Chartered
Institute of
Environmental
Health

Review of Property Conditions in the Private Rented Sector

Response to the Dept of Communities and Local Government Discussion Paper

March 2014

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Executive Summary

1. We welcome the opportunity to contribute to this overdue review of property conditions in the private rented sector (PRS), which is growing rapidly, while conditions in the sector compared to those in the social rented and owner-occupied sectors are on the whole appreciably worse. However, we are disappointed that the review paper does not address many of the fundamental problems in the sector, highlighted most recently by the DCLG Committee Report on the Private Rented Sector Session, July 2013.

2. We believe that the introduction to the review paper paints an over-optimistic view of the state of the PRS. In our view it is somewhat complacent to assert that the 'overwhelming majority' of landlords provide decent, well-maintained homes, when we know that, according to data from the most recent English Housing Survey, there are 214,000 overcrowded households in the PRS, nearly one in ten of all PRS dwellings are in the lowest Energy Efficiency Rating Bands, 33% of PRS homes are "non-decent", with 779,000 having a Category 1 hazard and 324,000 failing on disrepair.[1] The PRS has the highest proportion of the most energy inefficient homes (those in EPC Bands F and G). In addition, each year it costs the NHS £145 million to treat people made ill by living in these homes[2]. Living in a cold home doubles the risk of respiratory disease in children and quadruples the risk of multiple mental health problems in teenagers.

3. The high levels of tenant satisfaction quoted in the discussion paper are incompatible with the high turnover of tenancies, while research conducted by Shelter has pointed to low expectations among tenants and a lack of awareness of what might represent decent living accommodation.

4. We do not argue that the vast majority of landlords are decent, well-intentioned people, but a substantial number of their properties are nonetheless in poor condition and many lack effective management competencies and a good awareness of their responsibilities as landlords.

5. The sector is growing fast and is an increasingly important part of the housing market. While the majority of private sector dwellings meet appropriate standards, a significant minority of landlords continue to provide poor quality housing, posing a threat to the health and safety of their occupants. At the same time, a small minority of landlords actively pursue criminal activity to the detriment of people living in their properties.

6. Local housing authorities (LHAs) have the responsibility and duty to ensure adequate standards are maintained in the sector. The failure of non-compliant landlords to meet these standards has an impact on the public sector as a whole, as it compounds the long-term community health & well being problems associated with sub-standard housing.

7. The sector suffers reputational damage from the poor performance of a significant minority of landlords; but it is also a challenge for LHAs which have a duty to safeguard the well being of all their citizens and who pick up the costs of many of the problems created by poor housing.

[1] English Housing Survey 2013
[2] CIEH/BRE Housing cost calculator (2011)

8. A recent report by the Local Government Information Unit and Electrical Safety Council[3] found that eight out of 10 respondents to their survey of LHAs said they expect their council to take a more proactive stance in relation to the PRS in future.

9. Councils hold the powers and responsibilities for dealing with unacceptable standards, however, most have limited resources dedicated to this area of work. Even in 2005, over half of all LHAs in England employed fewer than five full-time members of staff on private sector housing renewal activity. As a result, the response to poor conditions in the broader PRS is typically fairly reactive. Surveys of CIEH members working in local authorities confirm this.

10. In the past, councils have implemented renewal policies to address problems in the sector, which remains a requirement of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002. However, a report from the Joseph Rowntree Foundation in 2005[4] suggested that the capacity of councils to deliver against these objectives was patchy and that developments towards preventive approaches to private sector housing renewal had been 'relatively disappointing'. Since then, many of the funding streams associated with this work have dried up, most notably the deletion of the £1.5 billion housing renewal budget resulting from the cuts within CSR10 announced in October 2010.

11. The consultation paper makes no reference to the recent extension of the Primary Authority arrangements to include Parts 1 and 2 of the Housing Act 2004. The CIEH is currently working with the Better Regulation Delivery Office and the Local Government Association to establish a national Expert Panel on Housing, similar to that which exists for other areas of regulatory activity covered by the Primary Authority, such as food safety, health and safety and trading standards. It is hoped that the DCLG would support this expert panel as it might prove to be a useful means of pursuing some of the suggestions and ideas put forward in the discussion paper.

12. It should be noted that at the time of the 1988 Housing Bill, which introduced assured short hold tenancies, the Minister of State for Housing, William Waldegrave, said the intention of the new legislation was 'to catch the bad boys'. 25 years on it is clear that the 1988 Housing Act has singularly failed in this objective. The CIEH believes that a fundamental review of the legislation applied to the private rented sector is long overview.

13. Further, the discussion paper makes no reference to the requirements of the Energy Act 2012, specifically that any property made available to rent should, from 2018, meet a minimum energy efficiency rating. In January 2013, the Dept of Energy and Climate Change (DECC) established an advisory working group with a remit to advise Ministers on the detail of the regulations that will be needed to bring the minimum standard into force. It was expected that the group would conclude its work by last summer, that a public consultation would then be issued and that the regulations would be laid in Parliament in late 2013 or early 2014. Instead, in March 2014 the consultation has still not appeared and the regulations are likewise delayed. This delay is highly regrettable since we – along with the responsible landlords' associations – have consistently called for the regulations to be laid promptly to give landlords as

[3] "House Proud", Electrical Safety Council and Local Government Information Unit (Sept 2013)
[4] "Housing policies: New times, new foundations", JRF (Sept 2005)

much time as possible to improve their properties ahead of the standard coming into force.

Question 1:

In addition to the production of the Tenant's Charter, is there any further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?

14. Following the roundtable workshop held by DCLG officials in November 2013, we understood that an amended version of the Tenants' Charter would be published, incorporating observations made during the workshop session. We have not seen a revised version. In such absence, we will comment on the only published version.

15. Firstly, we feel that a more prescriptive document is of minimum requirement, setting out rights and responsibilities of both landlord and tenant. Perhaps a "Renting Charter" would be more appropriate. It should specify landlord duties to repair and maintain, perhaps along the lines of the guidance produced in association with the Homelessness (Suitability of Accommodation) (England) Order 2012.

16. The draft Charter is worded along the lines of a tenant having to ask for specific items, whereas we consider that it should be expressed in terms of a landlord having to provide a 'pack' of key information to tenants. It should be compulsory for managing/letting agents to supply a pack of information to tenants that both parties must sign against, being linked this to rental deposits. A pack should be readily available for a local authority to see at any time. LHAs also have an important role in raising awareness as the main objective is to improve the PRS – council websites are a key tool in doing this as well as sharing information and best practice with partners and other agencies

17. When an Assured Short hold Tenancy (AST) is issued by the landlord we believe there should be a statutory requirement advising the tenant of the landlord's repairing obligations, including contact details of the local Environmental Health Department/Local Housing Authority for the tenant to contact if these obligations are not met. We hope that the Government will re-visit some of the issues raised in the Law Commission[5] report into the PRS, in particular, moves to rationalise and simplify the types of tenancy to better promote equity between the private and social rented sectors.

18. An important first step would be to redress the balance of power within the AST regime, which gives a landlord a guaranteed 'no reason' eviction after the expiry of the initial fixed period. This cannot be the basis of a sustainable PRS, even more so when rental prices are increasing at a higher rate than inflation.

19. Whilst it is acknowledged that a minority of landlords deliberately flout their rights and responsibilities, there are a huge number of landlords that are simply unaware of many of their rights and responsibilities. Tenants are even less likely to understand their rights and responsibilities and what the Housing Health and Safety Rating System (HHSRS) is for example. A requirement that basic statutory guidance or good practice be issued by the landlord/managing agent to the tenant at the start of a tenancy would be extremely helpful. Responsible landlords should not be averse to ensuring

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[5] "Housing: Encouraging Responsible Letting", Law Commission (2008)

their tenants are fully aware of their rights and responsibilities and this requirement would not create any significant financial burden. There are a number of organisations, including the CIEH that have the expertise to produce this guidance on behalf of the Government and keep it regularly reviewed and current.

20. We would also recommend that landlords and managing/lettings agents should undertake basic training on their rights and responsibilities before they can let property on a commercial basis. Most landlord associations offer this basic form of introductory training into what it means to be a landlord. Training courses could be accredited by appropriate professional bodies.

21. There is an important role for the Citizens' Advice Bureaux and organisations such as Generation Rent (formerly the National Private Tenants' Organisation) in publicising the existence of a "Renting Charter" and the main rights of tenants. A summary sheet could be displayed in all advice centres not just housing advice centres, while there is also a role for all local authorities, and indeed it would be good practice for any inspecting officers from LHAs to provide copies of the Charter to any tenants where an inspection is conducted. We further believe that it should be a legal requirement for the Charter summary to be displayed in the offices of all letting and managing agents and also newspapers that carry letting information should include information on the charter.

Some further comments on specific items in the published Tenants' Charter:

22. ***"What can you expect.....Ask to see the gas safety certificate":*** Guidance is needed here on whom to report matters to if a Certificate is not shown, or one does not exist. A quick link to the HSE website would be relevant.

23. ***"Ask the landlord whether there is record of any electrical inspections":*** There is no current requirement for a landlord to provide this; how is a tenant empowered to ask for something that is not legally required? At a minimum this section should be re-phrased so as to provide advice on what to do if there are concerns with the electrics.

24. ***"Ask to see the EPC":*** Again no follow up information is given on how to pursue this if an EPC is not available.

25. In the section ***"If something goes wrong – Your rights"***, there is no mention of the Landlord and Tenant Act 1985 (Section 11) responsibilities or Section 4 of the Defective Premises Act 1972 and the disrepair protocols or civil mechanisms for redress. This is a significant oversight, since it fails to mention key civil mechanisms of redress.

26. ***"Make sure that you have a written tenancy agreement"*** is followed in the very next sentence by "You don't need a written tenancy agreement…" This is at best mixed messaging and inconsistent.

Question 2:

What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities?

27. LHAs are uniquely placed to raise awareness in their areas but need dedicated revenue resource in order to engage with tenants and landlords via targeted marketing campaigns. Indeed LHAs have a statutory duty to provide housing advice to anyone resident in their area. Targeted engagement with particular sub-groups within the PRS, newsletters and advertising through borough-wide publications are likely to achieve the best results. Housing teams need to be able to continue accessing details of landlords who receive Local Housing Allowance directly when the change to Universal Credit takes place so they can continue to use this information to engage.

28. LHAs should share best practice on a local/city region basis. This should include details of those landlords who may be operating across multiple council areas where it has been necessary to take enforcement and prosecution action. This reduces the likelihood of the scale of "rogue activity" by a particular landlord going un-detected.

29. Use by local authorities of all available forms of communication, regular newsletters, attendance at stakeholder events, partnership working, website accessibility and promotion of successful prosecution cases and projects/initiatives though press releases all act to raise the profile of the issue. Each local authority has its own particular issues to deal with and direct their resources accordingly. Some LHAs are already very proactive at utilising all service requests about property conditions to highlight linked issues where they are not the enforcing authority, for example tenancy deposit rules and gas safety requirements. For some years the CIEH has pressed for LHAs to have shared enforcement powers with HSE for taking action under the Gas Safety (Installation and Use) Regulations 1998 as EHPs and other council staff are more likely to find infringements under the regulations.

30. An information document/Charter, based on an agreed national template, but including details about local environmental health and housing authority services should be made available at every Council area outlet, internet, libraries etc.

31. Most LHAs make information available via their websites; they provide guidance and presentations to landlords at regular landlord forums; guidance is provided by many councils to both tenants and landlords via housing advice services and support and these often recommend specific housing advice/intervention services via third sector agencies. Specific written guidance should also be used on how housing conditions are enforced for both tenants and landlords when a request for service is made by a tenant about their property condition.

32. A tenancy information pack should be made available through managing agents to ensure that letting shops make it available to potential tenants – this could also be available as a free download via agents. Information could be shared through the LGA for example as a best practice document. Neighbouring LHAs could consider a joint document to ensure consistency across the area, or this could be coordinated by an umbrella authority such as a county council.

33. Best practice could be developed by a DCLG-led working group similar to that which exists for park home licensing. Local authority representatives on this working group

have had the opportunity to exchange ideas and contribute to the guidance on fee setting which was recently published. They are now drafting guidance on enforcement best practice and this model could be expanded into the areas covered by this question.

Question 3:

What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?

34. Due to the enormous cuts in local authority budgets and because of mounting pressures on services, few LHAs are able to offer a "proactive" service and can only respond to complaints when received. But we are aware that to ensure they meet their statutory duty to take action to address Category 1 hazards that exist in the housing stock, many LHAs now use triage or filter systems in their call centres.

35. We are further aware that there are many LHAs that have not met their duty under Section 3 of the Housing Act 2004 to review housing conditions; we think it would be helpful if LHAs were required to publicise how they use their powers to deal with housing conditions.

36. Central government could play an important role in opening up new data sources to local government. This would allow PRS addresses to be more readily available to LHAs. Councils lack reliable and accessible data on the location of private rented properties in their locality, making both supporting and regulating the sector a resource-intensive exercise; many Councils do not have resources to dedicate to this task and there is a danger of duplication at a time where such resources are at a premium. Government should investigate the most efficient way of supporting councils with the data they need to act freely. Central government should review the data available on private rented properties and ensure councils have access to it, free of charge.

37. LHAs in a region need to share intelligence on the worst landlords and in developing enforcement strategies and should be obliged to consult with housing and other advice agencies and legal practices and on any licensing or accreditation schemes, for instance where a landlord has been deemed not "fit and proper".

38. Obviously, a very good and informative website is critical to disseminating advice and information and should include plain English leaflets for download covering various hazards, including the top ten hazards under the HHSRS. The website should also provide sign-posting to agencies such as Citizens Advice Bureaux and Shelter.

39. Where tenants are unable to resolve the issues themselves following the written advice available, we are aware of LHAs that use a "mentoring" letter approach whereby the council writes to the landlord highlighting the issues the tenant has raised and giving 28 days within which time the landlord must respond to the local authority confirming they have investigated the issues and taken appropriate action if required. The tenant is also sent a letter explaining the process which includes a form to confirm whether the landlord has visited or if no visit has taken place - or to say they require further follow-up action from the council if the complaint is more serious or has not been addressed by the landlord. This approach allows council officers the time to deal with more serious ongoing investigations while giving the landlord time to remedy the source of complaints from tenants. Knowing that the council has been made aware

and require action to be taken provides the impetus to informally resolve the situation, but also puts the responsibility on the tenant to ensure their issues are followed up, or to let the council know if they are not.

40. An interesting example of local practice we are aware of is that which is to be operated by Hastings Borough Council, with a pilot confidential tenant and landlord hot line, operated by skilled officers, to provide specific advice on a manner of issues ranging from the proper process around eviction through to whether a property should be licensed.

Question 4:

Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?

41. Tenants should be acknowledged as having a need for information in the same way as landlords. Simple, plain English explanations about the most common and significant hazards are needed to help tenants to help themselves, but would also act as a reality check. It is our view that the guidance for landlords should be reviewed and updated regularly and that tailored guidance should be made available to tenants on their general rights and responsibilities. This should include advice on potential hazards and explain how conditions might be enforced. There should be a legislative requirement on landlords/managing agents to provide this guidance at the start of a tenancy (or provide a link to its internet location).

42. However, although tailoring advice and improving information for tenants is important, nothing should detract from the basic fact that a landlord's responsibility is to ensure there are no serious hazards in the property, not the tenant's. It would also be helpful to provide information to tenants on the powers available to LHAs under Part 1 of the 2004 Act and how they can get LHAs to use them. We are aware of problems getting some Justice's Clerks to understand what an official complaint is and to get access to a Justice of the Peace.

Question 5:

Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?

Question 6:

What would be an appropriate trigger point for introducing such a restriction?

Question 7:

How could we prevent spurious or vexatious complaints?

43. In the UK the majority of tenancies are assured short hold and it is common for tenants not to renew their tenancy agreements after the initial 6 month period. This can leave them vulnerable to eviction and providing the notice is issued in accordance with the legislation there is no way to appeal the decision. Under the Housing Act 1988, landlords can serve a Section 21 Notice to Quit to tenants that have an assured short hold tenancy agreement. However, landlords cannot evict a tenant until after the

fixed term unless there is a break clause in the tenancy, although a break clause cannot be used in HMOs or if the deposit is not protected. After the 2 months' notice a judge has no choice but to issue a possession order which can be enforced by bailiffs and can be a cause of homelessness.

44. Research carried out in 2007 by the CAB identified real concerns that retaliatory eviction was a barrier to decent housing and that it needed to be addressed. The report[6] highlighted problems faced by tenants when exercising their statutory rights. At the time the Government concluded that tenants should be able exercise their statutory rights and they commissioned a report on the PRS.

45. The resulting report on a review of the PRS and its potential by Julie Rugg concluded that there was a lack of evidence to support the suggestion that many evictions occur as a result of tenants complaining as it was not possible to identify the reasons behind all evictions and therefore it is not possible to establish how many of evictions are of a retaliatory nature. Although supporting many of the Rugg Review conclusions, on this matter the CIEH differed. We have been provided with many documented examples by our members working in the PRS of retaliatory evictions.

46. In 2011 the subject was raised again when the National Private Tenants Organisation (NPTO) published their response to the DECC and the Retaliatory Evictions Working Group which focused on the issue of retaliatory evictions when tenants request their energy efficiency rating be improved to meet the new legislation. The report stated that although it was difficult to measure objectively the extent of the problem, retaliatory eviction was nonetheless an issue which needed to be addressed. The CIEH provided a dossier of evidence to the DECC working party, based on case studies provided by our members.

47. Although retaliatory eviction was recognised by the Government as a barrier to energy efficiency, tenants who exercise their rights in relation to their living standards are still vulnerable to eviction and we in the UK are legislatively behind many other countries across the globe. For many European countries retaliatory eviction is not an issue as their tenants are better protected; similarly, in countries such as the USA, Australia and New Zealand specific laws exist to prevent a landlord being able to evict tenants in a retaliatory manner. In many of these counties a landlord still has the right to evict a tenant when necessary; however tenants have a right to appeal and cannot be evicted when they have complained about their living standards[7].

48. More recently in March 2013, Shelter and CAB in Wales produced a report on the issue and recommended that the Welsh Assembly consider a change to their Housing Bill to protect tenants from retaliatory eviction[8]. The report highlights that although there is a lack in statistical data, there is a considerable body of evidence collected from other sources. The report recommends that there are clear and simple changes that could be made to legislation to protect tenants whilst balancing the requirements of the landlord.

49. We welcome the opportunity provided by this consultation paper to put forward constructive proposals which we believe would put an end to retaliatory evictions. We do not believe that LHAs have the necessary powers to currently address this matter;

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[6] Crew, D "The Tenants' Dilemma" (CAB), (2007)
[7] Crew, D (ibid)
[8] "Making rights real. Preventing retaliatory evictions in Wales." (Shelter Cymru & Citizens Advice Cymru), (2013)

the primary issue is that tenants are being evicted before they see any action taken or that poor living conditions are simply unreported through fear of eviction.

50. We have been working with Shelter on proposals to put restrictions in place to prevent Section 21 Notices being served when a renter has complained about poor conditions in their home.

51. We support the Shelter recommendations that:

Tenants who report poor conditions to their landlord, and are subsequently served with a Section 21 Notice, should have the right to appeal the eviction notice.

If a tenant is able to provide evidence from someone who is trained in the Housing Health and Safety Rating System to show that there are Category 1 or 2 hazards present in their home and that they made a complaint to their landlord, or someone who works on their behalf (e.g. a letting agent) before the notice was served, then the notice should be treated as invalid. The landlord should not be able to serve a valid Section 21 Notice for six months subsequently. This model most closely resembles international protections for renters.

An Improvement Notice or Emergency Remedial Action served by a local authority should automatically prohibit a Section 21 Notice.

The fear of retaliatory eviction is more prevalent than the practice. In order to provide renters with the confidence to report poor conditions, it is recommended that when a renter makes a complaint and a local authority subsequently serves an Improvement Notice or takes Emergency Remedial Action, landlords are automatically prohibited from serving a valid Section 21 Notice. LHAs have to take some form of enforcement action if they discover a Category 1 hazard. While they are not obliged to, they also have the power to take enforcement action if they discover one or more Category 2 hazards. LHAs also have the power to take emergency remedial action if there are hazards present which pose an imminent risk of serious harm to occupiers. They can take remedial action to remove the risk of harm and recover their reasonable expenses. Shelter recommends that if a Section 21 Notice is served before the Improvement Notice is served or Emergency Remedial Action is taken, it will also be treated as invalid. It is also recommend that where an Improvement Notice is served or Emergency Remedial Action is taken, the landlord should not be able to serve a valid Section 21 Notice for six months subsequently.

A Hazard Awareness Notice served by the local authority should also automatically prohibit a Section 21 Notice from being served.

Many LHAs do not serve a landlord with an Improvement Notice if they find Category 1 and 2 hazards in a property. The HHSRS enforcement guidance advises that it might be appropriate to wait before serving the notice if the local authority is confident that the landlord will take remedial action quickly. In this situation authorities are advised to use the Hazard Awareness Notice to record the action and provide evidence that the landlord was informed in the event that they fail to carry out the necessary work. We support Shelter's proposal that the Hazard Awareness Notice should also serve to automatically prohibit landlords from serving a Section 21 Notice for six months in order to prevent tenants from being evicted before the landlord has considered how to respond to the notice. We also support the recommendation that if a Section 21 Notice

is served before the local authority issues a Hazard Awareness Notice, it should also be treated as invalid.

52. These proposals would give tenants the confidence to report poor conditions in their homes without fear of retaliatory eviction. The law already exists to prevent landlords who have not properly protected tenancy deposits from evicting tenants, so would be relatively easy to implement. These measures should be extended to ensure that protections for tenants are in line with the broad range of international examples.

53. We believe that this change to the law would also benefit landlords. Often when tenants do not report problems, properties are allowed to fall into disrepair and landlords can be caught out with large fines later on. Shelter research into landlord business models showed that 71 out of 225 landlords surveyed thought that a renter not reporting problems when they occurred was a barrier to upgrading and maintaining their property. Reforming the law to encourage tenants to report issues as they arise will help landlords respond promptly, before their property deteriorates further. We also recommend that landlords who wish to sell their property would still be able to issue a Section 21 Notice, provided they could produce documents clearly evidencing a binding exchange of contracts to ensure that the proposed sale is genuine.

54. Those landlords who wilfully engage in poor practice will rightly be prevented from doing so. This will help improve the reputation of the sector and act as a future deterrent. Finally, the role of someone who is trained in the HHSRS in verifying reports of poor conditions as the basis for restricting the use of Section 21 Notices will protect landlords from spurious renter complaints.

55. LHAs are well used to dealing with spurious/vexatious complaints and officers are well versed in assessing whether a defect is longstanding and genuine or exaggerated or manufactured. Officers are trained and qualified in assessing the condition of properties. It is unlikely that they would be unable to determine if a Category 1 hazard/statutory nuisance existed and whose responsibility it was to remedy the problem. One significant problem regularly encountered is where a landlord claims to be endeavouring to make the necessary improvements, but is being unreasonably denied access by the tenant. It is considered essential that this issue is properly addressed. In such circumstances involvement of the Council would be beneficial as it would not be proportionate to threaten or pursue formal action against the landlord.

Question 8:

Do you think Government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?

56. We would support this, although often the problem with illegal eviction is in establishing a conviction. The test is subjective and proof is very difficult to obtain in the absence of an admission by the defendant. The costs borne by a local authority in pursuing a conviction should not be underestimated.

57. We would certainly support the use of RROs in cases where the court has not made an order for damages in favour of the tenant. Although incidences of illegal evictions are relatively low at a local level, any legislation that may act as a financial deterrent/penalty is welcome. Illegal evictions cause great distress to families and

place an added burden on LHAs if they are required to provide temporary accommodation due to a homelessness situation having occurred.

58. Where a landlord has been convicted of illegally evicting a tenant RROs would act as an additional deterrent. It would send a clear message that rogue landlords that deliberately set out to break the law will not be tolerated and act as an incentive to those who are not "rogue" to be fully conversant with the legal requirements. It would also provide financial assistance to tenants where they pay the rent and reimburse LHAs where Housing Benefit has been paid. In the case of the latter these monies could be channelled into homelessness prevention services offered by the local authority.

59. Overall, we believe this would be a very good deterrent and would help to ensure fair dealing and prevent the same happening in the future - the same principle applies to operating a licensable HMO without a licence. It would give tenants more of a reason to report and more of a reason for landlords to ensure work is carried out and ensure tenants are not evicted.

Question 9:

Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?

60. RROs should be available where the property has been let in breach of a Prohibition Order or where an Improvement Notice has not been complied with (has not been revoked). It should not be necessary for the local authority to have prosecuted the landlord for the offence unlike HMO licensing. This provision should be in addition to any compensation although it would be open to the Courts (or First-tier Tribunal) to take into account any compensation awarded or the RRO made when deciding on the other.

61. An RRO cannot be justified merely where a Notice has been served as no offence has been committed and one of the problems already is that 'formal' Notices are seen as a heavy approach by both landlords and LHAs; making an RRO available just because a notice has been served would make that worse. It should be sufficient that the landlord should not be able gain possession. However it would be reasonable for an RRO to be made where the landlord is aware of the remedial action required and does nothing even when a Hazard Awareness Notice has been served.

62. It should be available in addition to other action being taken – as there have to be serious issues for prohibition to have taken place so that may not always be an element, and damages are a civil action that do not make it unreasonable to require the landlord to also return the tenant's rent, it would act as a serious deterrent. The Rent Repayment Order could be proportional to the risk posed to the tenants. Landlords should be well aware of responsibilities.

Question 10:

Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?

63. We believe this would prove to be a more swift and effective method for a tenant to receive a degree of financial recompense. Prosecution proceedings can be lengthy and as the time limit for applying for a RRO is twelve months, if a RRO can be triggered automatically this would offer a more speedy resolution for the tenant, as opposed to having to pursue a separate action.

64. There would of course need to be a conviction as this is the only way to determine that the eviction was unlawful. It would also need to take into account any existing rent arrears.

Question 11:

Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?

65. We agree rent repayment should be required where a Category 1 hazard or statutory nuisance has been prosecuted by the local authority. Of course until such time as the property has been inspected it is not possible to determine whether such a hazard exists. Perceptions of risk are notoriously difficult and without advice it would be difficult for tenants. It would however be reasonable for an RRO to be available where the landlord has failed to undertake the works set out in the action taken after the local authority has undertaken inspection including a Hazard Awareness Notice.

66. There are many international examples where one of the recourses open to tenants is that if the property is found to be in disrepair then the landlord has to repay the rent to the tenant. We can see no reason why this could not be put in place in the UK and may lead to improvements in housing conditions.

Question 12:

What should the trigger point be?

67. A variety of responses have been suggested by our members, but the most commonly expressed view is that RROs could be automatically imposed following a successful prosecution for failing to comply with an Improvement Notice for remedying Category 1 hazards and not complying with the requirements of a Prohibition Order (and Emergency Prohibition Orders) where it has been made, due to the presence of Category 1 hazards. An RRO could also be imposed when a prohibition/demolition or clearance order is uncontested.

Question 13:

Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property?

68. We would support an RRO being in addition to any damages that the tenant may be awarded, but we are **not** in favour of prohibiting future rental of the property as a

further option, as suggested by the question. The RRO should be in addition to any private action the tenant may take. It is considered appropriate for the civil courts to take a view on any RRO in determining a private action and application for damages.

69. Prohibiting a landlord from renting out a specific property on the grounds that he/she had rented it out with hazards could prove counter-productive, especially in areas of high demand for housing – in such areas, it would mean one less property available for use, would be in conflict with empty homes activity, and it would not prohibit the landlord renting out any other properties he/she owns.

70. The proposal in its current form could not be implemented without new powers as currently a category 1 or 2 hazard needs to exist. Prohibiting a property from being rented would open up housing allocation issues and a Council's duty to re-house. RRO is the best option to remedy the detriment caused to the tenant(s).

71. Given that in many cases a tenant will be in receipt of housing benefit, any RRO will be aimed at recovering the benefit paid and it will have been the tenant who suffers as a consequence of the existence of hazards and breach of the notice/order, so any claim for damages should be in addition to the RRO. It would be for the Court or First-tier tribunal to decide whether the existence of the RRO should lead to a reduction in damages.

Question 14:

Is there a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches?

72. On the whole we feel that there are sufficient powers and tools available to LHAs to deal with less serious breaches. As for sanctions, the local authority has the choice whether to prosecute or not, or to caution the landlord so we do not believe there is a need to review the sanctions available.

73. We do feel however there is a need to review the drafting of the legislation, particularly on how hazards are addressed in HMOs that meet the standard test. LHAs can use the Hazard Awareness Notice where there are less serious hazards or the landlord is agreeable to the remedial action. A bigger problem facing tenants and indeed landlords in this context is the failure of many LHAs to use the powers that are available.

74. It is certainly the case that LHAs need the Courts to impose effective fines as poor fine levels undermine their ability to be a real deterrent to rogue landlords. It should be noted that there are intensive revenue costs involved in bringing prosecution cases and also defending appeals at RPT (First Tier Tribunal) hearings.

75. There is a distinct lack of judicial guidance for Housing Act offences which leads to a wide range of fines handed down by the Courts. Sentencing guidelines from the Ministry of Justice would help improve consistency and proportionality of sanctions which would benefit all.

76. A wider application of existing disrepair obligations and breaches of repairing covenants could be incorporated into a statutory "renting charter" (see our answer to Q1) enforced by the local authority or tenant with suspended section 21 during the action.

77. We acknowledge there is some support among our members for the use of Fixed Penalty Notices when dealing with lesser issues, such as minor breaches of conditions attached to licenses under the Housing Act 2004; minor breaches of the Management Regulations that apply to HMOs; obstructing an officer; minor contraventions of planning legislation, e.g. failing to comply with minor planning conditions; non-compliance with section 215 of the Town and Country Planning Act 1990; notices and 'visual amenity' issues, overgrown gardens, piles of rubbish; and failure to provide a Gas Safety Certificate (HSE enforcement).

Question 15:

Should private sector landlords be required to install, and maintain, smoke alarms in their properties, or would a non-regulatory approach to encourage greater take-up be a better option?

Question 16:

Should private sector landlords be required to install, and maintain, carbon monoxide alarms in their properties or would a non-regulatory approach be a better option?

78. We think there should be a specific, unambiguous requirement that a working battery smoke detector is provided, fitted in the correct location, at the commencement of a tenancy. There should be an awareness-raising campaign on this, as there has been with gas certificates, EPCs and deposit protection. Smoke alarms should have as a minimum a 10 year battery operated alarm.

79. It should be noted that higher smoke and fire detection requirements already exist for HMOs and this would need to be clearly identified so landlords do not intentionally or otherwise assume they have met their requirements through installation of simple stand-alone smoke detectors.

80. We do not believe that this would represent an insurmountable additional burden or costs as a good system can be installed by a qualified electrician for a relatively small cost in comparison to potential rental income. We do not believe that voluntary systems have worked as there has been no effective monitoring or regulation.

81. The same should apply to carbon monoxide alarm provision. Landlords can be held responsible should a tenant die the same as under any other type of business, so should not be treated differently and this area is something worthy of regulation.

82. It should also be noted that the absence of smoke and or heat detectors with alarms is a deficiency that affects the likelihood and outcome of the hazard of fire under the HHSRS, so local authority surveyors or enforcement officers could take this into account now.

83. Our views on smoke detectors and alarms apply equally to CO detectors; there should be a mandatory requirement, not a voluntary system, since many landlords still do not install CO detectors. The length of time that sensors remain effective should be considered.

Question 17:

Does the Landlord & Tenant Act 1985 cover the right areas, or should it be broadened to cover other issues?

84. There are a number of problems with the 1985 Act that require review. For instance, it relies on tenants taking action themselves against the landlord and therefore suffers from the same issues of potential retaliatory eviction as the 2004 Act. The requirement for a tenant to take action themselves is a significant barrier now that Legal Aid is more difficult to obtain.

85. It would be prudent whilst completing the review of property conditions that the scope of the Landlord and Tenant Act is reviewed to ensure that the legislation is still relevant to the repair requirements of the Housing Act 2004 as standards have improved.

86. A major failing lies in its reference to the old Fitness Standard under the Housing Act 1985 (Sections 8 & 10). Section 8 should be amended to refer to implied terms as to no serious hazards, and remove the rent limits, while section 10 should refer to the HHSRS and the relevant Statutory Instruments.

87. Amendment of the repairing obligation in Section 11 is also required. It applies specifically to repair (and working order) of exterior and structure and specific amenities. Disrepair has a specific meaning set in case law, but many hazards arise for reasons other than disrepair. If sections 8 & 10 were amended as suggested then section 11 could remain as a specific matter of disrepair and the claim would be limited to those matters only.

88. The Law Commission has previously recommended it would make sense for disrepair claims and indeed those under Section 4 of the Defective Premises Act 1972 to be dealt with by the First-tier Tribunal (Property Chamber).

89. A useful further development would in our view be the amendment of Housing Act 2004 to permit private law remedies for tenants where LHAs fail to act in accordance with their statutory duties under part 1.

90. We would argue that the current legislative framework applying to the PRS as a whole is both overly bureaucratic and complex; as such a wholesale review is long overdue. Businesses in the industry agree with this assessment and are frustrated by the lack of effective and clear regulation.

91. Huge benefit could be derived from bringing together the various statutes. Decent housing needs to be properly managed by the landlord and maintained by the tenant, but the current system means the rights and responsibilities of landlords and their tenants are unclear and contained within a number of different pieces of legislation.

92. Government should then allow LHAs to provide the central role in ensuring the new framework is followed in line with our strategic and regulatory housing role.

Question 18:

Do you think that the current approach strikes the right balance or should there be a statutory requirement on landlords to have electrical installations regularly checked?

93. We support the introduction of mandatory five-yearly safety checks by a competent person of the electrical installation supplied with PRS lettings, along with requirements for provision of relevant safety certificates to tenants. This measure would bring electricity more in line with requirements for gas supplies in the PRS and would safeguard tenants and landlords alike from the consequences of electrical faults, which are often extremely difficult - if not impossible - to detect without specialist equipment and training.

94. We do not believe that adoption of mandatory electrical safety requirements would present an undue burden for landlords. Five-yearly periodic inspections are recommended by the Institution of Engineering and Technology (IET) in their wiring regulations publication, and are already practiced by many leading landlords and agents. The cost - estimated at £100 to £150 - equates to around £3 per month when spread over a five-yearly period, and is insignificant in comparison to the average monthly rent and when weighted against the basic safety needs of tenants.

95. Given there is already a legal duty in place for electrical installations in Houses in Multiple Occupation (HMOs) to be checked on a five yearly basis, there is precedent for these measures. We believe a blanket statutory requirement for five yearly testing in all PRS homes would eliminate the current confusion around best practice, and strike a balance between not overburdening landlords but still ensuring tenant safety.

Question 19:

How effective is voluntary accreditation as a way of driving up standards?

96. This issue is rising up the agenda and an increasing number of LHAs are exploring local solutions. However, the number of accredited landlords is usually small in comparison to the total number operating in an area and schemes often fail to engage with moderately or poorly performing landlords. Accreditation schemes generally relate to the landlord or agent, rather than to individual properties. The best performing landlords are always quick to respond both to voluntary accreditation and registration schemes, and to join professional landlord bodies. The challenge faced by LHAs is that those who have not complied with legal standards either though ignorance or deliberate avoidance are unlikely to engage voluntarily. Councils currently have a limited range of options for improving conditions in the PRS, which broadly include discretionary licensing, voluntary accreditation and 'neighbourhood' enforcement approaches.

97. So there is some merit in voluntary accreditation schemes as a way to recognise and engage with responsible landlords and they work best where there are clear incentives for accredited landlords, for instance access to a local university's accommodation register, grants, loans or other support from the local authority.

98. But a local authority's ability to offer such incentives are becoming increasingly limited due to financial restrictions and there is a role for Government in promoting a national accreditation scheme linked to discounted insurance or tax incentives. Greater

incentive to join national accreditation schemes could be provided by classifying membership of these professional bodies as legitimate tax deductions on self-assessment tax returns.

99. But voluntary accreditation does little to identify poor landlords and as long as there is sufficient demand within the housing market to enable them to let poor quality accommodation without engagement with the local authority they will continue to do so.

100. Many of our members work in LHAs that have introduced voluntary accreditation. By and large their experience has been that they are not very effective in driving up standards. In areas of high demand for rental property (increasingly the norm), landlords do not need incentives such as this in order to get their property rented out; market forces dictates the rate of rental in an area. It is also sadly the case that many LHAs struggle to find the resources to support and promote accreditation fully.

101. If there is a purpose or incentive to be accredited such as a Student Accommodation Accreditation Scheme then it works well as the landlord has an added reason to become accredited. Otherwise, where there is little incentive, landlords don't necessarily see it as a means to getting tenants and it places another expense on landlords to do so. It is, however, important to have accreditation schemes in place so the local authority has an important role to play in promoting this to both tenants and landlords so that it is seen as a positive, and in time, a necessary step to be seen as a reputable landlord.

102. Some form of self-certification could be introduced where landlords must meet certain criteria such as fire safety for example, but whereby automatic inspection by the local authority would be instigated if self-certification forms are not returned. This is similar to the self-certification alternative intervention approach used for lower risk food premises, whereby a nil return automatically prompts an inspection.

103. In some examples, property-based *and* landlord-based accreditation schemes have been introduced. Property-based accreditation often proved costly and resource intensive and only reached a very small proportion of the available stock with many landlords choosing not to accredit their properties regardless of the incentives offered. In other examples we have been informed of, LHAs jointly maintain a Landlord Accreditation Scheme in partnership with the National Landlords Association. This requires the landlord to self-certify that their properties are 'up to standard'. Crucially it also requires landlords joining the scheme to undergo a basic training course in what it means to be a landlord. But even in these cases, take up of the scheme can be low.

104. So we do not believe that accreditation is in itself a sufficient method of driving up standards. It can contribute to improving standards but much depends on the scheme and how well it is policed.

105. In the absence of a national register or licensing of all private landlords (a proposal which the CIEH supports), accreditation is one way of sorting out those who want to act responsibly from the others, and should permit LHAs to concentrate on those unwilling to belong to such schemes. Accreditation would be an improvement on what we have at the moment if every local authority was required to recognise at least one accreditation scheme (albeit not one necessarily operated by it).

106. In the present market voluntary accreditation will not work to improve standards unless it were to be seen as a way of reducing local authority intervention, but given the current level of local authority interventions that is not much incentive either. From a local authority perspective it is a way of sorting the more responsible landlords from the rest, and for setting priorities, but the worst or non-accredited landlords and their properties would still have to be found and we know from our members that considerable resources have to be devoted even to identifying who owns the property, never mind the process of enforcement that is then required.

107. The Law Commission have proposed an enforced "self-regulation" approach, whereby a legal requirement on landlords and/or agents to join either a professional association or accreditation scheme was imposed. Landlords and agents would be able to choose which association or scheme to join, but they would have to be part of at least one association or scheme.

108. Defining a standard for private rented property can be an important way of clarifying local authority expectations in relation to property conditions and of encouraging greater awareness amongst landlords. For example, Liverpool City Council has developed "Liverpool Healthy Homes Standard", which aims to set a standard for houses that are safe and warm, functional and fit for purpose. This includes minimum requirements for property condition based on the Decent Homes Standard and also best practice in the management of tenancies. In July 2013, the Mayor of London launched the London Rental Standard as a comprehensive standard for private renting across London. The Standard covers landlords and letting agents, and incorporates all of the main industry schemes. It aims to trigger a massive increase in accreditation and standards in the capital through existing schemes such as the London Landlord Accreditation scheme. The London Rental Standard is about accrediting landlords, letting agents and managing agents, rather than individual properties.

Question 20:

Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?

109. The restrictions on licensing are already tight, evidenced by the 60% of LHAs the DCLG spoke to who felt they were unable to meet the criteria in order to introduce licensing in their area. The current legal framework already requires LHAs to provide a strong body of evidence regarding anti-social behaviour or lack of demand across a whole geographical area. The current percentage of LHAs that have actually taken up the tool of selective licensing is very small.

110. It seems therefore unnecessary for further tighter controls to be introduced on a little used tool already. As a tool it is already very controlled and restricted, as evidenced by the limited number of selective licensing schemes in existence. Indeed, evidence from the selective licensing schemes has demonstrated it to be an extremely effective tool and if anything, it would be appropriate to relax the restrictions around selective licensing to enable a broader application.

111. The burdens associated with selective licensing come from the drafting of the legislation and the bureaucracy involved not the principle of licensing. It would be less burdensome with a better drafted licensing regime once the licensing regime was in place. It would also be fairer to tenants and landlords alike if more LHAs used

additional or selective licensing as appropriate. Ideally the majority of the PRS should be licensed.

112. It is considered that the existing restrictions are already quite onerous and LHAs will only introduce a selective licensing scheme after much consideration of the resources involved, the impact it will have on the local market and the consequences of not taking steps to regulate the sector.

113. We would welcome a review of the current legislation and believe that the basis for imposing licensing should be widened to allow for the introduction of licensing where there is significant evidence of a dysfunctional PRS, e.g. poor repair, poor management, disproportionate rents, etc. We would welcome LHAs being given far more flexibility and discretion in tailoring licensing to suit local circumstances.

Question 21:

Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?

114. We can see no merits in such an approach. Even if it were possible to adequately define a "rogue" landlord (which we very much doubt) and identify all of the properties they let out, it would remain a simple task for them to transfer management to a third party and thus avoid the need for a license.

115. There are infinite practical difficulties, which we predict would produce an enormous regulatory burden for LHAs. Where a thematic approach is taken i.e. licensing those landlords who are "rogues" rather than simply all properties in a defined area, there will clearly be a problem identifying who the "rogues" are. Those landlords the local authority had not received complaints about will not be known. Would rogue landlords be defined as just the ones who had failed to comply with Improvement Notices i.e. prosecuted? Furthermore, there is a potential issue with (rogue) landlords operating across multiple local authority areas.

116. Rogue landlords are difficult to track down as often tenants are too scared to report them, so an area-based approach to licensing is likely to be more effective. It treats all landlords the same so is fair in relation to the standards required and gives rogue landlords the chance to become better landlords in future though adhering to requirements.

117. It is difficult to see how it would possibly work to focus a licensing scheme on rogue landlords – the purpose of licensing is to decide who is a "fit and proper person" to hold a licence. It is wrong to assume that all bad landlords are rogues, bad landlords stretch from the wilfully neglectful whose operations are a cover for criminal activity, to those who do not wish to be bad landlords but are wholly ignorant of what is required and incapable of managing property adequately.

118. This is one of the reasons why we continue to support a national licensing or registration regime for all private landlords. The problem with the licensing regimes as currently drafted is that it is not clear whether it is focussed on management issues, or the physical condition of the property (while supposedly being wholly separate from Part 1). Any system is dependent upon proper policing and effective sanctions to maintain quality. Given the level of rents and income landlords receive the costs of such a scheme would not be unreasonable to lead to a better-regulated PRS.

119. We do not believe the comparison with Scotland made in the consultation paper is wholly valid. But even using the percentage of revocations or refusals, a figure of 0.5% in England would mean of the order of 20,000, which would send out an important signal.

Question 22:

Should the relevant provisions of the Greater London Powers Act 1973 be reviewed or updated, does London need separate rules from the rest of England, and what comments would you have on how regulations could better support and reflect modern technology?

120. We shall leave the main commentary on this question to LHAs in London and to London-wide representative bodies, although one argument is that the housing market in London is not so different to any other borough or county around the country, so all areas should be subjected to the same laws and regulations. We agree that the issue around planning permission and short renting should be addressed.

121. In respect of technological advancements, the use of web based systems to allow landlords to automatically scan and upload relevant documentation, e.g. gas safety certificates, EPCs etc is supported. These could then be checked by support teams in councils, and could also be shared across councils via shared systems.

Question 23:

Do you think the methodology that underpins the HHSRS and/or the accompanying operational guidance need to be updated?

122. The CIEH has been pressing Government to instigate a review of the operational guidance for some time. The Regulatory Impact Assessment accompanying the Housing Act 2004 proposed a formal monitoring process of the new enforcement regime in the form of an evaluation commissioned within three years of implementation, in line with that intended for the proposed monitoring of the HMO licensing regime, enabling an assessment of the impact and effectiveness of the enforcement regime, particularly through the use of the HHSRS as an enforcement tool. Neither has happened.

123. The concept of applying a methodology of risk assessment to determine what risk to health and/or safety to occupants and visitors is posed by the conditions found within the curtilage of a property remains a sound one as it focuses rightly on the health and well being of occupants of housing. HHSRS is a far better system than the bricks and mortar approach previously imposed under the Housing Act 1985 and to revert to a 'prescriptive standards' approach that does not account for individual circumstances and the focus on the health and safety of the person would be an unwelcome and retrograde step.

124. There is also an urgent need for a review of the statutory enforcement guidance issued under Part 1 of the 2004 Act. There is power to provide a direction under Section 3 of the 2004 Act also on how the duty on LHAs to review housing conditions should be met and such direction is needed as most LHAs deal only with complaints, meaning the most vulnerable tenants of the worst landlords are likely to go unprotected.

125. The methodology of HHSRS is sound and was well tested before being incorporated into legislation. None of our members are arguing seriously for a review of the methodology. Its soundness can be measured by its adoption, with little amendment, by the US Department of Housing & Urban Development. This underlines that a risk assessment approach is more in keeping with better regulation than the HMO licensing provisions.

126. The Enforcement Guidance is in need of revision, while it is also true that the Act itself has been poorly drafted. The Operating Guidance requires review and revision in light of experience and decisions made in the Residential Property Tribunal/First-tier Tribunal (and Upper Tribunal) although it can be argued that most of the problems than have arisen stem from the poor drafting of Part 1.

127. It could also be updated to provide advice on how to gather local data to enable local averages for the likelihood and spread of harms for hazards to be developed. The data on Excess Cold remains the most controversial and certainly needs updating. The PRS contains a disproportionate number of cold or difficult to insulate homes often heated by electric only. A complex mix of factors including rising fuel prices, the disparity between gas and electric prices, tenants lifestyles and many cold and difficult to treat homes in the national private rented stock create a situation where there is inconsistent opinion and enforcement.