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Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty



Llywodraeth Cymru
Welsh Government

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Dear Christine

Thank you for your letter of 8 June regarding the concerns the Committee has in relation to the Draft Code of Practice for Landlords and Agents. I was aware the Committee held an evidence session on 4 June and some of the views raised.

There does seem to be some confusion as to the purpose of the Code and I am grateful for the opportunity to clarify this. Primarily, it must be a clear summary of what a licensed Landlord and/or Agent's statutory duties are. If a licensed Landlord or Agent is found by the enforcement authority to have failed to comply with any of these statutory duties, it may result in their licence being revoked by the Licensing Authority under the Housing (Wales) Act 2014. This will mean they will no longer be able to manage rental properties in Wales. It is vital these statutory duties are, therefore, clearly listed in the Code in a way which will make it enforceable by the Licensing Authority and Residential Property Tribunal.

This is a significant departure from the existing regime, where irrespective of how many offences a Landlord or Agent is found guilty of, they can generally continue to operate as a Landlord or Agent. This new approach will allow us to stop the worst Landlords and Agents from continuing to cause misery to tenants.

The secondary purpose of the Code is to set out best practice in order to drive continuous improvement in the sector. I specifically made sure such aspirational practice was included in the 'best practice' part of the Code following useful input by Committee members during scrutiny of the Housing (Wales) Act 2014.

Clearly, failure to comply with such practices cannot and should not result in a licence being withdrawn, as it would amount to effectively introducing primary legislation via the Code of Practice. It would be open to legal challenge as to its lawfulness.

However, I envisage those Landlords and Agents who have the best intentions will work within the best practice guidelines and further help to improve the standards and reputation of the PRS.

The new licensing provisions I am introducing in the Housing (Wales) Act 2014 will mean, for the first time, Councils will be able to communicate effectively with Landlords and Agents. This is an excellent opportunity to engage with those who currently do not do so through any of the voluntary initiatives, schemes or membership bodies. However, we must be very clear not to try and achieve everything overnight. It is important we get the basics right first and begin to drive up basic management standards step by step.

As you will be aware, I believe stakeholder involvement is very important and has been vital in driving these proposals forward. A Working Group was set up to ensure key stakeholders were involved with and had input into the development of the scheme, including the Code. Members have had the opportunity to raise their concerns at the meetings and to comment on the draft Code prior to it being issued for wider consultation.

Of course, as you have seen, not everyone will agree on a single best way forward or what should or should not be done. This particular initiative was never going to please everybody as their views were so diverse from the outset.

The Code was never intended to be all things to all people. Its primary role is to be a Code of Practice which a licence-holder must adhere to in order to let and manage rental properties. As such, it needs to be focused on this purpose.

The prime purpose of inviting representative groups such as Shelter Cymru, Citizens Advice Cymru and NUS Cymru to be part of the Working Group, was to ensure the views and concerns of those they represent, were put forward. The same applies in relation to Landlords, Letting Agents and Local Authorities.

In terms of the impact on Letting Agents, I do not envisage this Code will impact on the majority of a commercial agent's day-to-day practices, given the Code contains statutory requirements. Neither should it impact on those agents who already adhere to the Codes of Practice of their respective membership bodies. Indeed, from inception, it has always been made clear that 'good' Landlords and Agents have nothing to fear from this legislation.

I do not agree this Code would reduce expectations on Landlords and Agents in general. A large proportion of tenants in Wales have their properties managed by somebody, whether landlord or an agent, who does not currently follow any Code of Practice. This Code introduces a statutory practice by which everyone who lets and/or manages a residential property must abide. By definition, this will mean an increase in the expectations of those tenants who are renting from somebody who is currently not voluntarily a member of an existing professional body or accreditation scheme. In addition, a breach of existing Codes can only result in cessation of the membership of the relevant scheme, whereas, the penalty for a breach of a statutory requirement under this Code is ultimately, the withdrawal of a licence.

There are no other penalties, as such, for breaching aspects of this Code. Breaches of the statutory part of the Code, as they are already in law, can mean penalties, however, these are all enforced through other legislation.

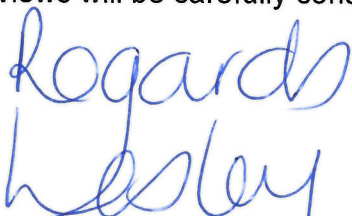
The issue of the potential need to amend this Code in the future was raised. As it is a Code being made by Ministers, it will have to be consequentially amended when legislation changes which affects the content, just as with all other subordinate legislation.

The best practice section of the Code details matters which are over and above what is required in law. I believe that those landlords who aspire to be amongst the best will, by definition, use this section to build on those aspirations. For the 'less good' landlords, including those who may be unclear of the statutory requirements placed on them, this section is aimed at encouraging them to aspire to provide properties for their tenants which meet at least a minimum standard.

In my view, the content of the Code does meet the needs of the groups who must adhere to it (i.e. licensed landlords and agents) and, it is clear what they must do to ensure they comply with the conditions of their licence. I understand tenants will be interested in the content of the Code and may usefully use it to help them understand a Landlord and/or Agents role. However, information for tenants on what they should or should not expect from their Landlord or Agent, along with their rights and responsibilities as a tenant, will be set out in an easy to understand tenant guide, which is currently being developed. There will also be a wealth of information and FAQs on the schemes website once it is all operational. I hope this reassures you the Code is not the only source of information that will be available for those who need information.

The views expressed about the layout and structure of the Code being confusing is, of course, subjective as there is no right or wrong way to set out a Code. However, I believe this is a useful example of why consultation is important. Of course, I have not yet had time to fully digest all of the responses but these are the type of things we can consider further before finalising the Code.

As you rightly point out, those views that were raised during the consultation period were quite numerous and detailed. My officials are still analysing much of the content of those responses and I am sure, where appropriate, some of the suggestions made will be addressed before the Code is finalised. I cannot, therefore, second guess what exact changes might be made to the Code at this stage but I assure Committee Members all views will be carefully considered.



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