



## **Proposed Additional Licensing Scheme Renewal in the London Borough of Harrow**

### **Safeagent Consultation Response**

**26 March 2021**

#### **An Introduction to safeagent**

Safeagent is a not for profit accrediting organisation for lettings and management agents in the private rented sector. Safeagent (formally 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). Safeagent provides an overarching quality mark, easily recognised by consumers, with minimum entry requirements for agents.

Safeagent agents are required to:

- deliver defined standards of customer service
- operate within strict client accounting standards
- maintain a separate client bank account
- be included in a Client Money Protection Scheme

Agents must provide evidence that they continue to meet safeagent criteria on an annual basis to retain their licence. The scheme operates UK wide and has 1,500 firms with over 3,000 offices, including a number of agents within the London Borough of Harrow.

Safeagent was recognised by the GLA as an approved body for the London Rental Standard. We are a recognised training provider under the Rent Smart Wales scheme and are also recognised by the Scottish Government in providing qualifications to meet the requirements of the Scottish Register.

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

#### **Overview**

We understand Harrow Council is seeking to renew the additional licensing scheme that operated throughout the borough from 1 March 2016 to 28 February 2021.

In considering this proposal, we have studied the consultation report published on the council's website.

We are pleased to note the commitment to consider all views expressed during the consultation and provide a full reply where key issues are raised. We look forward to reading the council's response to our consultation and trust our submission will be presented to councillors as part of the Cabinet report.

The introduction to the consultation report says the proposed additional licensing scheme will start in April 2021. Once the consultation closes on 26 March 2021, the council must consider all representations and present a report to Cabinet. A scheme

designation must then be made three months before the scheme starts. As such, the earliest start date would be Summer 2021.

### **Existing licensing scheme**

Before deciding to renew the scheme, we think it is important for the council to demonstrate they have effectively implemented and enforced the previous additional licensing scheme.

The consultation report says 562 additional licences have been approved but contains no information about the type of HMOs, how many have been inspected and the nature of issues encountered.

**This is set out in the Cabinet report. While not always feasible, the Council aims to inspect all HMOs prior to the final licence being issued**

There is no information about the steps that have been taken to identify, investigate and enforce against licensable but unlicensed HMOs, nor any indication about how many unlicensed properties there may be. It is therefore difficult to evaluate how successful the scheme has been.

**There has been a 465% increase in suspected HMOs over the last 5 years, showing clearly that there is an ongoing and significant issue with residential accommodation in the Borough. Identification has been through an intelligence based approach including surveys, complaints, council tax and other means. The scheme to date has therefore been successful in licensing known HMOs but still continues to be needed to address those remaining.**

### **Evidence base**

Section 1.3 in the Foreword says all HMOs have inadequate fire precautions because they were all converted prior to 1991 and were never made compliant. There is no evidence, and it seems highly unlikely, that all HMOs in the borough were created at least 30 years ago. The use and occupancy of properties is subject to change. We also note the council has been operating an HMO licensing scheme over the last five years and during that time, has presumably required inadequate fire precautions to be upgraded.

In section 2.43, the report acknowledges the council have not undertaken a physical or desktop statistical housing survey and has no estimate for the number of HMOs in the borough. Likewise, there is no indication of how many HMOs would fall above or below the threshold for mandatory HMO licensing. Without this information, there is no baseline data to show the nature and geographical spread of properties that would fall within scope of an additional licensing scheme, nor evidence to show why such properties need to be licensed. The report does not even show the geographical spread of existing licensed HMOs.

**This is provided at the end of this document for reference and shows that while there are “clusters”, HMOs exist in all areas of the Borough (note – these are the licensed HMOs, and does not include potential unlicensed HMOs)**

We understand that 330 properties have been licensed under the mandatory HMO licensing scheme and 562 under the additional licensing scheme. The report implies these properties have already been inspected and where necessary, upgraded to the required standards. It is therefore unclear why they need to be licensed again.

**Reasons stated above**

The reference to 80 overcrowding complaints in section 2.46 does not say whether this relates to HMOs. Rather, it says this indicates the need for more HMOs.

**The majority of those found are within HMOs / Unlicensed HMOs**

In section 2.47, the report highlights a substantial reduction in disrepair complaints, down 52% in the last 10 years. This is a positive development and demonstrates how housing conditions have improved.

The reference to resident owner occupiers and block managers of large leasehold blocks in section 5.2 has no obvious relevance to an additional licensing scheme. If there is an implied relevance, it is not clear how this relates to HMOs that would require licensing under an additional licensing scheme.

Section 5.4 lists four HMO-types which it says would be licensable under an additional licensing scheme. It says the scheme would cover buildings converted into a mixture of the flats and shared accommodation. It seems unlikely there will be many such buildings with less than five occupants. Buildings occupied by five or more occupants are already licensable.

It also says the scheme would cover nightly let hotels and hostels used as temporary accommodation. We understand the scheme would not apply to such buildings if the person having control or managing the property is a local authority. Even if the building was managed by a private landlord, it seems unlikely there will be many such buildings with less than five occupants. Buildings occupied by five or more occupants are already licensable.

**Noted but some do exist in the Borough and therefore included**

In section 5.4, we note the council say “...all larger HMOs have the potential to be *ineffectively managed*”, but that is not the legal test to be applied. It is for the council to show that a significant proportion of HMOs that fall within the proposed designation are being ineffectively managed.

**The amount of unlicensed premises, and the yearly increase, indicates that there is a significant amount of HMOs that are already not being managed correctly as not meeting the licensing requirements**

“Approval steps for additional and selective licensing designations in England”, Communities and Local Government Guidance, published February 2010, sets out the evidential steps required before an additional licensing scheme can be introduced. It says a local authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

The guidance contains examples of the type of evidence required to meet this legal test. It includes properties where:

- External condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located.
- Internal condition, such as poor amenities, overcrowding etc, adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues.
- There is a significant and persistent problem of anti-social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems.
- The lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare.

The consultation report contains no such evidence. There is no information about the location and prevalence of HMOs that fall within the proposed additional licensing scheme, the internal / external condition and management of those properties or associated anti-social behaviour. There is no anti-social behaviour data at all, either from local authority or police records. The only information is that HMO licence applications have doubled in the last five years. This is unsurprising as it corresponds to a widening of the council's additional licensing scheme criteria

in 2016.

This is covered in the Cabinet report and also refers back to unlicensed premises as well

Where the council propose to include section 257 HMOs within the licensing scheme, government guidance makes clear this should only be done if the council can demonstrate such properties are being poorly managed. In this case, no such evidence has been provided.

As above

In conclusion, the absence of a published evidence base falls far short of the legal steps required to implement a new additional licensing scheme. If the council were to proceed on this basis, it would place the local authority at considerable risk of legal challenge through Judicial Review. In the circumstances, we would encourage Harrow Council to step back, take stock and undertake a thorough evidential review before deciding whether to launch a new public consultation.

Whilst we do not believe there is justification to proceed with the additional licensing scheme, we have still commented on other aspects of the consultation.

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

We understand the council intend to include all section 257 HMOs within the additional licensing scheme, albeit no information has been provided about the estimated number, location and problems associated with such properties.

In this context, we were surprised to read the comment in section 5.4 that the vast majority of HMOs in Harrow fall within the definition of a section 257 HMO. This seems highly unlikely and we would ask council to explain how they have reached this conclusion in the absence of any published data.

We have concerns about including all such properties within the additional licensing scheme due to the difficulty experienced by letting agents in knowing when a property was converted and whether the conversion satisfies the relevant building standards. It is not something that is reasonable for a letting agent to assess.

In situations where there is a freeholder and separate long leaseholders, the situation is further complicated by the need to determine whether less than two thirds of the flats are owner-occupied. Only the freeholder may possess this information and the tenure of each flat may vary over time.

This would make it extremely difficult for a safeagent letting agent to assess whether a licence is required, despite their best endeavours. For example, it may be that the building did not require a licence when a flat was rented out, but subsequently requires licensing because another leaseholder in the building has rented out their flat. As such, a letting agent could find themselves committing an offence of managing a flat in a licensable building without a licence, simply because another flat had been rented out without their knowledge.

Bringing section 257 HMOs within the additional licensing scheme could also be problematic for long-leasehold owner-occupiers who find their flat is within a licensable building. The licensing fee may push up their service charge and could cause difficulties with their mortgage lender. As the licence would need to be disclosed to a prospective purchaser, some mortgage lenders may be reluctant to

lend on a residential mortgage for a flat within a licensed HMO, thus adversely impacting on the property's value.

It is also the case that the 2015 general approval to introduce an additional licensing scheme only applies if the council has consulted persons likely to be affected by the scheme designation. Without actively consulting with long leaseholder owner occupiers and explaining the implications of licensing section 257 HMOs, the conditions in the general approval would not be met and the additional licensing scheme could not be introduced without Secretary of State approval.

Whilst we are opposed to the idea of including all section 257 HMOs within the additional licensing scheme, we recognise that there are circumstances where a particular type of section 257 HMO may be worthy of more intensive regulation. For example, where a landlord has converted a property into cramped and poorly designed studio flats entirely for private rental without any planning and building regulation approval.

In such circumstances, the additional licensing scheme could be restricted to section 257 HMOs where the whole building and all the individual flats within it are in single ownership or considered to be effectively under the same control. The London Borough of Ealing adopted this approach in response to our consultation feedback. They also restrict the licensing of section 257 HMOs to situations where the number of flats exceeds the number of storeys in the building. Several other London boroughs have restricted the licensing of section 257 HMOs in response to our constructive feedback. We would encourage Harrow Council to give this further thought and consider adopting a similar approach.

Harrow has always adopted an engagement approach to licensing, working with landlords / letting agents to meet legislation. While we understand legislation can be confusing, ultimately the responsibility does fall on landlords. We happily take on board the comments made and will keep this under review to ensure that, like all licensing, it does what it sets out to do in an effective manner without putting undue burden where it is not required

### **Licensing fees**

We recognise that the council need to charge a reasonable fee to cover the cost of administering and enforcing the licensing scheme.

It is important that the council implement an efficient and streamlined licence application processing system. This will help to minimise costs and keep fees at a reasonable level, thereby minimising upward pressure on the rent that is charged to tenants. We understand the council do not currently offer an online application system and we think this is something that should be considered.

We don't support the proposal in section 6.4 that shorter licences could be issued to landlords with no history of managing HMOs, particularly if they are using a safeagent member to assist in managing the property. The consultation report does not explain how this would operate in practice and so we have been unable to comment in more detail.

This is noted and therefore we will make this change that shorter licences will be issued in the cases of premises that we have had to find and have not been proactive in approach or where they lack planning / building control permission and this needs to be rectified (as per previous Tribunal ruling)

For additional licensing, we note the council currently charge £1,310 per property and this would be further increased to £1,405, or £997 for licence renewals if there are no material changes. As a flat rate fee, we think this is too high for a shared house or flat occupied by just three people and will act as a disincentive to landlords allowing sharers.

In addition to an additional licensing fee, we note it says a 'New S/C unit' has a fee of £290. We are unsure if this relates to a flat in multiple occupation or something else. This needs to be clarified.

We understand the council offer an accreditation discount of £75 off the first licence application, although it is unclear if this discount is available if properties are managed by an accredited safeagent member. This is something we would encourage the council to consider.

As part of the annual setting of fees and charges (February 2021 the latest and can be found at [harrow.gov.uk](http://harrow.gov.uk)) benchmarking does take place to ensure it is in line with others

We note the council proposes to offer an early bird fee discount but does not say the size of the discount and over what period it would apply. We believe any fee discount should operate for at least three months in the lead up to scheme implementation. During this time, it is vital that the council widely promote the scheme amongst landlords and agents.

We strongly oppose the decision not to offer the proposed early bird fee discount if members of an organisation such as safeagent let or manage the property (section 6.9). This discriminates against landlords who use a professional managing agent and we don't understand the rationale for this proposal. Membership of safeagent must not result in higher application fees being charged.

Given the lack of clarity, we would ask the council to publish full details of the proposed fee schedule, discounts and eligibility and consult on the proposals before they are finalised.

Noted

### **Additional Licensing Application Criteria**

We would encourage the council to look again at their proposed criteria for issuing a one year licence. This sanction, with no fee discount, should be reserved for landlords where there are significant management or property condition concerns. The published list implies the criteria for a one year licence will be interpreted much more broadly.

For example. note 'a' says if the property has not been licensed before, it will only get a one year licence. This could be because it is being let as an HMO for the first time. Adopting this approach would be unreasonable and act as a significant disincentive to accepting sharers. This in turn will reduce supply and prejudice tenants seeking affordable shared accommodation.

Note 'b' implies fire risk assessments are a requirement in all HMOs but this is not the case. They are not required in shared houses and flats let to sharers on a single tenancy with exclusive use. Landlords should not receive a shorter licence simply because they do not possess a document that is not required.

Note 'd' needs further consideration. It again lists fire risk assessments which we

have commented on above. Not all HMOs need emergency lighting and some smaller shared-flats may not have a mains wired fire alarm system at time of application. This could be added as a property specific condition. There is no requirement to have a PAT test certificate at the time of application, although this could be added as a licence condition.

We do not understand what is meant by 'no outstanding licence conditions' as conditions must, by law, be added to every licence.

We think 'Good application history – no reminders' needs to be reconsidered. We have come across councils that send an advisory or warning letter informing the landlord they have 14 days to apply. We do not agree that a short-licence sanction should be applied unless a warning letter has been sent and the landlord has failed to comply with the deadline set.

**Noted and addressed**

We do not understand what is meant by 'adhere to Private rented Sector Code of Practice'. What code of practice is this referring to and how would that be determined at the time of application? If it is discretionary guidance, non-compliance should not result in a sanction being applied.

We have serious reservations about the 'self-certification' criteria. Self-certification normally relates to the fit and proper person assessment which involves prescribed questions that must be asked and answered on every application. Note 'f' implies something very different. It says the landlord must sign up to a Private rented Sector Code of Practice without explaining what it is. This duplicates the criteria mentioned above. It says the landlord must have 'qualified employees' without explaining what that means. Most landlords don't employ staff and nor is there a requirement for them to do so. We are pleased the council is recognising managing agents with professional membership although we are unsure how this proposal will work in practice.

Overall, the proposed licence duration criteria are confusing and impractical. We have no objection to shorter licences being used as a stop-gap measure for poor performing landlords, allowing them time to improve or face licence refusal the following year. This proposal is very different, overcomplicated and not one we would support.

We would be happy to discuss this with the council to help find a more appropriate way forward. Our willingness for constructive discussion extends to all aspects of the proposed scheme. Other councils have taken up this offer and found the dialogue worthwhile.

**Noted and addressed**

### **Licence Conditions**

Whilst not strictly a licence condition, we noticed a comment in section 5.7 that self-contained flats within a building covered by an additional licence may require a selective licence. We believe this is the wrong interpretation and would encourage the council to seek legal advice. Section 85(1) of the Housing Act 2004 makes clear that selective licensing does not apply to properties licensed under Part 2 of the Act.

**Noted and corrected**

We have studied the current list of standard HMO licence conditions that is hyperlinked from Appendix 4 of the consultation report.

We have made a number of suggestions to help improve and fine tune the wording of the conditions. This in turn should help landlords and agents to understand and comply with the requirements.

Condition 13:

We note the requirement for all prospective tenants to undergo referencing. Whilst most safeagent members routinely undertake referencing, we would encourage the council to consider how this condition would be applied in respect of care leavers, prison release, people fleeing domestic violent and the provision of temporary accommodation for a homeless family at the request of a local authority. In these situations, referencing will not always be possible. The licensing arrangements need to ensure certain groups are not excluded from shared accommodation.

**This is a standard condition across Councils for HMOs, but will be amended to take the above into account**

Condition 19:

We do not agree with the requirement to display notices in every private rented home informing the tenants they must not cause anti-social behaviour. We have not come across this requirement before. It is not something desirable in someone's home and creates an institutional feel. We assume this is not done in every Harrow Council property and do not think private tenants should be discriminated against in this way. The more sensible approach is to have appropriate ASB clauses in the tenancy agreement.

**This is amended to state tenants must be told of this requirement and highlighted in tenancy agreements**

Condition 20:

The general fire safety conditions should be those imposed by Schedule 4 of the Housing Act 2004 (as amended). If the fire precautionary arrangements need to be upgraded, this should be via property specific conditions with an agreed timescale for compliance. In our experience, councils often insert property specific conditions in a schedule at the end of the licence and we would encourage Harrow Council to do the same.

**Noted**

Condition 24:

Similar to condition 20, if the fire precautionary arrangements need to be upgraded, this should be via property specific conditions with an agreed timescale for compliance. It is not appropriate to have a general condition saying all kitchen, lounge, dining room and bedroom doors must be fire doors. The LACORS fire safety guidance only requires this in some HMOs and the guidance is referenced in condition 27 as setting an appropriate standard. In small low risk HMOs, sound, well-constructed and close fitting doors may suffice. This condition exceeds the prescribed standards for some licensed HMOs.

**Noted**

Condition 28:

This condition needs to be updated to reflect the new prescribed wording in imposed by Schedule 4 of the Housing Act 2004 (as amended).

**Done**

#### Condition 29:

As explained in the LACORS guidance, the Regulatory Reform (Fire Safety) Order 2005 does not impose a requirement for a fire risk assessment in all HMOs. It excludes HMOs let to sharers on a single tenancy with exclusive use. If this condition is to be retained, it needs to make clear it only applies if the HMO falls within the remit of the Fire Safety Order.

Done

#### Condition 30:

We understand the smoking ban only applies to the common parts of buildings containing different lettings. It does not apply to HMOs let to sharers on a single tenancy with exclusive use. Having said that, many landlords will still choose to insert a no-smoking clause in the tenancy agreement.

Noted

#### Condition 31:

We do not think the council can impose a condition saying the property must be fully compliant with planning and building regulations. Those are different regulatory regimes that sit independently of HMO licensing. It would be improper for the council to make any perceived planning breach a strict criminal offence with the risk of a civil financial penalty of up to £30,000. Planning has a separate regulatory regime. Any perceived planning breach should be dealt with by serving a planning enforcement notice which can be subject to appeal. We would encourage the council to remove this condition and follow the approach adopted by most other councils. It is common practice for licences to have clauses explaining that granting the licence does not infer the property has all necessary planning and building regulation approval.

Amended

#### Condition 33:

We would ask the council to amend the wording of this condition. At present it says the licence holder must attend training and refers to section 233 Housing Act 2004 without explaining what the training requirement is, nor how to find out. We understand no training requirement has been imposed under section 233 and so we assume the condition is not imposing a training requirement. This needs to be clarified.

Amended

#### Condition 34:

Many local authorities have widened this condition to allow either the licence to be displayed in the property, or a full copy provided to the tenants. We think this is a preferable approach as the licence could be removed from display between interim inspections and if it is placed behind a cover, only the front page is visible.

Amended

#### General

Where conditions impose requirements for documents to be produced, we would request that the timescale for returning documents is extended from 7 to 14 days. Otherwise, it creates a serious compliance risk if a landlord or agent is absent from the office for a few days and unaware of the request until they return.

Amended

### **Inspection regime**

If properties are to be inspected as part of the licence application process, it is vital that the council has sufficient officers available to conduct any inspections in a timely manner so that licence approvals are not unduly 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. In other boroughs, we regularly see licence approvals taking six months or more due to a backlog of work and inadequate resourcing.

**This is in place**

### **Delivering effective enforcement**

It is vital that the council establishes and maintains a well-resourced and effective enforcement team to take action against those landlords and agents that seek to evade the licensing scheme.

Without effective enforcement, new regulatory burdens will fall solely on those that apply for a licence whilst the rogue element of the market continue to evade the scheme and operate under the radar. This creates unfair competition for safeagent members who seek to comply with all their legal responsibilities. They are saddled with extra costs associated with the licence application process and compliance, whilst others evade the scheme completely.

**Noted and clear enforcement / CPN regime in place**

### **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 safeagent licensed firms.

**Noted**

### **Regulation of letting agents**

To achieve better regulation of the private rented sector and improve consumer protection, it is important 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. On 1 April 2019, the requirements were updated again, requiring letting agents and property managers to be members of a government approved client money protection scheme if they hold client funds. At safeagent we operate one of the government-approved client money protection schemes.

To assist councils in regulating the private rented sector and effectively utilising these enforcement powers, we developed the NALS Effective Enforcement Toolkit. Originally published in June 2016, the toolkit has been updated in conjunction with London Trading Standards and is currently undergoing a further review. The latest toolkit can be downloaded free of charge from our website:

<https://safeagents.co.uk/wp->

[content/uploads/2018/12/07618\\_NALS\\_EnforcementToolkit\\_Web.pdf](#)

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.

Thank you

**Isobel Thomson**  
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HMO Map

