

Background

Private renting is growing

Private renting is currently at an all-time high, having doubled in the last 20 years, and private renters now comprise [20 per cent of England's households](#). [Estimates](#) by PricewaterhouseCoopers suggest that this growth is likely to continue, with 25 per cent of England's households projected to be renting privately by 2025.

The demographics of private renters have also shifted in recent years, with 36 per cent of privately renting households now including children. Data from the 2015/16 English Housing Survey suggests that the unattainability of home ownership is a key driver of this trend, with unaffordability cited by 69 per cent of the private renters that do not expect to be able to buy their own home.

Who are landlords today?

According to data from the DCLG's 2010 [Landlords' Survey](#), a greater proportion of landlords than ever - 89 per cent - are individuals. In total, these landlords are responsible for 71 per cent of privately renting dwellings. Moreover, average portfolio sizes have also fallen, and an estimated 78 per cent of landlords own a single dwelling. 76 per cent of these landlords reported that their dwellings for rent were purchased as an investment for old age, based on long-term capital appreciation.

Data on which landlords might be defined as "rogues" is problematic. [Research](#) undertaken by the Building Research Establishment in 2010 queried the stereotype of the 'rogue' landlord. Instead, the BRE suggested that landlords could be broken down into five other types: naive, accidental (inherited property), informal, small and professional/accredited.

The inadvertent and unprofessional landlords increased from 17 to 28 per cent in the ten years up to 2010. This presents a challenge, in that [data from 2010](#) suggests that 63 per cent of individual landlords had no relevant professional experience or qualification. Moreover, only six per cent belonged to professional or private rented sector (PRS) trade bodies.

What are the problems facing private renters?

According to the English Housing Survey 2015/16, 29 per cent of housing in the English private rented sector would fail the Decent Homes Standard. Whilst this has fallen from 47 per cent in 2006, this can be attributed to the

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overall growth of the private rented sector (PRS), and the absolute number of non-decent homes has risen by 100,000 in the intervening years.

Satisfaction data from the same source suggests that 82 per cent of private renters were satisfied with their landlords in 2015/16. However, this figure masks significant problems, and [research by the Citizens Advice Bureau](#) suggests that 71 per cent of renters have experienced one or more of the following problems during their tenancy:

- Damp or mould growth
- Heating broken or inadequate
- No hot or cold water
- Insecure windows or doors
- Rodents or other infestation
- Faulty wiring

Moreover, [research](#) from the Building Research Establishment suggests that it is often the most vulnerable households in the worst housing with the worst landlords. This is corroborated by evidence from the Citizens Advice Bureau, which shows that 40 per cent of renters avoid asking for repairs or complaint for fear of their landlord's reaction.

ONS [figures](#) show that almost one-third of private rented households are headed by people born abroad. Over 80 per cent of recent migrants live in the PRS, often in the poorest parts of the sector where they are [most vulnerable](#) to exploitation.

Do local authorities have the powers and capacity required to enforce standards in the private rented sector and deal with 'rogue landlords'?

Powers

We welcome recent changes introduced by the Housing and Planning Act 2016. In particular, we support the wider application of Rent Repayment Orders (RROs) to cover illegal evictions, breaches of banning orders, and failure to rectify serious hazards, as these replace a system whereby landlords were being issued with inadequate fines.

We also support the recent expansion of civil penalties, which enable local authorities to impose a significant penalty on rogue landlords without the need to undergo a resource-intensive prosecution process. Civil penalties also have the significant advantage of being self-financing, as local authorities can keep the income raised from fines.

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However, further attention needs to be given to local authorities' ability to enforce Part 1 of the Housing Act 2004.

Whilst there is currently no general obligation on landlords to ensure that properties are fit for human habitation, the Landlord and Tenant Act 1985 compels landlords to carry out certain repairs e.g. to the structure and exterior of a property.

Moreover, the Housing Health and Safety Rating System (HHSRS) introduced by the Housing Act 2004, gives local authorities powers to tackle serious hazards, including compelling landlords to carry out their repair obligations. However, the HHSRS does not impose a set of minimum property standards, meaning, when it comes to issues such as fire safety, tenants do not have an alternative to approaching the local authority and requesting a property inspection and subsequent enforcement under the HHSRS.

However, even in these cases, it is not an offence for landlords to rent out a property with serious hazards. Instead, it is only an offence to not comply with an improvement notice once it has been issued by the local authority following inspection. It is only once this process has been completed that local authorities can make use of enforcement powers such as RROs.

This is a problem, in that local authorities do not have the capacity to ensure that rented properties in their area meet basic standards. We give more detail on this below.

Capacity

According to [DCLG figures](#), local authorities spent £39.4m on regulation of housing standards in 2015/16, a fall from £44m in 2009/10. This amounts to an average expenditure of £8.75 per [privately renting household](#) in England. [Recent analysis](#) suggests that this reduction in expenditure is likely to continue as a result of planned cuts to public expenditure.

Evidence suggests that the lack of funding for private sector enforcement has had a significant effect on the capacity of local authorities to use their powers. Proactive services have been particularly affected, although reactive enforcement services have also been stripped back. According to research by Karen Buck MP, in 2013/14 only 57 per cent of complaints about property conditions were investigated.

Moreover, significant enforcement thresholds must be met before a decision can be taken on enforcement action, including self-financing civil penalties. Local authorities are increasingly lacking the resource and expertise to meet these complex legal thresholds, thus stunting enforcement work further.

Therefore, measures which force tenants to rely on local authority enforcement are insufficient.

As a result, we recommend that regulations are reviewed to introduce a clearly defined set of minimum standards, making them a statutory requirement. This would mean that poor conditions are a breach of legislation for which a civil penalty can be issued.

Moreover, we are broadly supportive of the measures outlined in the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill. These would give tenants a means of redress, and enable the enforcement of fitness issues under the HHSRS without reliance on local authority enforcement. However, more detail is needed on the specific route of redress which tenants would have under the Bill.

What are the main obstacles to effective intervention in the private rented sector?

The key obstacles are as follows:

- Low take-up of accreditation schemes, and incomplete coverage of licensing schemes, meaning local authorities have no definitive record of the privately rented properties in an area. Availability of tenancy deposit data is helpful, but does not account for the worst landlords, who are unlikely to protect tenants' deposits
- Significant delays in the court system, with local authorities reporting that cases take 18 months or more before a hearing
- Lack of enforcement resource to investigate complaints, meaning few cases reach prosecution stage at all.
- A significant imbalance between demand and supply of privately rented properties; this leads to a lack of affordable homes, and often the unavoidable necessity for low-income tenants to accept poor conditions
- A growing proportion of unprofessional landlords within the sector. As highlighted above, only six per cent of private landlords belonged to a trade body or had a professional qualification in 2010
- An increasing [unwillingness](#) of private landlords to accept tenants claiming universal credit or housing benefit

How effective are landlord licensing schemes in promoting higher quality accommodation?

Evidence from local authorities suggests that, where introduced, licensing schemes have the following benefits:

- An objective set of minimum standards
- The ability to prosecute - or impose civil penalties - where properties fall below the minimum standards
- Improved standards in Houses of Multiple Occupation (HMOs), where licensing is mandatory
- An improved ability to consult with landlords on how to meet requirements
- A more detailed knowledge of who owns privately rented properties in the designated scheme
- The ability to target interventions
- Poor landlords are driven out of the market by enforcement
- A reduction in retaliatory evictions, as visits and enforcement actions are instigated by the council rather than the tenant (tenants from unlicensed HMOs can directly apply for RROs - but most don't - which implies they're worried, and corroborates the Citizens Advice Bureau evidence referred to earlier)

The benefits are largely corroborated by 2010 evidence from the Building Research Establishment. In particular, this evaluation found that licensing schemes worked particularly well when they included the following elements:

- Tenant referencing and vetting services
- A requirement to have written tenancy agreements
- Joint working between local authorities and other agencies
- Community involvement e.g. residents' associations

Particularly detailed evidence on the benefits of selective licensing comes from the London Borough of Newham. As of October 2016, Newham council [has identified](#):

- Reduced levels of anti-social behaviour
- Improved management and conditions of privately rented accommodation
- A quicker response and resolution rate by landlords to tenant complaints about repairs

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- A new ability for the council to identify landlords who are not paying the appropriate council tax for their properties, resulting in £1.67m additional council tax collected
- £338,496 RROs made against landlords
- A more professional property management approach amongst absentee or unprofessional landlords
- A higher take-up of landlord accreditation schemes
- More landlord prosecutions - Newham is responsible for [70 per cent](#) of all criminal landlord prosecutions across London

However, research has also identified the limitations of selective licensing schemes.

1) Schemes are generally not self-financing

Local authorities can set licence fee levels and it is expected that fees will cover the cost of administration. However, local authorities are prevented from using the income from licence fees more broadly to, for example, cover the costs of enforcement. Moreover, licensing schemes generally require linked services, such as landlord advice, as these services tend to be funded from other income streams.

2) Licensing schemes are complex

The PRS is governed by a complex, piecemeal set of regulations. This characterisation extends to licensing schemes.

Certain categories of properties, including HMOs and properties owned by Private Registered Providers (mainly housing associations), are exempt from selective licensing schemes. However, certain categories of HMOs are subject to mandatory licensing schemes. This means that each local authority potentially has multiple licensing schemes in existence concurrently. Each scheme might have different licensing requirements, start and end at different times, and charge different fees. Moreover, schemes might vary across local authority borders. This effectively turns the enforcement and administration of property standards into a postcode lottery.

As a result, landlords - particularly inadvertent or unprofessional landlords - can find it difficult to comply with the requirements of a licensing scheme. Equally, tenants are unable to ensure that their landlords are complying with licensing requirements, and so can't exercise the rights which licensing was intended to give.

CIH would recommend a review of the statutory minimum standards to which landlords are subject, aimed at ensuring a single, easily understood

set of minimum standards covering both property conditions and housing management. One example of this is the approach taken in [Scotland](#), where licensing is universal rather than selective, and all landlords must be registered with a local authority. Registration then establishes that the landlord is a “fit and proper person”, and local authorities insist on licensing before they will place applicants with a landlord, and allow landlords to use rent deposit, guarantee or bond schemes.

We also recommend that sufficient resources are made available for enforcement work to identify and prosecute landlords, without which licensing schemes are obsolete.

What approaches have local authorities taken to promote affordable private rented sector accommodation in their areas?

There is evidence of local authorities taking a variety of successful approaches to promoting affordable private rented housing. CIH has detailed these approaches in our recent report, [Building Bridges: A guide to better partnership working between local authorities and housing associations](#). Some examples have also been outlined below.

1) Build incentives into the welfare system

This could improve access to the PRS where landlords are otherwise [unwilling](#) to let homes to households who receive help with their housing costs. Some individual authorities offer to ‘fast track’ housing benefit applications, or, with the tenant’s consent, to make payments directly to the landlord for those who sign up to their accreditation scheme. For example, Birmingham City Council pays housing benefit directly to landlords who house tenants through their Private Rented Access Service. To participate, landlords must also sign up to the Midland Landlord Accreditation Scheme.

Feedback suggests that these authorities are having some success in convincing more landlords to accept tenants who are in receipt of benefits. However as universal credit is rolled out, this approach will no longer be possible as responsibility for the administration of benefits will be centralised and will no longer be the responsibility of individual local authorities.

Over the longer term, it would be possible to replicate this approach under universal credit if the Department for Works and Pensions (DWP) were to offer, with tenants’ permission, to pay the housing element of universal credit directly to accredited landlords. Pragmatically, this option is quite

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attractive, given the success of locally administered schemes based on the same approach and it would be likely to be popular with both tenants and landlords. However, anecdotal evidence suggests that some enforcement teams have experienced a lack of engagement from the DWP, and are consequently finding it difficult to prevent the evictions of universal credit claimants.

2) Meet the support needs of vulnerable people looking to access privately rented properties

CIH welcomes the announcement in the Autumn Budget that £20m will be made available for such Help to Rent schemes, as such schemes have the

potential to greatly improve the number and quality of housing options available to low-income households.

An example of positive joint working in this area comes from a partnership between Adullam Homes, High Peak District Council, and Staffordshire Moorlands District Council.

Adullam Homes is a specialist housing and support provider which provides a range of services for landlords, people looking for accommodation, and existing PRS tenants.

A bond scheme has been established, and funded by High Peak District Council. Through this scheme, a minimum six-month assured shorthold tenancy (12 month for families) is offered to tenants, both with a bond equivalent to one month's rent. The bond service also includes a period of initial tenancy support, which can be ongoing or taken up at any point during the tenancy if issues arise.

For those who are unable to use the bond scheme, Adullam has added a "prepare to place" 1:1 service prior to a tenancy, aimed at breaking the cycle of repeated tenancy failure.

Overall, the scheme has enabled access to PRS accommodation with oversight of tenancy standards. It has resulted in fewer "failed tenancies" and instances of repeat homelessness. Over the five years to March 2017, the scheme provided bonds to 467 households. The "prepare to place" service helped 136 people.

3) Private Sector Leasing schemes

These schemes allow local authorities, or their arms-length management organisations, to manage private rented sector properties on the behalf of landlords.

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For example, [Wolverhampton Homes](#) has run a private sector leasing scheme since 2009, and, as of April 2014, was managing 48 properties.

Benefits for tenants include a long lease period of 5-7 years, rents linked to local housing allowance rates, and a wider range of housing options.

Benefits for landlords include a guaranteed rent, access to £500 worth of

repairs per year, and a full management service in return for a 20 per cent management fee.

[St Leger homes](#), based in Doncaster, run a similar scheme undertaken on a much larger scale. Again, landlords can utilise a number of management services, and homes are let to tenants at local housing allowance rates, with no associated agency fees.

4) Encouraging greater levels of institutional investment into the sector

CIH welcomes measures to encourage more large-scale professional landlords into the PRS. This holds several benefits for local authorities:

- Large-scale new-build projects could make a significant difference to the volume of new rental supply at the local authority level, and subsequently reduce the pressure on private rents
- Investment would involve new dwellings that are purpose-designed for private renting, high in quality, and well-maintained
- Large-scale corporate landlords will offer higher standards of property management, as the value of their reputation as well as their investment will need to be protected
- Corporate investment in property is an inherently long-term venture, and so corporate landlords are less likely than typical buy-to-let landlords to sell properties as a result of house price inflation or an increase in interest rates. They will therefore be much more willing to let properties on longer, rather than shorter-term tenancies

Local authorities can take the following steps to encourage large-scale investment in new privately rented housing:

- Use local plans to set out the need for new privately rented homes, and identify sites which suit PRS development in their Strategic Land Availability Assessments
- Use Section 106 agreements to secure the provision of privately rented housing; this would ensure that the costs of affordable housing provision fall on the landowners as lower land prices. For example, the London Borough of Wandsworth takes PRS provision into account when assessing the viability of planning obligations it seeks from developers

- Make land available to PRS developers, with land values reflective of PRS use value
- Build partnerships with corporate investors, structured on the lines of corporate joint venture

How effective are complaint mechanisms for tenants in the private rented sector?

Retaliatory evictions

Recent measures protect tenants from retaliatory evictions, by preventing landlords from serving Section 21 notices within six months of being served an Improvement Notice or Emergency Remedial Action Notice by the local authority. However, [evidence](#) produced by the Citizens Advice Bureau (CAB) suggests that the process which tenants must undergo to be protected from retaliatory evictions is too cumbersome, and could prevent the measures from having the desired effect.

Tenants must first make any complaint about quality issues to their landlord or letting agent in writing. They must then allow a reasonable time for repairs to be carried out, only after which the local authority can be asked to inspect the property. Tenants must wait for the inspection to be carried out, and for the local authority to subsequently issue the landlord with a relevant notice.

If, however, the landlord issues a section 21 notice immediately after the tenant makes their initial complaint, the tenant's protection from a retaliatory eviction is then entirely dependent on the local authority being able to inspect and serve a relevant notice quickly enough.

[Research](#) by Karen Buck MP published in December 2015 suggests that environmental health services are very stretched and that, on average in 2013/14, local authorities received 433 complaints per annum, but served only 17 improvement notices and less than one emergency remedial action notice. This means that only approximately four per cent of tenants who make a complaint to the local authority will be protected from retaliatory evictions.

If changes are made to the legislation, as suggested by the CAB, they should consider how tenants can be prevented from experiencing retaliatory evictions as a result of local authority inaction. They should also consider how protections could be extended to cases where the local authority has chosen an enforcement route that does not involve prosecution. This is particularly urgent given the recent extension of civil penalty powers, as

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local authorities are now more likely to use them as an alternative means of enforcement.

Routes of redress

As outlined previously, local authorities are restricted in their use of prosecutions due to stretched resources. We therefore welcome the recent announcement that landlords will be required to join a redress scheme, which will give tenants direct access to a means of dispute resolution over issues such as repairs and maintenance.

However, this form of regulation does not necessarily involve a set of common, statutory minimum standards. We believe that this is a necessary addition in order to avoid a “race to the bottom” in terms of which redress schemes are cheapest to offer, and subsequently chosen by landlords. Again, we are broadly supportive of the measures outlined in the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill.

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About CIH

Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

Further information is available at: www.cih.org

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