Oxford City Council
St Aldate's Chambers
109 St Aldate's
Oxford
OX1 1DS

Date
15th April 2019

Dear Sirs,

Re: Concerns over your landlord and agent accreditation scheme

As you will be aware the RLA is the Leading body representing residential landlords across England and Wales, including a considerable number within, or owning property in, Oxford. We are writing to you in regard to your accreditation scheme for landlords and letting agents renting property in Oxford as we are concerned that this scheme is likely to be unlawful in nature.

There are three features of the accreditation scheme that we consider are likely to be unlawful:

1. The awarding of longer HMO licences to scheme members on a preferential basis;
2. The unreasonable geographical limitation of the required training to achieve accreditation;
3. The requirement to provide personal information as a part of the application process.

Longer HMO Licences

We are given to understand that members of the accreditation scheme are entitled to obtain longer HMO licences than other landlords who are not members of the scheme. This confers a financial and practical benefit on accreditation scheme members which is not available to other landlords, even where those individuals can demonstrate expertise by the way if equivalent training or experience to that provided through the scheme. We consider this to be unlawful for two reasons.

First, the Upper Tribunal in the case of *London Borough of Waltham Forest v Reid* [2017] UKUT 396 (LC) made plain that the decision as to the appropriate licence length is one to be considered on the specific facts of each case with an assessment of the level of risk associated with the landlord and the licence being assessed as part of that process. It cannot be appropriate to assess the risk for every accredited landlord at a level which permits of a five-year licence any more than it can be appropriate to assess all other landlords as not being suitable for a five-year licence. Such a policy plainly takes no account of the facts in each case and is irrational.

Secondly, by allowing landlords who are members of the accreditation scheme to have longer licences, they are provided with a financial and practical benefit in that they are required to pay a licence fee less often and that they are required to expend the time to fill in

the forms less regularly. This confers a benefit, albeit indirectly, on a preferential basis solely on those landlords who are registered with the Council's own scheme, without considering whether any other training, membership, or registration of any other scheme might provide similar positive effects and so be worthy of the same benefit. Such a policy, therefore, privileges the Council's own scheme on an unfair and anti-competitive basis and, for those reasons, violates EU rules prohibiting state aid.

Geographical Limitation

As the Council will be fully aware, ownership of property in Oxford is by no means confined to Oxford. However, any landlord that wishes to become accredited must attend training held by the Council, which is only available, in person, in Oxford. This makes it exceptionally difficult for landlords from outside Oxford, and in particular landlords from outside the UK, to become accredited. The Council will be aware of the case of *Gaskin, R (On the Application Of) v Richmond Upon Thames London Borough Council & Anor* [2018] EWHC 1996 (Admin). This case held that the EU Services Directive, enshrined in UK law in the Provision of Services Regulation 2009 applied to HMO licensing regimes and, by extension, other landlord accreditation schemes. The Directive and Regulations make clear that accreditation and licensing cannot be provided in a way that discriminates based on country of establishment. Accordingly, your offering of training solely in Oxford on an attendance-only basis discriminates against landlords outside Oxford, and particularly against landlords established elsewhere in the EU in a manner which is unlawful.

Personal Information

As part of the accreditation process, you require landlords to give details of all their properties and agents to provide a list of all properties that they manage. This is information which you could obtain through a selective licensing scheme were you to set one up. It is also information which you could obtain via a request under section 128 of the Housing and Planning Act 2016 to the three approved tenancy deposit schemes. Seeking a list of all property is tantamount to seeking a list of every landlords' name and address, especially given the ease with which a property address can be translated to the details of ownership via the Land Registry.

Accordingly, you are engaged in the collection of personal data. We are aware that you have asserted to local agents that this is not affected by the GDPR on the basis that the data is not personal data and on the basis that you could obtain it anyway through deposit schemes. With respect, this statement entirely misses the point of the GDPR. First, as we have made clear above, we consider that obtaining a list of property addresses is tantamount to seeking personal data, especially where the property is owned by individuals. The ICO has ruled as much in relation to lists of empty property. Second, the fact that the data is obtainable from another source suggests that you should, in fact, obtain it from that source, using statutory powers given to you and the guidance provided by the GDPR suggests that this is the appropriate course.

Finally, and most crucially, the fact that you *can* obtain and collate this data does not mean that you *should*. The Council has plainly not set up a selective licensing scheme which would allow this data to be obtained, nor has it used its power under the Housing and Planning Act to obtain the data. This suggests that the Council does not consider that it can justify a selective licensing scheme and has no use for the data obtainable from the deposit schemes, even though this would be more complete and embrace all landlords in Oxford.

Instead, the Council appears to be seeking to collect a restricted subset of property ownership data from those landlords most likely to be compliant with the law. This makes little sense and accordingly, there is no justification under the GDPR for collecting this data.

Conclusions

For all of the above reasons, we consider that your landlord and agent accreditation scheme as it currently operates is tainted by illegality and we must ask you to undertake an urgent review of the scheme. If you do not do so or otherwise fail to correct these issues we will take legal advice preparatory to undertaking judicial review proceedings in the Administrative Court and will report your use of personal data to the relevant GDPR supervisory authority.

We would prefer to avoid further action and would be pleased to meet with representatives of the Council to discuss our concerns further. We would also be pleased to discuss an alternative accreditation model that would satisfy our shared interest in ensuring a high-quality private rented sector in Oxford while at the same time ensuring that landlords and agents can easily and practicably meet the standard and operate their respective businesses efficiently.

Yours sincerely,

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