



Chartered
Institute of
Environmental
Health

Tackling Rogue Landlords and Improving the Private Rented Sector

Response to the Dept of Communities and Local
Government Technical Discussion Paper

August 2015

The Chartered Institute of Environmental Health

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We are a **registered charity** with 10,000 members across England, Wales and Northern Ireland.

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Executive Summary

1. We welcome the opportunity to contribute to the issues raised in the technical discussion paper. These are issues of the utmost importance and deserve a more thorough examination than is permitted by the wholly inadequate period for comment: just three weeks, and at a time when many people are on their annual holiday.
2. The Government is looking to bear down on the worst landlords; whilst we support many of the proposals in the paper and do not argue that the vast majority of landlords are decent, well-intentioned people, nonetheless a substantial number of their properties are in poor condition and many lack effective management competencies and many landlords lack a good awareness of their responsibilities. The problem therefore is not just a rogue and criminal minority.
3. The Private Rented Sector (PRS) is growing fast and is an increasingly important part of the housing market. While the majority of 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
4. The paper continues the piecemeal approach to reform of the PRS of this and the previous government. It is our view that a fundamental review and consolidation of the entire legislative framework is necessary to bring about comprehensive reform and rejuvenation.
5. The paper fails to address the link between the poorest quality accommodation in the PRS and tenants in receipt of housing benefit, many of whom are vulnerable and have little or no choice in the type of accommodation they occupy. In this part of the sector operate some of the worst landlords, who are able to exploit tenants' circumstances and this lack of choice. We support the comments of the Private Housing Officers' Group in their response who advocate a system whereby properties, on which benefit could be paid, should be required to be accredited in accordance with a recognised scheme (industry or local authority).

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

6. No, the fines are almost always too low and do not consider the severe impact (or potential impact) on the tenants or reflect the significant capital and revenue gains to landlords. Courts should be required to consider the impact on the tenants and the total assets/rental streams when setting the fine. A minimum fine of say £5000 would more appropriate.

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

7. There has been minimal impact. Our members working in local housing authorities (LHAs) tell us that in general fines seem to remain low and beneath the previous limit.

Should we consider setting minimum fines for repeat housing offences which have aggravating features? If so, what would be an appropriate level? Are there alternative approaches?

8. We would support setting a minimum fine for repeat offenders, with £7,500 being our preferred level. Courts should consider the impact on and assets of landlords in setting the fine, whilst we would also support giving the courts the power to ban repeat offenders from managing or letting properties for a defined period.

Are the relevant housing offences listed appropriate?

9. Yes; overcrowding needs to be defined. There are currently at least two pieces of legislation covering overcrowding: the Housing Act 1985 and Housing Act 2004.

How should we deal with offences committed by a company if the offence was the result of a deliberate act or omission by an officer or officers of that company?

10. We suggest adopting the same approach as under health and safety law, permitting prosecution of the individual and/or directors.

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

11. Yes. It would also be useful to give access for housing enforcement officers to the EPC database, as this provides a cross-check and enables targeting around some management and standards issues which are prevalent in the sector.

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

12. The CIEH has long supported a national register of landlords, which remains our preferred position. We would need to see the full details of the proposals, but at this stage we would support in principle the establishment of such a blacklist, on the basis it should make it easier for local authorities to carry out checks on landlords. Our concern is that rogue landlords may not be afraid of being blacklisted. Many are registered as companies, many are located offshore or are part of networks of individuals. Formal notices served are often worthless where owners are registered to offshore entities and where landlords are intent on playing the system.
13. The database should include lettings related data (such as gas, electricity and Land Registry information) and should be accessible to tenants. All landlords should be registered to a UK-based address or provide a UK representative for service of formal notices. Many rogue landlords do not use *bona fide* letting agencies but market their properties to target certain nationalities or cultures, medical "tourists", some even have agents at ports of entry. If enforcement action is taken the company will simply dissolve and a new one formed, often with a different director making it very hard to keep track. To legally let a property landlords should be required to register online to provide such information, contact details and ideally provide safety certificates where required.
14. The CIEH has recently been able to publish, following lengthy proceedings with the Ministry of Justice and the Information Commissioner, a list of prosecuted landlords. Councils are able to interrogate the data to find which landlords might have been

prosecuted in their locality. Whilst this database is far from comprehensive, it contains much of the useful information local authorities would be looking for when trying to establish whether a landlord has previous offences. The CIEH would be pleased to discuss this with officials if the "blacklist" proposal is to proceed.

<http://www.ehn-online.com/news/article.aspx?id=14486>

Do you agree with the proposed reasons for placing someone on a blacklist and issuing a ban?

15. Yes.

Do you think it should be at the court's discretion as to whether to include an offender on the blacklist or should this be mandatory?

16. This should be mandatory.

Should local authorities have the right to place the offender on the blacklist on any of the above grounds?

17. Yes, although there would need to be an appropriate appeal mechanism. We would need also to see appropriate arrangements which allow a landlord to come off the register "for good behaviour".

Do you agree with the penalties proposed for breaching a ban?

18. A term of imprisonment, forced sale of property, Rent Repayment Orders and action under the Proceeds of Crime Act 2002 should all be available sanctions.

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?

19. We have received many representations from our members working in PRS regulation to the effect that management orders are complicated and time consuming and require a level of expertise and resource which are increasingly unavailable. This is especially true in LHAs that no longer have a housing stock, which do not have the internal capacity to manage properties. Some local authorities have worked with social housing registered providers, but their experiences have been mixed. Should a large company be included on the blacklist, many thousands of properties could immediately require a Management Order. It is therefore important that the Government requires landlords/agents to declare all their properties, so that LHAs would be able to identify portfolios.

20. The Management Order process itself needs to be made simpler. The removal of the requirement for LHA's to pay surplus monies back to the landlord should a Management Order be made under any section of the Act is supported. A Management Order should not be a means of getting someone else to manage your property while continuing to make a profit. For these reasons we believe that Management Orders should be at the discretion of the LHA and not a duty.

Should we consider stronger penalties, for example, seizing the property of persistent offenders who ignore bans? What safeguards would be needed to ensure that this power was used proportionately?

21. Yes, although a custodial deterrent may be more effective. Protection could be through applying for a court order to seize the property

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

22. Yes – to ensure consistency with the regime as it applies to HMOs. In our view it would however reduce the number of licences granted by only a small margin, as it is likely that persons failing the test are more likely to appoint an agent. We believe that this should be a permissive power, thus allowing local authorities the option of keeping the existing test

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

23. The general consensus among our members is that the revised test strikes about the right balance.

Should other criteria be added?

24. None

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

25. Difficult to quantify, although there certainly will be additional costs associated with the additional rigour.

Should we introduce Rent Repayment Orders for situations where a tenant has been illegally evicted or a landlord has failed to comply with a statutory notice?

26. Certainly for illegal evictions and a statutory notice, but not Hazard Awareness Notices.

Should Rent Repayment Orders be introduced for any other situations?

27. They should be available for prosecutions under the HMO Management Regulations.

Should a Rent Repayment Order be limited to 12 months?

28. No, sometimes the period from when the landlord became reasonably aware of the situation until remedy is effected may extend beyond 12 months.

Should issuing a Rent Repayment Order be automatic?

29. Yes

How many additional Rent Repayment Orders per year are likely to be issued if they were extended?

30. It is difficult to offer an accurate estimate, but we believe larger authorities currently issue on average fewer than 10 RROs a year.

Would the use of Rent Repayment Orders have a significant impact on landlords?

31. We believe that they have the potential to be a more effective deterrent than Court fines.

What situations or contraventions should be covered by civil penalty?

32. The CIEH has expressed serious misgivings in the past about the number of offences created in recent years for which local authorities have been empowered to levy fixed penalties. We believe the likelihood of apprehension is usually a stronger deterrent than the size of a fine and that regulatory teams should therefore be properly resourced. We believe there are arguments of principle against the idea that the same person should adjudge when an offence has been committed and, effectively, decide on and apply a penalty.

33. When coupled with the power to retain fines, the ability to set fines is an invitation to use the power for revenue-raising; this is likely to skew authorities' priorities. Civil penalties may tend to trivialise offences and give the impression that offences are purchasable commodities or the cost of doing business and diminishes the view of the seriousness of the crime. The reduced burden of proof in a civil matter as opposed to criminal matter may not afford landlords sufficient protection in law. There is a danger that LHA's could concentrate on civil penalties with a lower burden of proof rather than prosecutions and because civil pecuniary penalties can assist in enforcement cost recovery.

34. Many of the so-called "minor breach" examples quoted in the paper are matters covered by the Housing Health and Safety Rating System, so we are not clear how civil penalties would sit alongside a local housing authority's duty? If a Category 1 hazard exists then one of the courses of action in Part 1 has to be taken. Are civil penalties to be available as well? In which case, why not civil penalties for breach of a Hazard Awareness Notice where there is no Category 1 hazard?

35. Notwithstanding, we are aware this position is unlikely to be shared by all of our members and that the proposals in the paper will be welcome among many LHA officers.

Assuming civil penalties are introduced based on the suggested criteria, how frequently is such power likely to be used?

36. We would draw your attention to the response of the Private Housing Officers' Group (PHOG) – their estimate is that larger Metropolitan and Unitary authorities may use the power around 20 times per annum.

Are they likely to be a deterrent?

37. The general feeling among our members that support the introduction of civil penalties is that if used appropriately, they would be more cost and time effective than a prosecution and are likely to speed up works and stop landlords delaying until the last possible moment as they could face an instant fine. Civil penalties should also be available *in addition* to prosecution.

What would be an appropriate penalty? Should it be similar to the potential fine for not displaying letting agent fees (up to £5,000)?

38. There is some consistency in applying a similar penalty to the potential fine for failure to display letting agent fees.

Should there be higher penalties for repeat offenders?

39. Yes

How should the appeals process work? For example, should there be a right of appeal to the First Tier Tribunal?

40. Yes but without informal appeals or reviews as a precursor to Tribunal hearing, which might be used as delaying tactic.

How would we ensure compliance and enforcement activity is concentrated on serious breaches rather than incentivising overzealous enforcement of low level breaches?

41. Given our position as set in paragraphs 32-34, we would say not to proceed with the proposal is the most effective way. But we are well aware that the lack of resources within LHAs probably precludes this possibility anyway.

How widespread a problem is abandonment?

42. We are unable to answer this question, as this is an issue rarely reported to our members.

What costs does a landlord currently face when presented with an abandoned property?

43. We can see that costs could be significant when one includes non-payment of rent, court and legal fees, plus potential break-in and damage while the property remains empty but not in the possession of the landlord.

How effective would the process described above be in tackling the issue?

44. There must be adequate protection against potential abuse of the process. How is "abandoned" to be defined?

Does the lack of a courts process present too much uncertainty?

45. We have some concerns about removing the courts from the repossession process; this is too short a consultation opportunity for an issue of some legal significance. It is of concern that the Government is considering giving landlords the right to take possession of a property from a tenant without going through some kind of arbitration such as the court. Some landlords, such as those this consultation paper proposes to deal with, are just those who might misuse such a power to get rid of 'problem' tenants or where they wish to sell a property. It is important that a tenant's right to occupy their home is protected from those that would abuse this power for their own means.

What are the reasonable steps and actions a landlord should take to satisfy him/herself that a property is abandoned?

46. We would favour a "check-list" to demonstrate that landlords have taken all reasonable steps to ascertain that a property has been abandoned.

What happens if a tenant returns to re-claim a property?

47. If a court order has not been obtained and the landlord cannot produce written notice by the tenant, the landlord should have the right to occupy unless a new tenant has been installed. In this case, the tenant should be able to gain compensation for their loss and disturbance.

What should the landlord do with the tenant's personal property?

48. The consensus view among our members is that the landlord should be required to safely hold personal property for two months after taking possession or to the end of the rental agreement, whichever is the longest.