

A review of the lettings market in Jersey

Call for evidence

This call for evidence is inviting comments on Jersey's lettings market.

Stakeholders are invited to provide their comments on the standards of practice of letting and property management agents, including:

- The key features of the lettings market;
- Concerns about the standards of practice of letting and management agents; and
- Ways to increase protection for landlords and tenants and to support professional standards of practice in the lettings market.

The information provided in response to this call for evidence will help to inform a review of the lettings market being conducted by the Housing Minister.

Date published: Tuesday 28th February 2017
Closing date: Friday 28th April

How we will use your information

The information you provide will be processed by the Strategic Housing Unit in compliance with the Data Protection (Jersey) Law 2005 for the purposes of this consultation.

The States of Jersey may quote or publish responses to this consultation and send to other interested parties (e.g. the Scrutiny Office, quoted in a published report, reported in the media, published on www.gov.je, and listed on a consultation summary etc.) but will not publish the names and addresses of individuals without consent.

Confidential responses will be included in any summary of statistical information received and views expressed. Under the Freedom of Information (Jersey) Law 2011, information submitted to the consultation may be released if required by a Freedom of Information request, but no personal data may be released.

For more information about how data handling please contact the Strategic Housing Unit.

Do you give permission for your comments to be quoted?

1. No
2. Yes, anonymously
3. Yes, attributed

Call for evidence

Strategic Housing Unit

Ways to respond

Responses can be submitted via the online questionnaire. www.gov.je/consult

Or you can also respond via e-mail or post to:

E-mail: SHU@gov.je

Strategic Housing Unit
Department for Community and Constitutional Affairs
Cyril Le Marquand House
PO Box 140
St Helier, JE4 8QT

When responding to the call for evidence, please state the capacity you are responding in, e.g. as a letting or managing agent, a landlord or a tenant. This information will help us to build a picture of the evidence base.

If you would like to meet with the Strategic Housing Unit to discuss your views on any of the matters raised by the call for evidence, please use one of the addresses provided.

For more information, please contact Jack Norris, Housing Policy Officer, by telephone on (01534) 440547.

Feedback on this consultation

We value your feedback on how well we consult or seek evidence.

If you have any comments on the process of this consultation please contact:

Communications.Unit@gov.je

1. Introduction

The Housing Minister is conducting a review of the lettings market in Jersey and, as part of the review, is inviting stakeholders to provide their comments on the standards of practice of letting and property management agents¹ (“letting agents”).

The review will consider the features of a well-functioning lettings market and will identify the extent of any concerns about the standards of practice of letting agents. In particular, the review will examine the following aspects of letting and managing property:

- Customer service and communication
- The types and level of fees and charges
- Advertising and marketing
- Repairs and maintenance
- Tenancy management
- Client money protection

This call for evidence has been issued to inform the review.

Where any concerns are identified as a result of this call for evidence, the final review will make recommendations about how the lettings market can be improved.

The goal is to encourage a professional approach to the letting and management of rented accommodation, which will help to increase overall standards in the private rented sector.

2. Objective

The review of the lettings market contributes to policy work on improving standards in the private rented sector, and is intended to support:

- Good standard accommodation for rent;
- Consistent and professional standards of management; and
- Clarity of choice and protection for consumers (i.e. landlords and tenants).

The review supports the aim of the Housing Strategy to ensure that everyone in Jersey has access to affordable, good standard and secure homes².

3. About the call for evidence

A call for evidence is a way of asking stakeholders about their views on a particular topic –in this case, the lettings market. Evidence can include facts and figures but can also involve people saying what their experiences have been of using a letting agent.

¹ The focus of the review is on residential property, i.e. where a property is used as a dwelling.

² Strategic Housing Unit (2016), *Jersey Housing Strategy*

The Housing Minister would like to receive comments from stakeholders such as landlords and tenants (and prospective/former landlords and tenants); letting agents; and consumer organisations that have experience or commercial knowledge of the lettings market.

Further background information about the review is provided in the accompanying report. It is not necessary to respond to all aspects of the call for evidence, and general comments are invited where relevant to the themes of the review.

The information generated by the call for evidence will be assessed and used to inform the review and potential areas of policy development around the lettings market.

4. What is a letting / property management agent?

A letting agent facilitates the setting up of a tenancy between a landlord and a tenant.

A property management agent is responsible for the management and maintenance of a private rented property on a landlord's behalf.

A property management agent may also be responsible for the management of a block of flats owned in common by a number of different persons.

Many letting agents will offer both letting and management services.

5. Context

Letting agents have an important role in the private rented sector, supporting landlords to manage property and helping tenants to find suitable housing. In particular, letting agents offer support and guidance for small-scale landlords who may not have the time, resources or experience to manage property, ensuring that they comply with their legal obligations and provide good standard and well-managed housing.

It is estimated that 50 businesses in Jersey identify as letting and/or management agents, ranging in size from small firms to large businesses³. The majority of letting agents act in a professional manner, ensuring an efficient lettings process by matching the supply and the demand for private rented housing.

Indeed, several local letting agents are members of trade bodies such as the Association of Residential Lettings Agents (ARLA) and the Royal Institution of Chartered Surveyors (RICS). Others have joined the States 'Rent Safe' landlord accreditation scheme, which promotes well-managed and good standard rented housing.

³This does not include legal professionals who may provide tenancy-related services, for example, the drafting of a tenancy agreement.

However, concerns have been raised with regard to the poor standards of practice and, on occasions, illegal practices of some letting agents. One particular concern relates to letting agent fees and whether they reflect the reasonable costs of the services provided. In turn, these add to the costs of renting and affect the affordability of housing generally.

These issues were identified in the Jersey Consumer Council's 2015 'Rents Matter' report⁴, which highlighted concerns such as a lack of standards around letting agents' activities and the transparency of fees. Similar types of problem have also been identified through cases dealt with by Environmental Health and the Strategic Housing Unit, and from members of the public through correspondence to the Housing Minister and States members.

In response, there have been calls to introduce some form of regulatory framework for the lettings market. At present, there is no formal regulation of letting agents in Jersey, except for the statutory framework for the whole rented sector (the Residential Tenancy Law).

In comparison to other jurisdictions, the barriers to entry are low and ongoing monitoring of standards of practice is limited. Anyone can set up and operate a letting agent and there is no requirement to comply with standards of conduct or offer consumer protection.

This call for evidence is therefore seeking to understand the extent and nature of concerns about the lettings market in Jersey, and to examine potential models to improve standards of practice. This will help consumers to make more informed decisions when using a letting agent and ensure they have appropriate protections, in addition to creating a level playing field for the many professional letting agents in Jersey.

6. Features of a well-functioning lettings market

The Minister would like to receive comments on the features of a well-functioning lettings market.

In your response, you may want to focus on the following aspects of letting and managing a property:

- Taking instructions from landlords
- Advertising and letting a property
- Setting up a tenancy
- Management and maintenance
- Ending a tenancy
- Complaints; and
- Protecting client money

⁴ Jersey Consumer Council 'Rents Matter' (2015) p. 9

Two examples of industry-recognised codes of practice have been provided to help inform your response – the Private Rented Sector Code of Practice for England and Wales⁵ and the Scottish Letting Agent Code of Practice Regulations 2016, which come into effect in 2018.

The Private Rented Sector Code of Practice for England and Wales

<http://www.rics.org/uk/knowledge/professional-guidance/codes-of-practice/private-rented-sector-code-1st-edition/>

The Scottish Letting Agent Code of Practice Regulations 2016

<http://www.legislation.gov.uk/sdsi/2016/9780111030912>

You may also want to think about the extent to which the following overarching standards of practice reflect your experiences or knowledge of the letting and management process. These have been developed with reference to the above mentioned codes of practice.

A more comprehensive list of standards for specific stages of the lettings process is set out in the attached code of practices.

Letting and property management agents deliver their service in a way that complies with the following standards of practice, which reflect a minimum duty to comply with the law and are in line with industry best practice:

- To comply with all statutory requirements relating to the letting and management of residential property, *e.g. the Residential Tenancy Law 2011*.
- To let and manage properties in an honest, fair, transparent and professional way.
- To manage properties with reasonable care and skill and in a timely way.
- To avoid conflicts of interests and, where they do arise, to deal with them openly, fairly and promptly.
- Not to discriminate on the basis of age, gender, race, language, sexuality or other factor.
- To ensure that communications and dealings with landlords and tenants⁶ are fair, clear and transparent, ensuring appropriate records are maintained.

⁵ Royal Institution of Chartered Surveyors 'Private Rented Sector Code' (2014) 1st Edition

⁶ Any references in this call for evidence to "landlords and tenants" also includes prospective or former landlords and tenant who may have used, or may come to use, a letting and/or property management agent.

- To ensure that information is provided in a clear and easily accessible way before a landlord or a tenant makes a transactional decision, including fees and charges.
- To ensure that all advertising material is accurate and not misleading or false.
- To look after client money and to hold this separately from other accounts.
- To ensure that clients are given details of complaints-handling procedures.
- To inform the appropriate person, the landlord or the tenant or both, promptly of any important issues or obligations such as repairs or breach of the tenancy.

Questions

- a) Do you agree with the standards of practice identified? If not, why not?
- b) What other examples of professional standards of practice can you think of?
- c) Are there any other comments you would like to make?

7. Concerns about the lettings market

The Minister is inviting comments from stakeholders regarding concerns about the lettings market in Jersey. The Minister would like to receive examples of any concerns that people might have based on their experiences of using a letting agent, or comments in relation to the examples provided below.

The Minister is aware of a number of concerns about standards of practice based on cases dealt with by the Strategic Housing Unit and Environmental Health, and also a result of the correspondence received from members of the public. These include:

- **Misleading advertisements:** inaccurate or misleading pictures and out-of-date information on websites.
- **Poor communication:** letting agents not turning up for viewings at an agreed time or not responding to tenant phone calls and correspondence.
- **Delayed and substandard repairs:** there are examples of tenants having to live in unsatisfactory and, in some instances, dangerous conditions as a result of repairs and maintenance not being carried out, or the property being let in that condition in the first place.

- **Deposit money:** the tenancy deposit scheme began operating in November 2015, and although take-up has been strong among letting agents, there is concern that some might still not be protecting tenants' deposits in the scheme. However, the extent of this problem is likely to be greater among landlords.
- **Notice periods and illegal evictions:** this, along with property conditions, is one of the most common sources of concern raised by tenants to Environmental Health. There are examples of legal notice periods not being followed in cases of periodic tenancies, and, worryingly, incorrect procedures being followed to evict tenants – either by-passing the court eviction process or not following the correct process to take possession of a property through the Viscount's Department.
- **Terms in tenancy agreements:** there are examples of tenancy agreements which have sought to limit a landlord's or a tenant's rights and obligations, or excessive sanctions for breach of contract. For example, a number of tenancy agreements seen by the Strategic Housing Unit have attempted to limit a tenant's right to the peaceful enjoyment of a property such as allowing a landlord or agent access at any time without notice.
- **Income Support:** the Social Security Department has indicated that a number of landlords and letting agents are reluctant to let properties to people in receipt of Income Support. It is recognised that this may not be the responsibility of a letting agent and based on a landlord's instructions, but it nevertheless limits the access low income households have to private rented housing.
- **Vetting of tenants:** there is concern that some letting agents may not be carrying out adequate vetting of tenants (e.g. by taking their references), which may cause landlords problems in the course of a tenancy by having to deal with tenants who break the terms of their tenancy agreement.

It is important to note that the Minister has not made an assumption as to whether these concerns are all valid, and whether they relate to a minority of letting agents or suggest a wider problem with how the lettings market is working – nonetheless, they do underscore a perception of problems in the lettings market.

In addition, it is noted that some of these concerns will also encompass landlords who let property without the help of a letting agent. Where this is the case, any solutions that may be proposed by the review will also apply to landlords.

Finally, the Minister is aware that some of the concerns identified will, on occasions, arise as a result of the action or inaction (as the case may be) of a landlord rather than a letting agent. For example, in conducting repairs and maintenance, a letting agent may be limited by the instructions issued by a landlord and may not have the authority to carry out works without the permission of the landlord. This will be taken into account in the response to the review.

Questions

- a) Do you agree with the concerns that have been identified? If not, why not?
- b) If you agree with the concerns that have been identified, please explain why.
- c) Are you aware of any other concerns about the standards of practice of letting agents? Please explain your response and provide examples of your own experience.
- d) Please provide any other comments you may have regarding standards of practice.

8. Letting agent fees

The Minister would like to receive the views of stakeholders on the fees that letting agents can charge landlords and tenants for using letting and property management services.

Letting agent fees are one of the most widely expressed concerns about renting privately, with complaints raised regarding the high cost of using a letting agent, as well as hidden or unclear fees.

There are a variety of different fees that letting agents may charge landlords and tenants, with the majority of fees focused on the primary customer of a letting agent, the landlord, who can expect to pay set up and management fees. Tenants will also pay a range of fees, including:

- **Upfront costs:** drafting a tenancy agreement and completing an inventory report; carrying out credit checks and references.
- **Tenancy deposit and rent in advance:** usually equates to one month of rent. The deposit is refunded at the end of a tenancy subject to any reasonable deductions for cleaning, damages and breaches of the tenancy agreement.
- **Holding deposit:** to reserve a property before signing a tenancy agreement.
- **Ongoing fees:** renewal fee for a tenancy agreement.
- **Fees at the end of a tenancy:** such as a check out fee.

In these cases, fees are likely to represent legitimate business costs that need to be met in order to provide an effective and good standard service. However, the

range of different types and levels of fees that landlords and tenants can be liable to pay have given rise to a number of areas of concern:

- There is disparity in the level of fees charged by different letting agents for similar types of services.
- Fees do not always reflect the actual business costs and may be out of proportion to the services provided.
- Full details about fees are not advertised clearly upfront and can be hidden in the small-print so that clients do not realise they are liable to pay until having invested considerable time in the letting process (“drip-pricing”).
- Double-pricing where landlords and tenants can be charged for the same services, such as drafting a tenancy agreement. On many occasions, landlords may not even be aware that this is happening.

As noted previously, the Jersey Consumer Council’s 2015 ‘Rents Matter’ report highlighted the variety of fees that tenants can be charged, which it stated often “lacked clarity”⁷. The report set out examples of some of the fees that letting agents can charge tenants above the tenancy deposit and rent in advance. The report showed:

- **Lease drafting and renewal:** some tenants were charged a fee for drafting a lease. One respondent was charged £175 for lease renewal.
- **Credit check:** some tenants paid for a credit check. Fees ranged from £10 to £30.
- **Viewing fees:** one respondent paid £100 to view two properties.
- **Introduction fee:** approximately a quarter of respondents paid an introductory fee, sometimes one week of rent.
- **Holding fees:** some respondents paid a holding fee to ensure that property stayed off the market.
- **Card charge:** some agents charged 10% extra if paying rent by card.

These examples are set out on page 8 of the report:

<http://www.jerseyconsumercouncil.org.je/wp-content/uploads/2015/11/JCC-Rent-Report-Web.pdf>

There have been calls to improve the transparency of letting agent fees in order to provide landlords and tenants with an opportunity to compare letting agent fees

⁷ Jersey Consumer Council ‘Rents Matter’ (2015) p. 9

and, if necessary, question charges. This would be a potential first step, but it does not deal with the issue of whether the fees are reasonable in the first place, and is negated by the fact that tenants often do not “shop around” for a letting agent but make a decision based on the property available to let.

Fees are a significant cost for landlords and tenants, and affect the affordability of housing – especially for tenants who have to absorb fees and other costs such as rent in advance and a deposit, which can leave them in financial stress.

Therefore, this call for evidence will assess the extent and nature of concerns about letting agent fees, and help to determine the most appropriate policy approach to deal with any concerns identified. It is important to stress that the intention is not to target professional letting agents who provide good standards of service, but instead to clarify what is fair and reasonable for landlords and tenants to pay in respect of fees.

Questions

- a) Do you agree with the concerns that have been identified regarding letting agent fees?
- b) If you are a landlord or tenant, what have been your experiences of letting agent fees?
- c) What types and levels of fees do you think are reasonable for letting agents to charge landlords and tenants? *If you are a letting agent, please provide relevant details about your fees if you wish to.*
- d) Please provide any other comments you may have regarding letting agent fees.

9. Potential regulatory measures

Where any concerns are identified about the lettings markets by this call for evidence, it is important to consider measures to improve and embed professional standards of practice. The aim is to create a level playing field for responsible letting agents and to ensure that basic safeguards are in place to protect the interests of landlords and tenants.

The Minister is seeking comments on the benefits and feasibility of introducing regulatory measures into the lettings market. A number of potential measures are outlined below – both voluntary and statutory – based on examples of initiatives introduced in England and Wales, and Scotland in recent years. Some of these measures, if adopted, would apply to the whole private rented sector, while others focus on letting agents specifically.

The Minister would like to receive comments on the following regulatory measures, which could be introduced following the review process:

Code of practice: a voluntary code of practice for letting agents establishing a common set of standards for the letting and management of property. This would inform landlords and tenants about the standards of practice they should expect from letting agents and inform them of their rights. It would help landlords and tenants to make more informed decisions about which agent they let from.

A code of practice could also be introduced on a compulsory statutory basis, similar to the Scottish Letting Agent Code of Practice Regulations 2016, which comes into effect in 2018.

Rent Safe landlord accreditation: the Minister wants to encourage greater take-up of the Rent Safe voluntary landlord accreditation scheme, which was launched in July 2016. The scheme encourages well-managed and good standard rented housing. The scheme already enables 'accredited letting agents' and, combined with a code of practice for the industry, could help to further improve and embed professional standards of practice and customer service among letting agents.

Mandatory landlord licensing scheme: a law to establish minimum standards of repair for rented housing will be brought to the States Assembly in 2017. This will include a provision for the Environment Minister to introduce regulations establishing a mandatory licensing scheme for landlords and letting agents, enabling Environmental Health to administer and enforce powers around standards of rented housing.

Client money protection: this would require letting agents to have a protection system in place for any money received from tenants and prospective tenants in the course of their business. A client money protection scheme would be designed to protect both parties in the unlikely event that a letting agent went into administration or misappropriated their client's funds. Any losses incurred through the actions of a letting agent would be covered by a scheme.

Redress: it has been compulsory since 2014 for letting agents in England to join a redress scheme. There are 3 government approved redress schemes – the Property Ombudsman, Ombudsman Services Property and the Property Redress Scheme. The redress schemes provide a mechanism for landlords and tenants to pursue complaints about letting agents. Complaints are determined by an independent person and, where complaints are upheld, the landlord or tenant can receive compensation. A similar scheme could be introduced in Jersey.

Transparency of letting agents' fee structures: legislation could be introduced to require letting agents to publish a full tariff of their fees – both on their websites and prominently in their offices. This has been a legal requirement in England since April 2015. This would ensure greater transparency, clarity and accessibility of information relating to fees for landlords and tenants.

Clarification of letting agent fees: there are two potential approaches to dealing with fees – the first approach is to specify the different types of fees that can be charged by letting agents and set the maximum level for the fees that can be charged. This would ensure that letting agents could continue to charge legitimate fees required to cover business costs, whilst protecting landlords and tenants from the disproportionate costs.

The alternative option would be to **prohibit letting agent fees for tenants** altogether. This is based on the principle that it is the landlord who holds the contract with a letting agent and should therefore be responsible for any fees. Landlords would be better placed than tenants to express choice and “shop around” for a letting agent. Letting agents in Scotland have been prohibited from charging fees to tenants (“premiums”) since 2012 and the UK Chancellor similarly announced in the 2016 Autumn Statement the Government’s plan to ban letting agent fees for tenants.

Retrospective tenancy deposit scheme: the tenancy deposit scheme has been in effect since November 2015. The scheme only currently applies to tenancies entered into after 2 November 2015, or tenancies that were renewed or varied after this date. The Minister is considering whether deposit protection should be extended to encompass all tenancies, i.e. ones which started before November 2015.

Tenancy agreement terms: the Residential Tenancy (Jersey) Law 2011 came into force in May 2013. The Law provides a legal framework for the relationship between landlords and tenants, including the rights and responsibilities of the parties. The Minister is considering whether the Law should be amended to include additional fundamental provisions, which reflect good practice and common terms of tenancies, including:

- **Repairs and maintenance:** codifying a landlord’s responsibility for keeping a property in a good state of repair, including the structure and exterior of the property; installations (e.g. water, gas, or electricity, sanitation, and space heating or for heating water); and any fixtures, fittings and other items let with the property. It should be noted that this would not include circumstances where the want of repair is the result of the action or omission of a tenant.
- **Landlord’s right to access:** making legal provision for when a landlord and their agents may enter a property for the purpose of inspecting the condition and state of repair, or carrying out work. It is suggested a minimum of 24 hours’ notice should be given to the tenant before exercising that right, except in emergencies.
- **Break clauses in fixed-term tenancies:** The Law presently only covers minimum notice periods for periodic tenancies (i.e. those that have no fixed end date). The current limit is that a tenant must give 1 months’ notice and a landlord must give 3 months’ notice. Landlords are permitted to set their own notice periods if they include a break clause in a fixed-term tenancy (i.e. where there is fixed

start and end date). It is suggested that a statutory limitation should be placed on the minimum notice period in these instances.

Questions

- a) Do you think there is need to regulate letting agents?
- b) Please provide your comments on the potential regulatory measures identified above and whether you think that they would be feasible or beneficial.
- c) What other types of measure do you think would help to improve the standards of practice of letting agents?
- d) Do you think there is a need to clarify the types and level of fees that can be charged by letting agents by either i) setting the maximum charges for letting agent fees or ii) prohibiting letting agent fees for tenants?
- e) Please provide any other comments you might have regarding letting agent fees.

10. Assessing the impact

The Minister would like to receive comments on the costs to letting agents that may arise should any of the options identified in section 9 be adopted.

There are arguments for and against introducing regulatory measures – whether voluntary or statutory measures – for letting agents. On one hand, the introduction of some form of regulation would ensure consistent standards across the market and enable professional letting agents to compete on a level playing field.

On the other hand, there may be cost implications for letting agents, which, in turn, could be passed on to landlords and, ultimately, tenants through higher rents (although tenants may favour landlord costs being added to rent spread across the tenancy).

Some of the potential regulatory measures are likely to have a greater impact than others. The introduction of a code of practice for letting agents, for example, would have minimal impact because letting agents should already adopt these standards in their business. This would have no direct costs to landlords or tenants as a result.

However, clarification of the types and level of fees that letting agents can charge or a ban on fees and charges for tenants entirely, could potentially have a serious impact on letting agents who adopt such a business model.

Questions

- f) What, in your assessment, would be the impact upon letting agents of the proposed regulatory models set out in section 9?
- g) Please include an indication of the likely costs to businesses if you are able to provide such information.
- h) Are there any other comments you would like to make?

11. Next steps

The Housing Minister will use the responses to this call for evidence to inform the review of the lettings market in Jersey. On the basis of the responses, the Minister will determine the nature and extent of concerns about letting agents and will consider the most appropriate policy options for dealing with these concerns.