in Salford with landlords whose properties meet the standards of the Landlord Accreditation Scheme and the tenant can have reassurance that as a licenced property, it will be well managed.”

**RLA response:**

We support the move by many Local Authorities, not just Salford that are providing homeless people with options and enabling entry to private sector housing. However, it is not just the tenant that needs a guarantee that the property will be well managed. Once the property is successfully let the landlord too needs an element of reassurance that the tenant knows their responsibilities and will treat the property with respect and keep up with their rental payments. Working with tenants too would bring up the quality of homes in these areas, not just licensing landlords who may not realise that their property is in appalling condition at the hands of the tenant unless they inspect their properties regularly. As you will probably be aware this isn't always possible if the landlord lives in another part of the country.

**Page 18:** “Landlords registered on this scheme agree to operate according to our good practice Code of Standards. Selective Licensing continues to contribute to the overall aims and objectives of the Promoting Positive Prevention - Salford’s Homelessness Strategy
2008-2013 by encouraging stability in the private rented sector, reducing the likelihood of illegal evictions or harassment, and preventing homelessness presentations.”

**RLA response:**

We would argue that Selective Licensing will not contribute to the sustainability of tenancies, instead of licensing landlords the council should then be looking at working with landlords on how they could come to an agreement to offer a longer term tenancy for the most vulnerable who would ordinarily have a longer tenancy if they were placed in social housing? Landlords might be more inclined to do this if there are some incentives such as guaranteed rent and management of these properties with the help of the Local Authority rather than being charged to tackle the problem on their own, which is effectively what the Selective Licensing scheme does.

To add whilst the RLA opposes the use of illegal eviction and would never condone harassment tactics it is important to remember that in some cases eviction is the only option for landlords and it is usually the last resort. Research for the Residential Landlords’ Association counters persistent claims that private landlords are choosing to evict their tenants when they ask for repairs, in so-called retaliatory evictions.

According to the survey of more than 1,760 landlords, some 56 per cent had had to evict tenants from their properties. Almost 90% reported that they had carried out evictions for rent arrears, with another 43% for anti-social behaviour, nearly 40% for damage to the property and 20% for drug-related activity.

Just under 30% wanted to regain possession of the property, for example because they needed to sell it for personal reasons. We feel that this demonstrates that the vast majority of landlords only seek to evict when they really need to.

**Page 18: Private Sector Housing Strategy**

“The Councils Private Sector Housing Strategy “Building better lives in Salford 2010 -2015”, sets the framework for how the Council will meet the local priorities. One key objective of this strategy is to work with landlords and agents within the private rented sector and with Housing in Multiple Occupation to secure improvement to housing conditions. Selective Licensing plays a key role in this objective by continuing to raise management standards across the private rented sector.”

**RLA response:**

Many HMO’s will be under mandatory licensing regardless of a Selective Licensing scheme. This seems to overlap entirely with what the Council is trying to achieve. HMO Licensing should already constitute effective enforcement for the PRS and the council should be using the many powers already at their disposal before considering Selective Licensing.
With recent benefit changes such as Universal Credit being rolled out in the North West, the overall benefit cap, and the extension of the SAR to 25 – 35 year olds, we are hearing reports that many Landlords are already becoming more reluctant to let to housing benefit claimants. With the added pressure of a Selective Licensing schemes becoming increasingly common we fear that Landlords will simply leave the market or invest elsewhere.

Additionally, the extension of the SAR to the 25 – 35 age group means that there will be even greater demand for shared accommodation. The Council will need Landlords to invest in creating shared spaces for this group to live at an affordable rate to reduce the risk of homelessness and cost of temporary accommodation. HMO licensing has increased the cost and ‘hassle’ associated with shared housing and bedsit accommodation and Article 4 Directions make it even more problematic when it comes to managing this kind of housing, which is a disincentive to increasing supply. Adding Selective Licensing to the list of obligations a Landlord must already adhere too is simply going to put off investment.

Page 20: Improving safety standards

“The Council will also require the landlord/agent to carry out the following for each property that requires a licence:

a) Obtain and supply references for prospective and previous tenants;
b) Submit a current gas safety certificate every year;
c) Install and maintain smoke alarms.
d) Provide evidence to prove that the properties electrical installation is of satisfactory condition throughout the term of the licence

e) Install and maintain a Carbon Monoxide detector”

RLA response:

We would like to remind Salford Council of the recent Court ruling between Hyndburn Landlords Association (Paul Brown) Vs Hyndburn Council which restricts the use of housing conditions as a condition under selective licensing criteria. Production of Energy Performance Certificates (EPCs) and Electrical Installation Condition Report shall be removed from landlord requirements under selective licensing conditions. The remainder of these requirements are already recognised as ‘Good Practice’ in the industry anyway and those that will purchase licences will no doubt already adhere to these measures. Once again you are failing to recognise effective ways to identify the landlords that do not provide safe housing; those who are the worst operators will not purchase a license anyway and will continue to let out unsafe properties until prosecuted by LA enforcement teams.

11. Freedom of Information requests

I have two Freedom of Information requests:

a. In view of the lack of information on proposed budget for the proposed licensing schemes, and the concerns outlined in paragraph 1, I would be very grateful if you could provide me with a full breakdown of the proposed budget for the scheme under the auspices of Freedom of Information protocol.

b. I would be very grateful for the number of landlords prosecuted by Salford City Council, and the reasons for their prosecutions, for the last five municipal years; namely:
   i. 2012/13
   ii. 2011/12
   iii. 2010/11
   iv. 2009/10
   v. 2008/09

Conclusion

The RLA is opposed to the proposed Selective Licensing scheme for the reasons outlined in this response. However, the Association is keen to work with Salford Council to promote Accreditation and Co regulation, and would welcome further dialogue with the Council on this issue.

The RLA commends the council for recognising the role of accreditation for professional landlords. However, the Association feels that a bigger statement could be made and would ask the council to reconsider licensing proposals for working more closely with landlords and tenants.

Yours faithfully,

William Keunen
Policy and Communications Officer
Residential Landlords’ Association
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Appendix 1

RLA Proposal for a Co Regulation model in Liverpool as opposed to Selective Licensing

To improve management and stock quality in the private rented sector a new regulatory regime is needed. A new regime would comprise self-regulation and statutory enforcement operating together in a complementary way. The new regime would be a partnership between the private and public sectors with an emphasis on the private sector operating industry self-regulation, and the public sector enforcing against the persistently non-compliant.

Enforcement in the PRS

The RLA acknowledges the need for increased professionalism in the PRS and much of the RLA’s work, including training, advice and educational services is focused on this.

The RLA believes that improved standards of professionalism would be best achieved through a new regulatory regime that is weighted in favour of industry self-regulation complemented by targeted statutory enforcement by local authorities.

There needs to be a cultural shift to ensure that local authority enforcement is based on “worst case first”. At present the reality is that local authorities concentrate their efforts on the better compliant landlords while the non-compliant largely evade their attention.

The Self-regulation model

Enough legislation exists to effectively control the PRS. What is required is an effective system of ‘smart enforcement’ that allows local authorities and other agencies to concentrate their efforts on targeting the criminals and poor quality landlords that operate within the system, with robust self-regulation for the complaint.

Our proposed self-regulation model would need to have two key elements to it:

1. All landlords should have the opportunity to join a self-regulation so long as they meet the minimum joining criteria, this could include the Liverpool Landlords Accreditation Scheme.
2. There should be a partnership protocol between the local authority and each scheme operator whereby if a local authority found a problem with an approved self-regulating landlord, then in the first instance the problem would be referred for remedy, to the scheme operator, this could be the RLA. In the unlikely event that the landlord did not remedy the problem then they would lose their self-regulatory status and the case would be referred back to the local authority for enforcement action.

It is practical to build on existing accreditation schemes. Salford City Council has a long established (free) accreditation scheme. We would envisage that this scheme could be incorporated into a Co regulated model and that the RLA could support Salford City Council in recruiting more Landlords with a robust marketing strategy and take away the administrative cost and burden by managing the online accreditation package, similar to the model that we run in Leeds.

RLAAS (Residential Landlords Association Accreditation Scheme) is a ready-made vehicle that Salford City Council could use to introduce Co regulation. RLASS will focus on the running and administration as well as recruiting new landlords and facilitating forums and events leaving LCC with more capacity and resource to target non-compliant landlords.

**Partnership approach; Co – regulation as a basis for self-regulation**

Leeds City Council has seen a positive impact on the PRS by focussing intense resource in carefully targeted areas. This, with commitment from professional bodies such as the RLA, Leeds Accreditation Scheme, Fire and Police services, Leeds City Council and other non-member Landlords, has seen ASB decrease and standards rise.

Salford City Council has a good reputation for partnership working. What we envisage is a partnership approach with accreditation schemes operating alongside local authority enforcement and where necessary local authorities would be able to obtain information about accredited landlords. Further, in order to enhance accreditation, each accreditation scheme would be required to have at least one independent environmental health officer attached to the scheme to advise on standards to ensure that a professional approach was adopted by the scheme. This would be an important safeguard.

**What will be the cost of Co-regulation?**

The cost of accreditation within the co regulation model for the landlord will depend on the level of membership chosen by the Landlord. There could be a ‘Standard Membership’ and an ‘Enhanced Membership’. It is difficult at this stage to estimate what an accurate cost would be to Salford City Council given that we aren’t aware of what types of measures and resources from RLASS that Salford City Council would require. However, a membership fee (circa £75.00 a year) compared to a £500 licensing fee per property is likely to be more attractive to Landlords and as a result SCC would not have to as heavily subsidise a less
effective accreditation scheme as they do currently. We do know from reports from Leeds City Council that accreditation when done properly is more effective and definitely cheaper than Selective Licensing.

**Maintaining Current Standards**

Our proposals should not be seen as watering down the current standards. As is pointed out elsewhere, members of accreditation schemes would be expected to observe the same legal and regulatory requirements as apply to all landlords. Rather than any softening of control accredited landlords would be expected to be the more professional and responsible landlords who operated well managed properties.

There would, of course, be pre-entry vetting before landlords were allowed to join accreditation schemes and members of accreditation schemes would be expected to undergo training, as well as the requirement to keep up to date with developments affecting the Private Rented Sector. Probationary membership would be possible.

In this way accreditation would act as a positive spur to improve professionalism in the Sector. Accreditation status provides good landlords with a market advantage.

Accreditation also helps tenants to choose a good landlord and assists local authorities with their strategic housing function of facilitating the provision a good quality local PRS.

**What would happen if the accredited landlord defaults?**

Accreditation schemes would be required to adopt a complaints and disciplinary system. If an accredited landlord’s conduct was such that he/she should not be accredited then accreditation would be revoked and that landlord would be subject to local authority enforcement. Further, in the event of a very serious situation, it would be appropriate for the local authority to take direct enforcement action even where a landlord is accredited.

The regulatory function of accreditation is made effective by (1) the vetting of landlords prior to their becoming accredited (2) a complaints investigation and disciplinary procedure that will result in landlords losing their accreditation if they do not comply with the scheme. Defaulting accredited landlords would be required under scheme rules to pay the resulting costs incurred by the scheme.

**Adoption**

Under our proposed scheme the local authority would agree not to use their enforcement powers in the first instance if an accredited landlord is found to be non-compliant. Instead, refer the non-compliant landlord would be referred to the accreditation scheme operated who would effect remedial action. The local authority does not lose any enforcement powers. Rather they simply agree not to use them. The local authority could retain the right to take
enforcement action against the adopted out accredited landlords in certain exceptional circumstances.

The exceptions to the rule could be:-

(1) Imminent risk to health and safety.
(2) Really serious management neglect.
(3) Persistent serious breaches.
(4) Clear evidence that landlords commitment to self-regulation is a sham

Any non-compliance with housing legislation by an accredited landlord would in the first instance be dealt with by the accreditation scheme’s procedures; not a local authority enforcement action. Exceptions to this rule would apply as outlined above in which case local housing authority enforcement action would take priority over the accreditation scheme’s own procedures.

**How the new Scheme would work**

1. Development of Accreditation Schemes as self-regulatory bodies. This would include any existing schemes and further schemes, including potentially national schemes, e.g. operated by landlord associations.
2. All landlords could join an accreditation scheme so long as they met the minimum criteria. This would include pre-entry vetting. This essentially will ensure that the better landlords joined and provide a barrier to entry for those for whom the self-regulatory model was not appropriate.
3. The same laws and requirements would apply to all landlords, whether or not they were members of an accreditation scheme.
4. Accredited landlords would be subject to statutory licensing if this proceeds but accreditation scheme members would be opted out of further local authority regulatory control; although on an individual basis landlords could opt back in if they wished. On cessation of membership of an accreditation scheme, the landlord would automatically be opted back in to the local authority control.
5. Each accreditation scheme would operate a complaints and disciplinary system. The ultimate sanction for non-compliance would be expulsion from the scheme which would lead to automatic re-entry into the local authority enforcement regime.
6. There would be protocols between the local authority and the accreditation schemes to deal with their relationship (e.g. to deal with complaints received by a local authority in respect of an opted out landlord).
7. Accreditation schemes could provide higher standards but would not impose lower requirements than the legal minimum under the housing legislation.
8. Each accreditation scheme would have to have a consultative independent environmental health officer to advise them.
9. Provision could be made for tenants, the local authorities and other stakeholders to be involved in the oversight of accreditation bodies.
10. This then frees up more resources within the Local Authority for the high level enforcement task of pinning down the worst non-compliant landlords.

**Co regulation on a National and Regional Level**

The RLA are developing the policy of Co Regulation in the hope that other Local Authorities will see the benefits of raising standards through this method and co regulation will prove to be a viable alternative to Selective Licencing nationwide. We believe that in order to see real benefits and raise professionalism in the PRS a uniform co regulation approach is needed. One of the unique benefits of a system of co regulation and working with a Landlord association like the RLA who could manage the online admin through RLAS is that the ability to operate across Council boundaries saves costs for Landlords who may have properties across council boundaries and costly duplication of licensing schemes for Councils. Salford City Council could be pioneering in working with the Co regulation model, alongside other cities in the North such as Leeds. Please note that the other two main cities in the North with big student populations, Manchester and Leeds have both run Selective Licensing schemes and have reverted back to accreditation as they found that this more effective and less costly.

If rolled out on a national or even regional scale (initially piloted in the North West for example), the RLA would support a brand such as a ‘Trust Mark’ or ‘Kitemark’ as an initiative for accredited Landlords.

**More Information**

The Residential Landlords Association Accreditation Scheme (RLAAS) is a national scheme operating throughout England and Wales. All private sector landlords who own residential properties for rent in England and Wales are eligible to apply for an RLAAS membership.

You can find out more about RLAAS here - [http://www.rlaas.co.uk/](http://www.rlaas.co.uk/)

Leeds Landlord Accreditation Scheme (LLAS) is a voluntary scheme that private residential landlords are encouraged to join by Leeds City Council

You can find out more about the Leeds Accreditation Scheme here - [http://www.leedslas.co.uk/](http://www.leedslas.co.uk/)