

Appendix 2

Rent Smart Wales Enforcement Policy Stakeholder Consultation Summary Responses and Consideration

<u>Organisation</u>	<u>Comment summary</u>	<u>Rent Smart Wales response</u>
Bridgend, Cardiff and Vale of Glamorgan AND Merthyr Council (point 1 raised only)	Does enforcement policy determine SLA decisions only and allow LA to use their own	LAs acting under Housing (Wales) Act 2014 are acting as "RSW" and should use this guidance in decision-making and progression to ensure consistency. However, LA policies are not restricted.
	The policy style and content should be simpler and shorter.	Document reviewed and significant alterations made to reflect the comment made.
	Was Regulators Code considered when preparing doc, it's not mentioned	Yes, document also amended to be clearer.
Peter Alan	What are an agents responsibilities re. Landlords being registered?	Agents have requirement in licence conditions to notify client landlords of requirement to register and must report landlord to RSW within 12 weeks if they have failed to do so. Landlord has legal responsibility to register. Clarification request, no change required to policy.
	What are an agents responsibilities re. Landlords providing and updating correct info?	Landlords are legally required to provide correct info and update any changes. Agent must provide up to date details of houses they represent at least once a year or on request from RSW. Clarification request, no change required to policy.
	When does a licence holder need to update their name?	When there is any change in who licence is issued to. Clarification request, no change required to policy
Torfaen	Wording amendment - Clarity on wording to be changed to "Registration of Landlords and properties" and typographical corrections	Document has been re-worded.
Powys	What are the implications for Trading Standards responsible for EPC elements of rented properties?	Breaches of EPC, Tenancy deposit, fees etc are a breach of RSW COP which should be assessed during any visits. Recommendations are being prepared for additions to inspection forms to cover these issues and to include cross-authorisation of enforcement officers. Enforcement of matters contained within COP is a LA issue. This level of detail is covered in the policy, no amendment required.
Newport	Query whether RSW or LAs would investigate complaints about the service	Policy amended to simplify and clarify. Investigations will be undertaken by either Rent Smart Wales or Local Authorities, depending upon the nature of the complaint. Where the matter is specifically related to a Local Authority issue their complaints policy will be followed.
RCT	How will consistency in decision making be ensured?	Through use of prosecution guidelines, standard documentation and all-Wales training. Clarification request, no change to policy required.
	Will there be operational guidelines to be followed?	Flowcharts and procedures will continue to be developed and tested as cases are dealt with. Clarification request, no change to policy required.

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	How will referrals, timescales, info sharing and case conferences work in practice?	Use of common IT system, 'How To' guides. Case conferences can either be telephone calls, e-mail exchanges or meetings where required. All notes will be stored in common IT system against the case. Clarification request, no change to policy required.
National Landlords Association	No comments, "policy looks fine to us"	n/a
Neath Port Talbot	Would the LA require authorisation from RSW in order to take formal action?	General consent is granted to LA under MoU. Specific consent would have to be sought if LA were looking to take action with regard to a dwelling not in their area or for offence that was not in the remit of LA. There would be an expectation to discuss cases and keep all parties informed either through IT system updates and/or discussion and case conferences. Clarification request, no change to policy required.
	Who would generate the FPN?	LA has access to RSW database and ability to generate and process FPNs. Clarification request, no change to policy required.
	How is the LA reimbursed for the FPN activity?	Payments initially made to RSW, but returned to the LA through financial transaction. Clarification request, no change to policy required.
	Will every non-compliant landlord/agent be prosecuted	No. The policy explains that FPNs will be used where appropriate in most cases, prior to prosecutions. Level of action required will be assessed against circs and guidelines. Policy amended to simplify and clarify options.
Caerphilly	Will prosecutions only be taken against landlords/agents with large portfolios	No, but prosecutions against those with larger portfolios will have greater effect and protect interests of more tenants. Enforcement action can be taken where appropriate against anyone not complying. Policy amended to simplify and clarify options.
	What message should the Council give to landlords/agents they use in PSH	That they MUST comply with all requirements. If info is given to them in writing then they have no Defence of not being aware of requirements. Any breach can be considered for immediate action. Clarification request, no change to policy required.
	What consent does a LA have to take action?	General consent is given to the LA through the MoU as the LA undertaking duties in relation to the Housing (Wales) Act 2014 are acting as part of Rent Smart Wales. Specific consent is needed if LA wanting to take action outside of their area or powers. Content of the policy amended to make this clearer.
	Who is Rent Smart Wales in relation to LA?	Policy amended to make this clearer. LAs acting under Housing (Wales) Act 2014 are acting as "RSW" and should use this guidance in decision-making and progression to ensure consistency. However, LA policies are not restricted.

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	Query whether RSW or LAs would investigate complaints about the service	Policy amended to simplify and clarify. Either Rent Smart Wales or Local Authorities, depending upon the nature of the complaint, will undertake investigations. Where the matter is specifically related to a Local Authority issue their complaints policy will be followed.
	Why is there no mention of refusal/revocation of licences?	Policy excludes this aspect and states this clearly. In addition, any activities that may also indicate that a licence holder is no longer a "fit and proper" person should be reported, to be dealt with under separate procedure. No amendment required.
	Who takes the lead in relation to offences where either SLA or LA could?	This is covered in detailed procedures guidelines, which form part of the MOU and subsequent and ongoing training. No amendment to policy required, as not intended to include this level of detail.
Wrexham	Who is Rent Smart Wales in relation to LA, SLA, LiA?	This policy covers the enforcement work undertaken by Cardiff Council as the Single Licensing Authority (SLA) and 22 Local Authorities to deliver Part 1 of the Housing (Wales) Act 2014. Collectively the partnership and service is known as "Rent Smart Wales". Each LA has access to the database, branding and documentation. Policy now makes this clearer.
Flintshire	Query whether RSW or LAs would investigate complaints about the service	Policy amended to simplify and clarify. Either Rent Smart Wales or Local Authorities, depending upon the nature of the complaint, will undertake investigations. Where the matter is specifically related to a Local Authority issue their complaints policy will be followed.
	Why is there no mention of refusal/revocation of licences?	Policy excludes this aspect and states this clearly. In addition, any activities that may also indicate that a licence holder is no longer a "fit and proper" person should be reported, to be dealt with under separate procedure. No amendment required.
	Is it fair for Defendants to have to travel to Cardiff for trial when SLA initiates proceedings?	Prosecution cases will be issued in Cardiff if instigated by SLA as this is home authority. If LA instigates proceedings, cases will be issued in local Court. There is precedent where a national body operates schemes of this nature but this will be reviewed with the benefit of experience. Equality impact assessment also covers this matter.
RICS	Happy with doc, requests periodic review	No amendments required

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RLA	What will be the enforcement approach to landlords/agents ignorant of, or misunderstanding requirements?	Approach will be proportionate. It is currently recognised that there is still a need for marketing, and that this will continue in order to inform new persons entering the market. No amendment made to the policy.
	How much grace allowed to unregistered/unlicensed landlords? Will non-compliant landlords/agents be allowed time to register/licence without action as long as they comply with the steps that would normally be taken?	Unregistered/unlicensed landlords or agents have had over a year already. Proportionate response will be taken. Marketing will continue. No amendment required to policy
	Will other factors (i.e. Property condition, agent vs landlord) be considered in deciding what action to take	Yes, each case will be considered on merit, before deciding on what action is appropriate.
	What are an agent's responsibilities re. Landlords being registered?	Agents have a requirement in licence conditions to notify client landlords of requirement to register and must report landlord to RSW within 12 weeks if they have failed to do so. Landlord has legal responsibility to register. Clarification request, no change to policy required.
	If officers approach businesses/individuals and require them to provide info about investigation, should they be cautioned first and dealt with under PACE if suspected of criminal offence?	Documentation will make clear to Caution where appropriate and conduct investigations in accordance with PACE. Policy makes it clear that the relevant regulatory codes of practice / legislation should be followed.
	Why are there guidelines for decision making only under prosecution section. What are the guideline and timescale considerations for other disposals? How can consistent decisions be reached without this?	Policy re-written to clarify and simplify. Guidelines referred to removed from doc, referenced instead via Policy, Crown Prosecutors code etc rather than prescribed in policy itself.
	Is policy going to be restructured to show a more transparent and graduated decision-making process?	Decisions will be appropriate to the case and decision-making will be made in line with the guidelines and policy. Amendments made to simplify and remove options unlikely to be used.
	What guidance is there as to when Rent Stopping/Rent Repayment Orders will be considered	Templates will be drawn up to ensure that at the decision making point re: formal action, the relative merits of RSO/RRO will be considered. This will be done using the same criteria as any other formal decision making option. This section has been re-worded to provide additional clarity.

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	Wording amendment - bullet point "public opinion" to "public interest"	Removed on edit
	Wording amendment - reword "matter of judgement and officers must exercise their discretion...."	Removed on edit
	Wording amendment – “a decision may need to be made ...”	Removed on edit
	Wording amendment - Contradictory re: discretion and the enforcement officer	Removed on edit
	Wording amendment - Should there be a qualification against the "aim of eliminating financial gain" or clarification of when Rent Stopping/Rent Repayment orders will be applied for?	No change as believed to be a misunderstanding. In consideration of action we are going to take we should take account of the financial gain that the offender has had from non-compliance
	Wording amendment – “remuneration” to “reparation”.	Removed on edit
	Who makes decisions on enforcement/NFA and who takes prosecution (Who is Rent Smart Wales in relation to LA?)	This policy covers the enforcement work undertaken by Cardiff Council as the Single Licensing Authority (SLA) and 22 Local Authorities to deliver Part 1 of the Housing (Wales) Act 2014. Decisions about enforcement action will be taken either at LA level or SLA level, depending on the agreements set out in the MOU.
Denbighshire	Will prosecution templates be provided for consistency?	Yes. No amendment required to the policy.
	If businesses ask for a meeting with RSW who would attend this? Would SLA officers travel or would complainants have to travel to Cardiff?	This will vary depending on the case locality and complexity. Operational matter, no policy amendment required.
	Clarification on the "complaints" section. Who is this section suggesting would be penalised after complaint?	Refers to complaints made about RSW service (not about landlords or tenants) and that there is system of accountability for RSW actions. Complaints to be learned from rather than used to penalise staff. Section re-written to make simpler / clearer.
Training for Professionals	Informal cautions are not indefinitely unspent	Section deleted

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National Trading Standards Estate Agency Team	Policy is too wordy and should be slimmed down as the more there is in there, the more there is to challenge at Court.	Policy substantially reviewed to provide clarity and simpler framework.
	PACE Interviews - Interviews should be offered before enforcement decisions are made.	Incorporated during edit.
NALS	FPN - is there a FPN appeals process? Is the representation/complaints section the process that should be used.	No legal appeal process but can contact RSW via representation/complaints options to challenge. Otherwise would need to make argument in Court once escalated to prosecution. No amendment.
	Simple Cautions - who is authorised to issue caution. Will it be Senior Officer? In Police officer requests, Insp authorises, Sgt administers.	Provision deleted, as following legal advice, considered inappropriate for use in this circumstance.
	Simple cautions - query re: fact that cautions never become spent.	Section deleted.
	Prosecution - standard wording required to identify decision makers for cautions (unrelated to investigation) and prosecutions (not normally had any significant involvement)	Simple Caution removed from policy. Unrelated officer to review evidence for decision to prosecute. This officer will not normally have been involved in the preparation of the case. Template prosecution forms will cover this item, reference to process not required in the policy.
	Prosecution - Senior Officer authorisation should be sought for FPNs	No, FPNs are issued in response to offences before progression to prosecution in order for offender to discharge liability. Authorisation devolved to officers, decision making to be reviewed by Senior Officers at relevant times. No amendment to policy, operational matter.
	Prosecution - Senior Officer authorisation should be sought for RSO, RRO	Templates will be drawn up to ensure that at the decision making point re: formal action the relative merits of RSO/RRO will be considered. This will be done using the same criteria as any other formal decision making option.
	Who takes the lead on enforcement, SLA, LA?	This policy covers the enforcement work undertaken by Cardiff Council as the Single Licensing Authority (SLA) and 22 Local Authorities to deliver Part 1 of the Housing (Wales) Act 2014. Collectively the partnership and service is known as "Rent Smart Wales". Each LA has access to the database, branding and documentation. Policy now makes this clearer. There is a MOU in place, which describes the detail of how responsibilities are shared between the SLA and LA partners.