

DCLG technical discussion paper

Tackling rogue landlords and improving the private rental sector

Date: September 2015



1. The Local Government Association (LGA) is the voice of English local government. Our mission is to help support, promote and improve local authorities in England.

Improving the private rented sector

2. Councils work in partnership with investors and landlords of all tenures to raise standards across the private rented sector and encourage investment to meet demand. Councils do this through effective use of their planning powers, coordinating action and investment and by working across geographical boundaries to join up and take a strategic approach. Councils also invest in new and existing private rented housing and work closely with landlords, using their enforcement powers as a last resort to tackle unacceptable standards and criminal landlords.
3. The English Housing Survey presents a positive picture of experience in the private rented sector with 83% tenants expressing satisfaction with their accommodation¹. Within an overall positive picture there are significant regional and local variations. The private rental market is under pressure in parts of the country where economic conditions and the housing market have driven demand higher than supply, creating the conditions for “rogue” landlords to rent sub-standard accommodation. Pockets of low rents and poor quality homes pose different yet equally challenging problems, for example in coastal towns, where low wages and an older housing stock can lead to a downward spiral of poor conditions. For the private rented sector to succeed, it needs a local response, led by councils. This principle underpins our recommendations to the Department for Communities and Local Government (DCLG).
4. Our response covers the questions set out in the technical discussion paper. We invite DCLG to consider broader recommendations on how to improve the quality of the private rented sector, such as amendments to Article 4 planning directions, and additional powers that would help councils make surplus public land available for large scale development of new privately rented homes.

Submission

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¹ DCLG English Housing Survey

Summary of the main recommendations

- Sentencing guidelines on housing act offences should be introduced as a priority to ensure consistent and appropriate fines. For more serious housing offences, the Housing Act could be amended to create an “either way offence”. This would bring in a new range of penalties from a fine to stronger penalties such as a community order or custodial sentence.
- A list of persistent offenders would be useful to councils to support the issuing of licenses to landlords and other enforcement work. However, the administrative burden and cost of compiling a list must not fall on councils.
- The “fit and proper person” test for landlords should be strengthened with a clear framework. This will remove the uncertainty for councils and landlords as to what constitutes “fit and proper” and provide a robust basis for accepting or refusing a license. The use of additional checks should be determined locally
- The government should amend the notice period and compensation arrangements for Article 4 planning powers so that councils can respond effectively to local concerns over concentrations of houses in multiple occupation (HMOs).
- Councils should have a “power to direct” surplus public land to improve the quality of the private rented sector through large scale investment.

Section 1 – tackling the worst offenders

Aggravating factors in housing offences

5. The recent LGA research report “Prosecuting landlords for poor property conditions”² reviewed the resources and timescales for councils and the level of fines awarded. This report found that prosecutions are taken when the landlord refuses to engage with the councils and there is no other option for remedial work. In rare cases the risk to the safety of tenants is so serious that immediate prosecution is necessary.
6. Our research revealed that some of the fines awarded were lower than expected by the council. There was no correlation between the fine awarded, the seriousness of the offence and the number of tenants living in the property.

² Prosecuting landlords for poor property conditions, LGA June 2014. This was completed before unlimited fines came into effect.

<http://www.local.gov.uk/documents/10180/49942/Prosecutions+LGA+research.pdf/1bc18f74-e616-4e26-8387-ad0a9bae6768>

Consultation questions

Do you think that current fines for housing offences generally reflect the gravity of the offence? If not, how can this best be tackled?

No. Councils work with magistrates to raise awareness of housing act offences and the impact on tenants, but cases may not come up in court very frequently or seen by the same magistrate. New and clearer sentencing for Housing Act offences should be issued to provide consistency on the level of fines and guidance to magistrates on factors that should be taken into consideration in giving a sentence.

Magistrates have the power to issue a fine for a Housing Act offence but cannot issue any other form of penalty. In one of the worst cases highlighted in LGA research the fine did not reduce the immediate risk of harm to tenants, and the council had to start a second prosecution³.

Recommendations:

The introduction of sentencing guidelines would bring a more consistent and appropriate level of fines. Action at government level is required to make this a priority for the Sentencing Council.

For more serious housing offences, the Housing Act could be amended to create an “either way offence”. This would bring in a new range of penalties from a fine to a community order or custodial sentence.

What has been the impact (if any) of removing an upper limit on potential fines for certain housing offences?

Evidence from councils suggests that the impact is limited. Magistrates are obliged to look at the landlord’s income in determining fines, and in the absence of sentencing guidelines they are likely to set a lower fine if they believe the landlord has a limited ability to pay.

Blacklisting and banning rogue landlords and agents

7. Despite the important role that private letting agents play within the market they are not subject to the same level of regulation as estate agents. For example, there is no requirement for letting agents to undertake professional training. There have been a number of recent measures to bring more rigour to the market that are a welcome step in the right direction, including the requirement for letting agents to belong to a redress scheme. The LGA has called for letting agents to be regulated through a power that prevents the worst offenders from operating, as is already the case for estate agents⁴.

³ LGA Report “The cost of prosecuting landlords” notes that the judge in a case in Wolverhampton stated that a prison sentence would have been considered due to the seriousness of the cases

⁴ The Estate Agents Act 1979 includes a power for an individual to be declared unfit for estate agency business

Consultation questions

Do you agree that data held by the Tenancy Deposit schemes should be made available to local authorities?

Yes. This would be helpful to local authorities, on the understanding that there would be no associated costs.

Do you agree that there should be a blacklist of persistent rogue landlords and letting agents?

A list of persistent offenders would be useful to councils to support the issuing of licensing and other enforcement work. The process of setting up a list will take money and resources, and this burden must not fall on councils.

The proposals for a “blacklist” of persistent rogue landlords are not clear and raise some concerns. There are two proposals in the paper that are relevant to this question:

- The development of a national “blacklist” of landlords and agents who persistently commit offences. This would be made available to councils and potentially more widely
- The introduction of a “ban” on landlords and letting agents committing the most serious offences, making it an offence for them to operate

The introduction of a ban would be more meaningful if landlords and agent details can be easily accessed by councils, tenants and industry bodies through a national list. However, a list of persistent offenders would not be a “blacklist” as councils can only block landlords who require a license⁵.

It would be helpful to see further details of how the proposed ban would apply to letting agents, and how this would be enforced.

If a local authority took over management of a property, how could we ensure that they did not incur a loss in managing the dwelling?

We would be happy to work with DCLG on this. Current mechanisms such as management orders need to be streamlined and reviewed to avoid additional costs and financial risks to councils.

Fit and proper person test

8. The fit and proper person test is an important part of licensing, but it must be fair and reasonable for both councils and landlords. The current system would be more effective if councils had stronger grounds on which to base their exclusions. There is no formal government guidance, leading some councils to introduce their own

⁵ Licensing is mandatory for houses in multiple occupation (HMOs). Councils can introduce local licensing schemes to cover other areas.

local policy on fit and proper landlords in order to provide a robust and transparent basis for their decisions.⁶

Consultation questions

Should local authorities be required to refuse a license to anyone who fails the fit and proper person test? If so, what impact is this likely to have on the number of licenses granted?

No. As noted in the consultation paper the fit and proper person test is “open to differing interpretations”. The burden is on councils to prove that a landlord is not fit and proper, but there is not clear framework for councils or landlords as to what this means in practice. This leads to appeals and ongoing disputes.

We recommend that clear guidance is put in place.

Is the revised fit and proper person test sufficiently robust or any elements of it too stringent?

The proposed revisions include additional criteria such as disclosure and barring checks, and checks on the immigration status of a landlord. Additional criteria will not solve the underlying problem with the fit and person test, which is the lack of a clear framework for determining what is fit and proper.

Some areas may only have a small number of licensed areas, for example a rural council with a few HMOs in the main town. In this case the checks would be significantly out of proportion to the scale of the problem.

It may be appropriate for some councils to introduce additional checks where tenants are at risk, but a blanket national policy will create needless bureaucracy and additional costs.

How much more expensive would it be for a local authority to apply a revised fit and proper person test?

We welcome further discussion with government on this point. The views of landlords must also be taken into account, as increased costs would have to be met by landlords through higher licensing fees.

Section 2 – rent repayment orders and civil penalties

9. The LGA has expressed support for the idea of extending rent repayment orders. We would be happy to work with DCLG to develop these proposals and ensure that rent repayment orders are generally an effective tool for councils.
10. The introduction of fixed penalty notices for low level offences would be a useful extended power for local authorities. This could assist in tackling those which courts are not currently taking seriously, or which

⁶ For example Bristol City Council and Runnymede Borough Council

are so minor that prosecution is not pursued due to the costs outweighing the benefits.

Section 3 – abandonment

11. Councils have an interest in proposals to create a new legal process of “abandonment” through the advice services they provide to tenants, and as the holders of a statutory duty to house the homeless.
12. Any proposals to change the complex arrangements in tenancy law need serious and detailed consideration to avoid unintended consequences. The short timescale for the consultation has not allowed for a detailed examination of this issue and further discussion would be welcome.
13. It would also be helpful to understand whether changes to tenancy law would apply only to private landlords, or to all landlords including social landlords.

Additional points on improving the private rented sector

14. We invite DCLG to consider further recommendations for improving the private rented sector.
15. Government planning rules enable landlords to convert a dwelling house to a house of multiple occupation and back again without the need for planning permission. Councils retain backstop powers to require planning permission for this kind of conversion and may use these in cases where they have concerns about the impact of a concentration of HMOs on local objectives in an area. However, the powers available to councils, known as ‘Article 4 Directions’, are blunt and costly to use. The government should amend Article 4 directions to reduce the notice period and compensation provisions. This would allow a more flexible approach to the use of Article 4 directions by local authorities and mean that they could respond to resident and landlord concerns and local priorities more effectively.
16. The government has supported large scale investment in the private rented sector through a taskforce and financial tools such as loans. The cost of land is crucial to the financial viability of developments of rented accommodation at scale. Using surplus public land could support this, and councils have a role to play in this. Giving councils a “power to direct” over public land, as recommended in the House & Elphicke review⁷ on housing supply would help to speed up the release of public land.

⁷ Review of the role of local authorities in housing supply, DCLG January 2015