



LEICESTER CITY COUNCIL'S SELECTIVE AND ADDITIONAL LICENSING PROPOSALS

A RESPONSE TO THE CONSULTATION FROM SAFEAGENT - FEBRUARY 2022

INTRODUCTION

safeagent www.safeagents.co.uk is an accreditation scheme for lettings and management agents operating in the Private Rented Sector (PRS) **safeagent** firms are required to:

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

Firms must provide evidence that they continue to meet **safeagent** criteria on an annual basis, in order to retain their licence. The scheme operates UK wide and has 1500 firms with over 2500 offices.

safeagent is an accredited training provider under the Rent Smart Wales scheme and meets the requirements for training for agents under the Scottish Government Register. Recently, we have been approved by Government as an approved Client Money Protection scheme.

SAFEAGENT AND LICENSING

safeagent is supportive of initiatives such as selective and additional licensing, providing they are implemented in a way that takes account of the PRS's own efforts to promote high standards.

safeagent believes that positive engagement with voluntary schemes and the representative bodies of landlords and agents (such as **safeagent**) is essential to the success of initiatives such as selective and additional licensing. We are mindful that the operational problems associated with lack of such engagement have been highlighted in House of Commons Standard Note SN/SP 4634 <https://publications.parliament.uk/pa/cm201314/cmselect/cm>

The same note sets out how important it is for licensing schemes to avoid being burdensome. We believe that promoting voluntary schemes and offering discounted licence fees to accredited landlords and agents, can help to achieve this. Voluntary schemes often require members to observe standards that are at least compatible with (and are often over and above) those of licensing schemes. We believe, therefore, that if Leicester City Council were to allow discounts based on membership of **safeagent** (as well as other similar bodies) implementing and policing the licensing scheme would ultimately be less costly and more effective, allowing resources to be concentrated in the areas where they are most needed.

This is a commonly accepted approach by many English Local Authorities. We would further point out that, in Wales, the Welsh Government has recently recognised the importance of membership of specified bodies such as **safeagent** and is offering discounted fees to members as a consequence <https://www.rentsmart.gov.wales/en/>

PROMOTING PROFESSIONALISM IN THE PRS - THE ROLE OF AGENTS

safeagent's engagement around the country, with various local authorities, suggests that lettings and management agents have a key role to play in making licensing, accreditation and other, voluntary regulatory schemes work effectively. Agents tend to handle relatively large portfolios of properties, certainly when compared to small landlords. They tend, therefore, to be in a position to gain an understanding of licensing based on wider experience. They become expert in trouble shooting and ensuring that the balance of responsibilities between the agent and the landlord is clearly understood. This, amongst other things, can help to prevent non-compliance due to misunderstandings about local licensing arrangements.

safeagent ensures its members maintain certain operational standards, have Client Money Protection arrangements in place, keep separate client accounts and comply with their legal obligation to be a member of a redress scheme. We also provide training. All this can be of assistance to councils who are trying to drive up standards in the PRS.

Although agents are now required by law to belong to a government approved redress scheme, display their fees and publish their mandatory client money protection status, our experience to date suggests local authorities face challenges in enforcing these standards. Membership of bodies such as **safeagent** can reduce the need for the local authority to use its formal, legal powers in these areas.

Furthermore, **safeagent** firms have a key role to play in helping to avoid the occurrence of widespread evictions, following the expiry of the COVID-19 eviction ban. Lettings and management agents are uniquely placed to offer mediation and negotiation between tenants and landlords.

In a survey of "**safeagent**" firms across England, agents were asked about the proportion of landlords who have been sympathetic and willing to help tenants affected by COVID-19, by offering rent reductions or payment plans. 47% of firms said 75-100% of their landlords were willing to help, showing a high level of support for tenants to allow them to stay in their homes. Agents can provide the important service of setting up payment plans, as well as collating and holding the confidential evidence needed at all stages of the process.

LEICESTER CITY COUNCIL'S PROPOSALS - SPECIFIC ISSUES

Partnership Working with Lettings and Management Agents

safeagent believes effective enforcement is fundamental to better regulation of the PRS and has, echoing the recent National Audit Office (NAO) report on the regulation of private renting, called on Government to develop a coherent plan to assist Local Authorities in delivering their regulatory responsibilities.

In this context, we would urge Leicester City Council to work closely with accredited lettings & management agents, to ensure that the regulatory effort associated with licensing schemes is focussed on the greatest risks. The highest priority should be tackling rogue landlords and agents, not policing the compliant.

Many rogue landlords and unaccredited agents operate "under the radar". Resources should be directed towards these serious, high risk, cases. There is danger that too much time will be spent on those properties and landlords where an existing, reputable agent is already best placed to ensure compliance with license conditions.

We feel the approach to licensing should be risk based and targeted, thus pursuing those landlords and properties with track records of poor provision and compliance, ensuring that they sign up to and comply with the scheme.

To this end, we would urge the council to fully recognise the compliance work reputable agents carry out as part of their day to day work. We would also suggest that the Council work closely with accredited agents to proactively seek out and identify unlicensed properties. We would urge Leicester City Council to work with agents to identify those irresponsible landlords who impact negatively on the reputation of the PRS.

We would also draw Leicester City Council's attention to safeagent's new Enforcement Toolkit. [safeagent-Effective-Enforcement-Toolkit-2021.pdf \(safeagents.co.uk\)](https://www.safeagents.co.uk/SAFEAGENT-Effective-Enforcement-Toolkit-2021.pdf) This has been updated to reflect the legal requirement for lettings and management agents to belong to a client money protection scheme and now includes over 100 Tribunal decisions from across England. It also includes template warning letters to letting agents who are failing to comply with legal duties, advice on serving civil penalties and even examples on how to highlight enforcement action to the local media.

Selective and Additional Licensing Fees

A license fee of between £1000 and £1150 would be high compared to most other local authorities in England, even after any discounts applicable are applied.

We believe a more significant discount than the proposed 10% should be available to agents and landlords who are members of recognised national accreditation bodies, such as **safeagent**. We would suggest that this is justified because **safeagent** members and the landlords who engage them are far less likely to be non-compliant. As a result, there are reduced enforcement costs to the council in respect of properties managed by **safeagent** firms. We would also suggest that **safeagent** membership mitigates the need for compliance visits to be carried out by the council. For example, the timing and content of inspections could be risk rather than routine based, recognising that the risk of non-compliance is much lower in the case of properties managed by **safeagent** firms.

To sum up, the council will have fewer concerns about the management, use, condition or occupation of the property where a **safeagent** member is managing it. This should be reflected in a significant license fee discount, which provides an incentive towards the engagement of accredited agents. Below, we outline how the standards required by **safeagent** are compatible with the requirements of the licensing scheme.

Late License Penalty Fee

We do not agree with the proposed Late License Penalty Fee. In our experience, administrative errors and resourcing issues on the part of the council are the most common cause of licensing delays. These include problems with receipt and processing of applications, as well as errors and delays in dealing with queries. These are often the primary cause of the correct license not being in place at the right time.

In this context, a Late License Penalty Fee would be unfair. After all, it is unlikely that rebates will apply in the case of council error or delay. Furthermore, we would question whether the council will always be in a position to provide definitive advice on licensing in a timely and easily accessible fashion. In our view, it would be better to address the issue of errors and delays in an amicable fashion, recognising that administrative problems can sometimes arise on either side.

Fee Waiver – the PRS Lettings Scheme and Tackling Homelessness

We are very supportive of LCC's private sector lettings scheme, which we recognise aims to support landlords to provide long-term, stable private rented tenancies to the people in the city who need housing the most.

We would suggest that, in cases where a private landlord is participating in this scheme, license applications should be accepted without any fee being payable (or with the fee being paid by another council department) We know that this arrangement is in place in some English local authorities, for example Bristol City Council.

Whilst taking the point on saving agent's fees, it might be worth exploring how an agent could access the scheme on a landlord's behalf. Our members locally will, I think, be able to help identify suitable lettings - and it would be a shame to limit the scheme to self-managed properties.

The approach could become more structured if the council were to enter into partnership arrangements whereby lettings agents source properties for council referrals of homeless people or those at risk of homelessness. safeagent is currently working on a model whereby a "Social Lettings Partnership" is created through links to one or more established local agents. This is an alternative to the LCC approach, whereby established agents are bypassed. We would be happy to discuss this model with the council at any time.

Licensing Period and Changes in License Holder

We would be concerned if any licence application made part way through the designated period was to incur the full fee. This is unfair and makes licenses granted later in the designated period poor value for money. In these cases, we believe the fee should be charged "pro-rata".

This issue is highlighted in the government report "An Independent Review of the Use and Effectiveness of selective Licensing" (MHCLG 2019)

This report describes how "Most licence fees do not take any account of the remaining time of the licensing designation. This can lead to landlords being required to pay the full cost five-year of licensing even if there is only a short time remaining before the designation expires (with no option to "carry over" where re-designation is intended). This negatively impacts on relationships with landlords, who perceive this as manifestly unfair. This issue can be partially mitigated by making the enforcement portion of the licence fee payable on a pro-rata basis"

Charging of full fees for part periods is also anti-competitive, as it can add cost to the process of engaging or changing a license holding managing agent. Specifically, we often see cases where a reputable agent has to take on management of a property and the license, when there has been a history of management and/or compliance problems. We would suggest that, in cases where an agent steps in as licence holder/manager, the licensing fee should again be charged "pro-rata".

Alternatively, it should be made clear that licenses taken out part way through the period last for a full 5 years - and remain valid when the designation is renewed or comes to an end.

We note, for example, that in Bristol all individual licences for selective or additional licensing are valid for 5 years from the date of issue. This does not necessarily tie in with the dates that schemes are operational, as each licence can be issued at any time during the 5 year

term of the relevant licensing scheme. Licenses will naturally run on past the end of the designated scheme.

As a result, Bristol do not operate a pro rata fee for applications received part way through the scheme. Instead, licence holders must comply with the terms of the licence for a period of five years **even when the scheme has come to an end**. Bristol still inspect licensed properties and take any necessary action to ensure the property meets licensing standards, until the licence has expired.

Proposed Licensing Area

We welcome the targeted nature of the licensing proposals. However, steps should be taken to ensure that introducing a further layer of regulation and cost through licensing does not discourage landlords from staying in the rental market, especially at a time when there has been an increase in the value of most properties. Landlords selling up could reduce the supply of rental stock in the city and create further upward pressure on rents - something which may be an unwelcome and unintended side-effect of the scheme.

LICENCE CONDITIONS

In our detailed comments below, we point out some of the areas where compliance with key standards is an inherent part of the **safeagent** scheme. These are the areas where we think promotion of **safeagent** membership through license fee discounts could ultimately save the Council money, as well as increase the take up of voluntary accreditation.

Tenant Referencing

We are supportive of any requirement to obtain references for prospective tenants. **safeagent** is actively involved in promoting good practice in tenant referencing. We would be happy to discuss our work in this area with the Council.

Tenancy Management

safeagent agents are expected provide and fill in a tenancy agreement on behalf of the landlord. they will always make sure the terms of the tenancy are fair and help the tenant to understand the agreement.

They will always provide clear information to the tenant about any pre-tenancy payments and what these cover. They will explain any requirement for a guarantor and what the guarantor role entails. At the end of a tenancy, they will always serve the tenant with the correct period of notice as set out in the tenancy agreement.

Under **safeagent's** service standards, agents are required to take a deposit to protect against possible damage. They are required to explain the basis on which the deposit is being held and the purpose for which it is required, as well as to confirm the deposit protection arrangements. When joining **safeagent**, agents are asked to provide details of the number and value of the deposits they have registered with the scheme.

Agents are asked to authorise **safeagent** to contact the scheme to verify this information.

During the course of a tenancy, **safeagent** agents will check the condition of the property and draw up a schedule to outline any deductions to be made from the tenant's deposit.

They will return the deposit in line with timescales and processes required by the statutory tenancy deposit schemes.

safeagent agents are also required to:

- have a designated client account with the bank
- operate to strictly defined Accounting Standards
- be part of a mandatory Client Money Protection Scheme.

These requirements provide additional security for client monies held. Again, this is an area where increased **safeagent** membership would be of benefit to the Council and local tenants.

Licence Conditions Relating to the Property

We welcome Leicester City Council's drive to improve property standards. We believe that **safeagent**'s standards go a long way to ensuring compliance with license conditions.

Under **safeagent**'s service standards, **safeagent** agents are expected to visit any property to be let with the landlord and advise on any action needed before letting the property. This includes any repairs and refurbishments needed to put it into a fit state for letting. They will also go with possible new tenants to view unoccupied property. Tenants can, therefore, be confident that **safeagent** agents have provided advice to the landlord concerning any repairs or refurbishments which are necessary.

Safeagent agents are expected to explain both the landlord's and the tenant's the rights and responsibilities. To guard against misunderstandings, they will arrange for the preparation of a schedule of the condition of the property.

Safeagent agents are required to ensure that tenants are provided with copies of safety certificates on gas and electrical appliances before they commit to the tenancy. They will provide details of the condition of the property, plus a list of its contents. The property will have undergone all required safety checks on furnishings, and gas and electrical services.

Thereafter, **safeagent**'s standards require agents to carry out property inspections periodically, as agreed with the landlord, in line with normal good practice. **Safeagent** and our firms would anticipate inspections to be carried out every 6 months as a minimum, to identify any problems relating to the condition and management of the property. In line with common practice, records of such inspections would contain a log of who carried out the inspection, the date and time of inspection and issues found and action(s) taken. Under a licensing scheme, this information could be shared with the council in an appropriate format.

Tenants will be fully aware of access arrangements. **Safeagent** agents are expected to arrange in advance a time for access, in order to inspect the condition of the property in accordance with the tenancy agreement. **Safeagent** agents will arrange to have routine maintenance work carried out, up to a limit agreed with the landlord. The agent will refer expenditure above that limit to the landlord.

Training

We welcome any proposals requiring agents who are license holders to undergo training. However, we would suggest that the training provided by **safeagent** should be recognised by the council (please see [Professional development - Letting agents | safeagent \(safeagents.co.uk\)](https://www.safeagents.co.uk/professional-development-letting-agents))

Membership of **safeagent** means that agents have access to an extensive training package, engagement with which should reduce the need for the local authority to intervene. Although not a *condition* of **safeagent** membership, **safeagent** offers accreditation through an online foundation course as well as qualifications such as BTEC Level 3 in Lettings and Management practice.

safeagent offers training to those who have been involved in lettings and management for some time as well as those who are just starting out. Training is available for principals of firms as well as employees. Thus, **safeagent's** Virtual Learning Environment (VLE) is designed to cater for a wide range of professional development needs. Training is easily accessible and can be undertaken when it suits the trainee. Any candidate completing the **safeagent** Foundation Lettings Course successfully also has the opportunity to use the designation '**safeagent qualified**'. **safeagent** Foundation Lettings Course (Wales) is also approved training recognised by Rent Smart Wales, the Welsh Government's regulatory body as meeting the requirements for agents to have complying with their licensing requirement. One advantage of this approach is that it makes it easy to ascertain (through on-line monitoring) that participants have in fact undertaken the required training, prior to or immediately after accreditation. Modules available cover:

- Pre-tenancy issues
- Responsibilities and liabilities
- Setting up a tenancy
- During a tenancy
- Ending a tenancy
- General law concepts, statute vs contract
- Relationships
- Obligations
- Process
- Considerations for corporate tenants
- Continuing Professional Development (CPD)

In addition, **safeagent** provides mini online courses designed to cover a number of elements in more detail, as appropriate to the learner's role, include topics such as:

Assured Shorthold Tenancies (ASTs)
Client Money
Consumer Protection Regulations (CPRs)
Deposits
Disrepair
Electrical Appliances & Safety
Gas Appliances & Safety
Houses in Multiple Occupation
Housing, Health & Safety Rating System (HHSRS)
Inventories and schedules of condition
Joint Tenancies
Notice Requiring Possession

We would re-iterate that discounted fees for **safeagent** firms would provide an incentive to positive engagement with training that is fully compatible with the requirements of the licensing scheme.

Anti-Social Behaviour (ASB)

For our members, dealing with actual and perceived anti-social behaviour in the PRS is a day to day activity. However, in general, we have concerns about the assumed link between the amount of PRS accommodation in the neighbourhood and the incidence of ASB. In our experience, levels of ASB can be just amongst homeowners and tenants of social housing.

There may be some *correlation* between incidences of ASB and the prevalence of PRS accommodation on the area. However, correlation does not equate to *causation*. The *causes* of ASB are many and varied. It is not, in our view, reasonable to expect agents and landlords to play a disproportionately large part in tackling them.

Furthermore, we would strongly advise against any proposals which imply a parity of approach between the PRS and the social rented sector. Social landlords are publicly funded (and regulated) to develop and manage housing on a large scale. Their social purpose brings with it wider responsibilities for the communities in which they work. As private businesses, PRS landlords and their agents, whilst having clear responsibilities to manage their properties professionally, cannot reasonably be expected to tackle wider social problems.

Fit and Proper Person Test - Suitability of Licence Holder

All principals, partners and directors of a **safeagent** firm are asked to make the following declaration on application:

– “I confirm that: for a period of 10 years prior to this application I have had no conviction for any criminal offence (excluding any motor offence not resulting in a custodial sentence) nor have I been guilty of conduct which would bring the Scheme or myself into disrepute; I am not an undischarged bankrupt nor is there any current arrangement or composition with my creditors; I am not nor have I been a director of a company which has within the period of 10 years prior to this application entered into liquidation whether compulsory or voluntary (save for the purpose of amalgamation or reconstruction of a solvent company) nor had a receiver appointed of its undertaking nor had an administration order made against it nor entered into an arrangement or composition with its creditors; nor have I at any time been disqualified from acting as a Director of a company nor subject to a warning or banning order from the Consumer Markets Authority or the Department for Business, Enterprise and Regulatory Reform.

If I am subject to any current claim or am aware of any impending claim for professional negligence or loss of money or if I have been the subject of any investigation by the Consumer Markets Authority and/or local Trading Standards Office, full details of the circumstances are set out in a report enclosed with the application; all information provided by me in connection with this application is, to the best of my knowledge, correct”

We believe this certification is broadly in line with Leicester City council’s licensing conditions and is another example of where promotion of **safeagent** membership through discounts could help to ensure compliance.

Complaints

All **safeagent** firms are required to have a written customer complaints procedure, available on request. Our guidance sets out how the first step for complainants is to ask the firm they are dealing with for a copy, which will outline the method by which they can seek to resolve any issues.

In line with statutory requirements, all **safeagent** members must also be members of a recognised redress scheme. Firms are required, at the request of the complainant, to refer the complaint to a redress scheme once their in-house procedure has been exhausted. They are also required to comply with any award determined by the redress scheme, within the timescale prescribed.

Under co-regulation schemes elsewhere in the UK, **safeagent** has undertaken to review any complaints that have been adjudicated upon by any of the redress schemes. Under such an arrangement, **safeagent** can report to the Council on the number of complaints reaching this stage and on the adjudications made. Non-compliance with a redress scheme's adjudication would eventually lead to disqualification of the agent from **safeagent**. We would be happy to come to a similar arrangement with Leicester City.

MEASURING THE SUCCESS OF THE SCHEME

We believe that regular information on implementation of the scheme should be made available in a clear and consistent format. Reports to local landlord and agent forums, representative bodies and other stakeholders should include at minimum:

- The estimated number of private rented properties that require licensing under the selective and additional licensing schemes
- The number of applications received in respect of these properties
- Progress in processing (granting, querying or refusing) the licence applications received
- Analysis of the reasons for any queries or refusals and the extent to which remedial action is identified and taken as a result
- Analysis of the outcomes of ongoing inspections and the extent to which remedial action is identified and taken as a result
- Progress reports across the whole 5 year period covered by the scheme.

This should help to enable the Council to work in partnership with landlords, agents, representative bodies and other stakeholders to ensure the success of the scheme.

CONCLUSION

It seems to us that many of the licencing requirements in the Leicester City scheme highlight how important it is for landlords to work with reputable agents such as **safeagent** members.

Offering a discount to licence holders who work with a **safeagent** accredited agent would help to promote this.

safeagent would welcome a collaborative approach with Leicester City Council, based on shared objectives. We believe that agents who are members of a recognised body are more likely to embrace selective and additional licensing and less likely to generate complaints or breaches of their licence. Discounted fees for **safeagent** members would be a significant incentive to positive engagement by agents. In return, the Council would experience reduced administration and compliance costs.

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APPENDIX 1 – COMPATIBILITY OF SAFEAGENT SERVICE STANDARDS WITH TYPICAL SCHEME CONDITIONS

Example Scheme Conditions	SAFEAGENT Service Standard Requirements
Fees	SAFEAGENT promotes complete transparency in agency fees. Members provide landlords with a statement of account as often as agreed.
Rent Liabilities and Payments	SAFEAGENT agents collect the rent and pass it on every month or as otherwise agreed. The agent will keep a separate clients' account to hold all monies.
Contact Details	SAFEAGENT agents are expected to respond to tenant and other legitimate enquiries in a timely manner. Up to date contact details will enable them to respond to tenants' requests for maintenance or repairs which might in some cases have to be referred to the landlord for approval.

Example Scheme Conditions	SAFEAGENT Service Standard Requirements
State of Repair	SAFEAGENT agents visit the property with landlords and advise on any action needed before letting the property. This includes any repairs and refurbishments needed to put it into a fit state for letting. They will also go with possible new tenants to view unoccupied property. Tenants can be confident that SAFEAGENT agents have provided advice to the landlord concerning any repairs or refurbishments which are necessary.
Access and Possession arrangements	SAFEAGENT agents will visit the property periodically during the course of the tenancy as often as agreed with the landlord. Tenants will be fully aware of access arrangements. At the end of a tenancy, they will always serve the tenant with the correct period of notice as set out in the tenancy agreement.
Repairs and Maintenance	SAFEAGENT agents will arrange to have routine maintenance work carried out, up to a limit agreed with the landlord. The agent will refer expenditure above that limit to the landlord.
Access, Cleaning and Maintenance of Common Parts	SAFEAGENT agents will arrange in advance a time for access to the property in order to inspect the condition of the property in accordance with the tenancy agreement.
Level of Facilities	SAFEAGENT agents ensure that tenants are provided with copies of safety certificates on gas and electrical appliances before you commit to the tenancy. They provide details of the condition of the property, plus a list of its contents. The property will have undergone all required safety checks on furnishings, and gas and electrical services.

Example Scheme Conditions	SAFEAGENT Service Standard Requirements
Deposits	SAFEAGENT agents provide and fill in a tenancy agreement and take a deposit to protect against possible damage. They will explain the basis on which it is being held and the purpose for which it is required.
References	SAFEAGENT agents choose a tenant in a way agreed with the landlord, taking up references or checking the tenant's rent payment record.
Complaints & Dispute Handling	<p>SAFEAGENT agents explain both the landlord's and the tenant's the rights and responsibilities. To guard against misunderstandings, they will arrange for the preparation of a schedule of the condition of the property.</p> <p>During the tenancy, they will arrange to check the condition of the property and draw up a schedule to outline any deductions to be made from the tenant's initial deposit. They will return the deposit as soon as possible, less any appropriate deductions.</p>