

Summary

- Most of the exempt accommodation sub sector is not problematic and provides good quality accommodation and support.
- Some local authorities have identified provision that has serious problems in quality of accommodation and support, particularly non-commissioned short-term services, but this has emerged in recent years.
- The demise of the supporting people programme (and its accompanying quality assurance framework) and unintended consequences from welfare reform have created the environment that has led to the emergence of some poor-quality services and risk to residents.
- There are gaps in how the regulatory systems fit together which provide powerful financial incentives for bad faith actors to exploit and maximise the rental incomes they can gain.
- There are several ways those gaps can be addressed as well as strengthening the ability of the regulator and local authorities to share information and work together to tackle abuses.
- There is a recognition in the sector of the problems caused by poor provision for both residents and good providers, and a willingness to work with government, the regulator, and councils, to find appropriate, proportionate solutions.

Methodology

CIH's response to the committee's inquiry below has been shaped, working in partnership with Crisis, by:

- Analysis of freedom of information (FOI) data on exempt accommodation claims and data on regulatory action by the Regulator of Social Housing (RSH)
- Analysis of existing legislation and regulation governing exempt accommodation
- Workshop with local authorities and sector bodies
- Ongoing discussion with CIH members with experience in the exempt sector.

**What is the proportion of exempt accommodation that is provided by registered compared to non-registered providers, and is an appropriate balance being struck?
What is the proportion of exempt accommodation provided by commissioned compared to non-commissioned providers, and is an appropriate balance being struck?**

How does whether a provider is registered or non-registered, or commissioned or non-commissioned, impact the quality of provision?

CIH has analysed DWP data obtained under a FOI request by Crisis to explore the extent of the exempt accommodation sector and nature of providers, to address the committee's questions about the potential impact of non-registered or registered providers with commissioned or non-commissioned services. Our analysis of FOI data below has tried to understand the size and nature of the problem within the exempt accommodation sector. It suggests that most exempt accommodation is of good quality and an essential part of the housing and support offer for people who require help in the short or long term.

The freedom of information (FOI) data

The FOI data is derived from the DWP's single housing benefit extract (SHBE) – the official source of data on HB statistics. While this is usually a reliable source for all the main HB variables, there are some concerns about its reliability when it comes to identifying the scale of supported (exempt) and/or temporary accommodation. This is because the data is a relatively new variable and when introduced in 2015, there may have been some variance in the way and the pace at which local authorities implemented the change. If these issues were resolved, we would expect it to be more easily reconcilable with other data sources such as the DWP/DCLG supported accommodation review of 2016 and the local authority HB subsidy returns.

We therefore need to be cautious about the conclusions drawn from this data; whilst it may be useful for identifying broad trends and rough proportions by caseload type it would be unwise to state these as being the precise amounts at any given point in time. Ignoring the obvious anomalies, the total caseload shows a steady rising trend from January 2016 to March 2021 from 88,000 to 152,000. The steadiness of the trend suggests that it is reasonable to conclude that there has been growth, but it would be unsafe to use the data to calculate a reliable estimate of the precise rate.

Although there are limitations in the FOI data that mean we must be cautious about drawing firm conclusions on the actual growth rates, if we assume these limitations are distributed evenly then we can say that the rate of growth has been steeper amongst registered providers (RPs) than it has been for other 'social' landlords and private landlords. The FOI data suggests that 'other-social landlord' and 'private landlord' sub-sectors have experienced similar growth rates, which is somewhat less than for RPs (by about 50 percent). If the difference (if not the scale) is real, then this would support the hypothesis that the financial incentives provided by RP status is a driver of growth.

Bearing in mind the weaknesses in the FOI/SHBE, the approximate split in caseload by landlord type at March 2021 was as follows:

England only, excluding cases with earned income: Landlord	Caseload
Housing association	119,100
Other social rented	5,700
Other	27,100

This figure for RPs (circa 77 percent) is somewhat lower than data from the RSH (89 percent). But whatever the precise split, it gives us a range for the proportion of claims from non-registered providers (non-RPs) as being between one tenth to no more than just under a quarter of the caseload. Whilst it is known that some of the problematic housing is provided by private third-sector organisations it can only be a fraction of the problematic caseload even if organisations present a higher risk than RPs. It is too simplistic to attribute the problematic caseload to largely being about landlord type (or the landlord or

managing agent's constitutional arrangements). For example, it is known that some of the problematic caseload occurs where non-RP managing agents are 'piggy-backing' RPs to benefit from some regulatory privileges that registration brings (notably exemption from HMO/selective licensing and referral to the rent officer for HB subsidy).

What's the size of the problem?

There is little evidence to suggest that the exempt accommodation sub-sector has had long term problems any more than any other kind of social housing provision. That some authorities have reported serious problems about the quality of the accommodation and support provided is not in any doubt, but there is little or no evidence of these pre-dating the demise of Supporting People (and accompanying quality assurance framework). Rather, it seems the demise of Supporting People and the unintended consequences of other welfare reforms have created the environment that has led to the serious abuses. Loss of a funding source for any kind of direct provision (be it housing-related support or for new build social housing) will inevitably lead to loss of control over quality. To expect the same levels of control by restricting personal welfare payments (where the provider is a third party) whilst desirable, is unrealistic.

It should be remembered however that most of this sub-sector is not problematic, e.g., it includes specialist housing schemes for older and disabled people owned by RPs. When it was last reviewed the sector argued strongly for the retention of exempt accommodation, against the government's preferred solution for short-term supported housing of a locally devolved fund to supplement the HCE element of universal credit.

Although it is safe to say that the exempt accommodation sub-sector has experienced growth in recent years (even if we cannot draw firm conclusions about the real rate), the fact that it has grown does not mean that all the new provision is problematic and of questionable quality. We know that before this growth occurred most claims related to long term provision (typically sheltered/ extra care housing). The start of the FOI time series data (April 2016, before large scale migration to UC had occurred) suggests that only around 15 percent of the caseload at that time was identifiable as being short-term working age (income support and JSA cases) although this figure should be treated as only a rough approximation.

What does the Regulator of Social Housing (RSH) data tell us about problematic supported housing?

We can get some idea of the proportion of RP caseload that is problematic from the RSH data where the provider has been put on notice or has been given a non-compliant governance or viability rating (G3/G4 or V3/V4). At the time of writing there are 30 RPs where some sort of regulatory action is currently being undertaken, but only 20 of these own or manage units of supported housing and five of these 20 own or manage other housing (which may or may not be the source of the compliance issues). The total number of supported housing units owned or managed by RPs with either a non-compliant grade and/or with a regulatory notice is in the table below:

RSH data: supported housing units owned or managed by registered providers with compliance issues¹

	Landlord only has supported	Landlord has other units
Owned and directly managed	10,183	1,402
Owned but managed by another organisation	4,400	1,644
Managed for another organisation	1,751	47
Total	16,334	3,093

We do not know which of these units are exempt accommodation, or where the landlord owns or manages other housing whether the supported housing is the reason for the regulatory intervention. To put this in perspective, in 2021 the total number of supported housing units (including housing for older people) in England owned by RPs was 406,508². So, even if we assume all of these are exempt accommodation and are substandard it represents just under five percent of the total (though we do not underestimate the impact that this five percent can have).

However, it would be unwise to draw too firm conclusions from this not least because:

- landlords with compliant grades (G1/G2, V1/V2) may account for at least some of the exempt accommodation that is problematic
- the RSH may not yet be aware of landlords where there are compliance issues – and regulatory intervention may have been prompted by local authorities who have been active in enforcing standards (such as in the pilot authorities).

Most of these landlords have dispersed stock across several local authorities. Only one local authority outside Birmingham has more than 150 supported units in its area owned by one of these providers. The clear outlier is Birmingham which has over 5,500 between four.³ The city council's figures show that overall, the total number of exempt

¹ Units owned or managed in 2021, RSH returns (2021). Note that these numbers won't necessarily be the same as when the notice or regrading was issued: Private registered provider look-up tool

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027007/PRP_TOOL_2021_Final.xlsx

Current and previous regulatory judgements and notices table

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1042734/Regulatory_judgements_notices_2021.12.22_Published.xlsx

² Regulator of Social Housing, Private registered Provider, Additional Tables

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037735/SDR_2020_to_2021_additional_tables_v1.2_FINAL.xlsx

³ Comprising: Trinity HA Ltd, 334 units; Sustain (UK) Ltd, 2468 units; Prospect Housing Ltd, 1473 units; New Roots Ltd, 1279 units (as of December 2021).

accommodation units (RP and other landlords) increased from 11,455 in 2016/17 to 16,098 in 2019/20 and in the following 18 months at a steeper rate to 18,700⁴.

**How should the regulatory oversight of exempt accommodation be organised?
What should be the regulations governing exempt accommodation and how should those regulations be enforced?
Is the current model of exempt accommodation financially viable, and does it represent value for money?
What is the quality of exempt housing provision?**

To understand how the regulatory oversight might better be organised it is essential to understand what is driving abuse. Working with Crisis UK, CIH conducted a review of the legislation and guidance with respect to HB and exempt accommodation and other connected housing legislation covering the regulation and enforcement of housing standards for both private and social landlords in England namely:

- the parts of the housing benefit legislation concerning exempt accommodation, eligible rent, and service charges⁵
- the Social Security Administration Act 1992, part 6 which covers fraud and enforcement
- the Housing Act 2004, parts 1 to 3 which regulates standards of accommodation for private landlords and private registered providers and sets the local authorities enforcement powers. Part 1 covers the 'Housing Health and Safety Rating System' (HHSRS); part 2, HMO licensing; and part 3, selective licensing schemes
- the Housing and Planning Act 2016, part 2 which extends local authority powers to deal with rogue landlords including the introduction of banning orders
- the Housing and Regeneration Act 2008, part 2 which sets out system of regulation for social landlords in England including the powers of the Regulator of Social Housing, as amended by the Localism Act 2011 and the Legislative Reform (Regulator of Social Housing) (England) Order 2018, No. 1040.

Our main finding is that there are gaps in how these regulatory systems fit together which provide powerful financial incentives for bad faith actors to exploit and gain an advantage over their competitors. Anecdotal evidence from the exempt accommodation pilots about the kinds of abuse that cause the most widespread problems seems to support the conclusion that it is these gaps in regulation rather than the fact that HB pays higher rents for exempt accommodation that is driving the kinds of problems that local authorities have faced. The main gaps that occur are as follows:

- under the exempt accommodation rules (see above) the claimant can receive HB up to the full market rent. This becomes problematic when it is exploited by bad

⁴ Birmingham City Council, paper by Guy Chaundy – Senior Service Manager Housing Strategy

⁵ [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006](#), schedule 3, paragraphs 4 and 5; and the Housing Benefit Regulations 2006, [schedule 1](#) which covers ineligible service charges

faith actors in conjunction with regulatory gaps set out below that put tenants' health and safety at risk

- what counts as 'exempt accommodation' is not tied to any property standards or property management related conditions if the landlord is a not-for-profit RP of social housing, all its properties are exempt from HMO licensing⁶ - including where the property management is carried out by a third party, and even if that third party is not themselves a registered provider
- the local authority can use its part 1 (HHSRS) Housing Act powers against a RP but are usually reluctant to do so unless a category 1 hazard exists, assuming that they are aware of the property, in most cases from a complaint
- if the landlord is a not-for-profit RP any properties that are let at a market rent are not 'social housing' and therefore also fall outside the consumer regulation and the RSH can only use its economic regulation powers (financial viability and the rent standard). If the lettings qualify as specialist supported housing the landlord will also be exempt from the rent standard
- the general data protection regulation means that information held by the RSH about rents and service charges cannot be shared with the HB department without the landlord's permission (unless the authority has evidence of fraud)
- if the landlord is a not-for-profit RP, they can be confident the authority won't refer the HB claim to the rent officer because it is likely to result in a reduction in the HB subsidy the authority receives
- HB departments have lost their powers to prosecute for HB fraud so bad-faith landlords can push the boundaries of legality to their limits
- conspiracy to defraud and theft are banning order offences but are difficult to prove in relation to benefit payments. The statutory social security offences are easier to prove but are not banning order offences.

Providing enhanced help with housing costs for people living in supported housing is not of itself problematic. Indeed, in the absence of severely restricted funding for housing-related support it plays a valuable role in the prevention of 'revolving door' homelessness and in helping others to live independently.

CIH believes that to provide good quality supported / exempt accommodation for the diverse groups of people and range of needs that the sector supports requires more direct funding for both accommodation and support services (in our recent spending review submission⁷ we argued for £1.6 billion national, ring fenced funding for housing support⁸).

Although there may sometimes be issues with the quality of support provided there is little evidence of regulatory failure with sheltered housing or with other long-term support that exempt accommodation helps to fund. The evidence of regulatory failure that exists (and which we take seriously) seems to support the conclusion that most of problems associated with exempt accommodation occur in the sub-sector for non-commissioned short-term support.

⁶ Housing Act 2004, s.254, 263 and schedule 14 para 2(1)(aa)

⁷ <https://www.cih.org/publications/cih-comprehensive-spending-review-submission-2021>

⁸ This would merely restore the funding to the 2009 level immediately before the ring fence was removed

As a rule, CIH does not support using help with personal housing costs to regulate the cost or quality of accommodation for several reasons which include:

- the link between price and quality generally is weak (location determines the price) with the cost of improvements rarely covered by the marginal increase in rent⁹
- assessing quality requires assessment by a third party which severely constrains administrative efficiency (and in any case the decision maker does not have 'independent jurisdiction to determine whether or not a provider is complying with some other regulatory regime'¹⁰)
- restricting HB penalises the service user rather than the provider who can still demand the shortfall (Rent Repayment Orders are a more appropriate tool).

However, in the case of non-commissioned exempt accommodation we think that linking benefit payments to quality standards is justified to close the regulatory gap that is driving the abuse. There is no justifiable excuse for placing vulnerable tenants in properties that are known to present the greatest risk to the health and safety of the occupiers. The regulatory gaps need to be closed; we think this is possible without adding new burdens to the parts of the scheme where it already works well. Our main recommendations - which we are continuing to refine working closely with our partners Crisis and in consultation with housing professionals and the housing industry - are:

- a further condition is added to benefit regulations that define exempt accommodation to the effect that the landlord agrees to adhere to any reasonable property management related conditions that the authority reasonably requires to ensure the health and safety of the occupiers. This could include for example, that the landlord agrees to comply with the National Statement of Expectations¹¹ and/or (for non-RPs) be a member of the authority's landlord accreditation scheme¹². The condition could expressly state that any requirement to comply with HMO standards would be deemed reasonable, including where that property would be an HMO but for the fact that it is managed by a RP.
- the RSH can set enhanced consumer standards for social housing, and this may include an expectation that properties that would be an HMO but for their RP status will comply with a national standard broadly equivalent to mandatory licensing conditions.
- the rules for selective licensing schemes are broadened to include properties that would be an HMO but for an exemption. Selective licensing could potentially be used to target only those landlords that are problematic (but this would require

⁹ Leather, P. (1999) *Housing Benefit and Conditions in the Private Rented Sector*. York: Joseph Rowntree Foundation/University of Birmingham

¹⁰ *AG v South Ayrshire Council* [2017] UKUT 110 (AAC), reported as [2018] AACR 18

¹¹ Supported housing: national statement of expectations, MHCLG/DWP (2020)

<https://www.gov.uk/government/publications/supported-housing-national-statement-of-expectations/supported-housing-national-statement-of-expectations>

¹² This is a reasonable condition to avoid enforcement escalation see: [Rogue Landlord Enforcement Guidance for Local Authorities](#), para 2.20; *Humber Landlords Association v Hull CC* [2019] EWHC 332 (Admin)

- primary legislation¹³). Rent Repayment Orders could then be used where landlords refuse to comply.
- the RSH should be given the power to refuse registration in certain circumstances (at the present the RSH cannot refuse to register any landlord that meets the basic criteria).
 - the welfare benefit information sharing regulations¹⁴ should be amended to allow the national regulator to share information about rents and service charges with the local authority.
 - the banning order offences regulations¹⁵ should be amended to include Social Security Administration Act offences. Restoring local authority powers to prosecute for these offences where it relates to exempt accommodation would help to act as a deterrent to bad-faith landlords looking to exploit the rules. Banning orders could be used to prevent ‘pop-up’ landlords returning by creating and registering a new company.

We are aware that some of the problems identified may be mitigated through separate government reform proposals. In particular, the proposal for a national landlord registration scheme as part of the Renters’ Reform Bill would facilitate a more strategic approach to Housing Act enforcement whilst the review of social housing regulation may close some of the regulatory gaps we have identified.

In addition to these changes, CIH believes that there are several examples of good professional practice that can be learned from the pilots that could be used by other authorities when they encounter systematic abuse, e.g., closer scrutiny could be made of claims to identify ineligible service charges that are disguised as ‘intensive housing management’¹⁶. We look forward to the publication of the evaluation from the local pilots.

Is there sufficient publicly available information about exempt accommodation?

The discussion of the limitations of the data provided under the FOI above demonstrates the lack of adequate information consistently collected on non-commissioned exempt accommodation. Recommendations for more robust and consistent data collection would be a useful outcome, to support a strengthened regulatory approach and assurance of quality and value for money.

¹³ HMO and selective licensing can only be defined geographically, unlike banning orders which apply to individuals and companies

¹⁴ [The Social Security \(Information-sharing in relation to Welfare Services etc.\) Regulations 2012](#)

¹⁵ [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#)

¹⁶ *Allerdale BC v JD and others* (HB) [2019] UKUT 304 (AAC)

About CIH

The 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. 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.

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Further information is available at: www.cih.org