

Crisis' response to the Communities and Local Government Committee's Private Rented Sector: Combatting 'rogue landlords' inquiry

Crisis is the national charity for single homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change.

Our innovative education, employment, housing and well-being services address individual needs and help homeless people to transform their lives. We measure our success and can demonstrate tangible results and value for money. We are determined campaigners, working to prevent people from becoming homeless and advocating solutions informed by research and our direct experience.

Over the last decade the private rented sector has expanded dramatically and is increasingly being used to meet housing demand and provide long term homes for a growing range of households. Crisis has first-hand experience of working to help people into the private rented sector and so we know that it can be a viable housing option, even for vulnerable people, with the right support and safeguards in place. At present, however, there are serious problems and the sector is not fit for purpose.

Conditions in the private rented sector

Conditions in the private rented sector are much worse than all other tenures. Thirty per cent of homes in the private rented sector fail to meet the government's Decent Homes Standard.¹ This compares to 19% of owner occupied homes and 15% of social rented homes.

Poor conditions are much more likely to be concentrated in the bottom end of the sector. Research undertaken by Crisis and Shelter² tracked the experiences of 128 households over a 19 month period. The participants had previously been homeless and had subsequently been housed in the private rented sector. Every home had a problem with poor conditions. Some were extremely severe and many got progressively worse. The most common problems were damp and mould. This made people's homes very cold and had a significant impact on their health and wellbeing.

Professional standards in the private rented sector are low. The private rented sector is a largely unregulated sector. Whilst some landlords wilfully flout regulations, many more are simply ignorant of their responsibilities. Only 8% of landlords are full time landlords and more than three quarters (78%) of all landlords only own a single dwelling for rent.³

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

Licensing can be a valuable tool for local authorities to help improve conditions and professional standards in their area. It provides local authorities with basic data on landlords and the stock they own, which is not currently collected elsewhere. This data allows local authorities to better target properties in poor conditions for inspection as well as targeting educational resources at amateur and accidental landlords who lack knowledge on their rights and responsibilities. Licensing can also allow local authorities to require landlords to abide by conditions, additional to the legal requirements, to help improve standards and tackle poor practice. These include, for example,

¹ DCLG, (2015), English Housing Survey Headline report

² Smith, M., Albanese, F. and Truder, J (2014) A Roof Over My Head: Sustain: A longitudinal study of housing outcomes and wellbeing in the private rented accommodation. Crisis and Shelter: Big Lottery Funded.

³ DCLG, (2010), Private Landlords Survey.

providing tenants with a written tenancy agreement and undertaking regular electrical safety checks.

In order to ensure that licensing is effective in improving conditions in the sector, it should be accompanied by enforcement work. It is also essential that appropriate support is provided for tenants who are at risk of homelessness as a result of the behaviour of 'rogue' or criminal landlords.

There are three tiers of property licensing in England:

- Mandatory licensing, which applies to all large Houses in Multiple Occupation (HMOs), wherever they are in the country.
- Additional licensing, which applies to smaller HMOs, where the council adopts a scheme.
- Selective licensing, which applies to other non-HMO private rented properties, where the council adopts a scheme.

The London Borough of Newham operates all three tiers of property licensing and introduced the country's first borough-wide selective licensing scheme in January 2013. This has allowed them to build up an accurate picture of the private rented sector in their area. Before Newham Council introduced mandatory landlord licensing, it had estimated that the borough had 30,000 private properties rented out by around 5,000 landlords. But as a result of the licensing process, it discovered 50,000 rental properties owned by 27,000 separate landlords.

Licensing has enabled Newham Council to:

- Successfully identify criminal landlords and require all landlords to adhere to a basic set of conditions including levels of occupation, tenancy management and property standards.
- Instigate 1,135 prosecutions for housing crimes – 70% of all such prosecutions in London.
- Ban 28 of the borough's worst landlords.
- Issue more than 2,000 improvement notices to tackle poor conditions.
- Recover £2.6m in additional council tax.⁴

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

Local authorities often struggle to tackle poor conditions and standards in the sector and strategically enforce against the very worst landlords because of a lack of resources and basic data on private landlords and stock in their area. As outlined above, property licensing can be a valuable tool to help local authorities enforce standards in the private rented sector and deal with 'rogue landlords'. The government have recently introduced restrictions that further limit local authorities' ability to introduce selective licensing schemes.

Since 1 April 2015, local authorities have had to seek confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of privately rented homes in the local authority area. This provides an additional barrier to local authorities who are proactively trying to improve standards in the private rented sector, and already face expensive investigative and

⁴ 'Half of landlords in one London borough fail to declare rental income', The Guardian, 13 August 2017. <https://www.theguardian.com/business/2017/aug/13/half-of-landlords-in-one-london-borough-fail-to-declare-rental-income>

consultation costs to demonstrate the need for such a scheme in their area. This will make it much more difficult for local authorities to introduce licensing schemes. We are particularly concerned given that the government has outlined its objections to borough wide licensing, and since the changes were introduced in 2015 the government have refused permission for the majority of applications for borough-wide selective licensing schemes. Local authorities are best placed to decide whether selective licensing is the most appropriate tool to improve the private rented sector in their area and should be given the greatest flexibility to improve conditions right across the sector. We urge the government to reconsider this decision.

In December 2016 the government consulted on proposals to extend the mandatory licensing of HMOs. Crisis recommends that HMO licensing should be extended to any property that is let to three or more people in two or more households because property conditions and management relate more directly to the size of the household than the number of storeys. This should also help to remove any confusion that arises for landlords and councils when deciding when to apply for and grant an HMO licence. Crisis also agrees that properties let below or above a business premises should be subject to licensing requirements due to the potential increased risk of fire. Poorly converted blocks of flats should also be brought under the scope of HMO licensing. They are often in a much poorer condition than other dwelling types: 40% of converted flats fail to meet the government's decent homes standard; 23.4% contain category 1 hazards; 23.4% contain substantial disrepair; and 10% have damp in one or more room⁵. What's more, the extension of the shared accommodation rate (SAR) demonstrates the government's intention that more people will live in shared accommodation, and HMO licensing should be amended to reflect these changes.

Whilst we support the government's plans to extend HMO licensing we are concerned however, that it could potentially have a negative effect on the supply of affordable shared accommodation, particularly for people who are only eligible for the SAR. Despite more and more people in housing need and in receipt of housing benefit relying on the private rented sector, landlords have become much more reluctant to let their home to private tenants in receipt of housing benefit. Evidence from the National Landlord Association in 2013 showed that fewer than 1 in 5 (22%) landlords were willing to let to tenants on housing benefit. This figure was a marked drop from 46% of NLA members who were willing to let to tenants in receipt of housing benefit in 2010. They claim that this is a problem that is getting worse⁶. Government research on the impact of changes made to housing benefit since 2011 (including the extension of the SAR) details a number of serious problems around the availability, affordability and appropriateness of shared accommodation for different groups in different areas of the country⁷.

We would therefore recommend that local authorities consider providing a discount for landlords who let rooms in an HMO at the SAR to make it more attractive to do so. We also recommend that local authorities consider providing longer licences to landlords who do provide good quality accommodation, which requires no enforcement work from the local authorities. We hope that measures introduced in the Housing and Planning Act to allow local authorities to issue civil

⁵ English Housing Survey 2013: profile of English Housing, (July 2015), Table 3.3, Different types of housing conditions problems by dwelling characteristics, 2013

⁶ House of Commons Work and Pensions Committee (2014), Support for housing costs in the reformed welfare system, fourth report of session, 2013-14. London: House of Commons.

⁷ DWP (2014) The impact of recent reforms to Local Housing Allowances.

<https://www.gov.uk/government/publications/local-housing-allowance-monitoring-the-impact-of-changes>

penalties of up to £30,000 as an alternative to prosecution for certain offences, as well as our proposal to increase licensing fees for landlords who continue to poorly manage their properties, should help to offset these discounts to landlords who provide a good service.

In order to ensure that licensing is effective in improving conditions in the sector, it should be accompanied by enforcement work. Local authorities should be given greater powers to take over the management of a property in very poor standards quickly to ensure that conditions are improved and tenants are not made homeless. We would envisage that this would work in a similar way to the use of Empty Homes Management Orders. To account for the cost of managing a property in very poor condition, the local authority should be able to charge the landlord a management fee. In addition, the local authority should be able to reclaim the cost of bringing the home up to the decent homes standard, which it would legally be required to meet if it was being let by the local authority. In circumstances where the landlord cannot do this, DCLG should ensure that local authorities have sufficient funds to carry out work to properties to ensure that they comply with the housing health and safety rating system. This would help relieve the burden on local authorities and ensure that the supply of shared accommodation isn't adversely affected.

In many areas local authorities do not have the capacity to effectively enforce standards in the private rented sector. Local authority environmental health teams are significantly under resourced. Average budgets allocated to environmental health services per head of the population has fallen by 8% in two years and 1,272 jobs were lost in environmental health offices between 2010–12⁸. In 2005, over half of all local housing authorities in England employed fewer than five full-time members of staff on private sector housing renewal activity⁹.

Tenancy relations teams have also faced significant cuts and many local authorities don't have a team at all. Tenancy relations services play an important role in supporting private sector tenants who are having problems with their landlord, including in cases where tenants have been illegally evicted. Crisis supports the Association of Tenancy Relations Officers' recommendation to make it mandatory for local authorities to investigate alleged illegal eviction offences, and to prosecute cases where there is sufficient evidence. Crisis also recommends that government place a statutory duty on local authorities to provide a tenancy relations service, whose role is to help mediate between tenants and landlords when problems arise and to investigate allegations of illegal evictions.

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

A lack of data on landlords and the properties they let makes it extremely difficult for environmental health teams, who have faced significant cuts, to effectively target enforcement work. We also know that tenants are often reluctant to refer problems to their local authorities, again making it very difficult to identify and enforce against rogue landlords. The lack of available data also makes it very difficult for local authorities to target educational training and resources at amateur and accidental landlords. This challenge is reflected in the very low proportion (5%) of accredited landlords¹⁰.

⁸ Unison (2012) Environmental Health: how cuts are putting individuals and communities at risk and damaging local businesses and economies.

⁹ Local Government Association (2013) Future funding outlook for council from 2010/11 to 2019/20.

¹⁰ Gousy, Hannah (2014) Safe and decent homes. Shelter: London.

It is vital that the government makes existing data held by various schemes about private landlords and the properties they own available to local authorities. This should include the data held by the Tenancy Deposit schemes, the Gas Safe register and land registry records. Furthermore, any legislation should be retrospective to ensure that data already held by the schemes can be disseminated to local authorities. The schemes should also be required to share data on both the property and landlord contact details.

Crisis also recommends that the government provide good practice guidance for local authorities on how to best share data sets across departments in order to most effectively identify landlords and rented properties which will not appear on these centrally held data sets. In particular, we would recommend that the government draw on the work of the London Borough of Newham who have designed a system that enables them to cross reference housing benefit, council tax, land registry and a number of other records in order to identify landlords who have failed to comply with borough wide licensing.

It is also important that local authorities and prospective tenants have access to information about landlords and letting agents who have committed housing related offences. The government introduced a database of rogue landlords and property agents convicted of certain offences in the Housing and Planning Act 2016. The database, which came into force on 3 November 2017, will enable local housing authorities to record information about, and target enforcement action against, any landlord who has received a banning order under the Housing and Planning Act 2016; been convicted of a banning order offence; or received 2 or more civil penalties over a 12 month period. This will go some way to helping local authorities identify and target enforcement action against 'rogue landlords' however the database will only include a limited amount of data. For example, if a landlord has only received one civil penalty, this cannot be added to the database. Crisis recommends that DCLG publishes a list of landlords and letting agents who have been convicted for: a housing related offence; an offence involving fraud, violence, drugs or sexual assault which was committed at any residential premises; or an offence committed against a tenant.

This information is already publicly available, so there would be no data protection issues in making this more accessible. Making the data available to tenants as well as local authorities would allow renters to act more effectively as consumers and help drive up conditions within the sector. Greater consumer power alone however, will not necessarily lead to the improvement of conditions, particularly for the most vulnerable tenants living at the lower end of the sector. For this reason, it will be vital that local authorities utilise this source of data to most effectively target their enforcement work.

The Housing and Planning Act allows local authorities to apply for a banning order to prevent a particular landlord or letting agent from continuing to operate where they have committed certain housing offences. The courts should also have the discretion to ban landlords who have committed one of the offences listed above, regardless of whether the local authority has made an application for a banning order. This measure will help relieve local authorities from additional administrative burden of applying for a banning order following a prosecution.

As highlighted above, local authorities often lack the resources and capacity to effectively intervene and enforce standards in the private rented sector. The ability to introduce borough-wide selective licensing schemes could help to generate both the data and the resources needed to achieve this.

Fixed penalty notice fines can also be an effective way for local authorities to tackle poor conditions in the private rented sector and generate additional income to support further enforcement and improvements work. New measures introduced in the Housing and Planning Act allow local authorities to issue civil penalties of up to £30,000 as an alternative to prosecution if landlords fail to comply with an Improvement Notice, commit offences in relation to licensing, contravene an overcrowding notice or fail to comply with management regulations in respect of HMOs. To ensure the fines are used for this purpose they should be ring fenced within local authority budgets to help improve the condition of properties in the private rented sector and help fund enforcement teams, which have faced significant cuts over the last five years.

The use of fixed penalty notices should be restricted to less serious and first time offences. We would strongly oppose the prolific use of fixed penalty notices for repeat offenders, for whom an initial notice had clearly not served as a deterrent. The government should attempt to ensure that the use of fixed penalty notices is standardised across local authorities, particularly given that prosecutions could result in a landlord being banned. We would otherwise have concerns that landlords operating in different areas, committing exactly the same offences and letting properties in a poor condition, could face very different penalties, which could result in one landlord being banned and another continuing to let out properties.

The local authority should be able to issue a fixed penalty of up to £5000, in line with the amount they are able to fine a letting agent for not being a member of a redress scheme or failing to display their fees correctly. In addition to a financial penalty, Crisis recommends that, in the absence of a mandatory register of landlords, the local authority should have power to require landlords to undertake mandatory training or join an approved accreditation scheme if they have been issued with a fixed penalty notice for renting out a property in poor conditions. This would help improve professionalism and skills within a sector which is largely dominated by amateur and accidental landlords.

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

A number of local authorities either run effective Help to Rent schemes to support clients who are homeless, threatened with homelessness or vulnerably housed to create and sustain tenancies, or work with partner organisations to deliver these services. Help to Rent projects de-risk the private rented sector and make it a viable option for both landlords and vulnerable tenants. They work with local landlords to set up a tenancy and ensure it is sustainable for the tenant by providing ongoing support.

Schemes attract landlords by offering a suite of services to mitigate the risks that might otherwise be associated with letting to a tenant who has experience of homelessness and is in receipt of housing benefit. Those services might include helplines for landlords and tenants, inventory services pre- and post-tenancy, and in some instances rental guarantees for a specified time period. Inexperienced landlords will receive training on how to manage complex tenancies and a named point of contact if something goes wrong. Anecdotal evidence from the Help to Rent projects Crisis helps fund and from Crisis Skylight Housing Coaches indicates that this support is the service most valued by

landlords¹¹. The tenant will receive structured support throughout the tenancy, to ensure the accommodation remains suitable and help gaining and maintaining employment.

Help to Rent projects also help tenants to overcome some of the financial barriers to accessing a private rented sector property, including deposits and rent in advance. This could be through helping tenants to access existing funds, such as Discretionary Housing Payments (DHPs) or Local Welfare Assistance schemes, or by providing a rent deposit guarantee through the project's own bond scheme. A rent deposit guarantee is a written commitment in place of a cash deposit, from a Help to Rent project to a landlord. It covers certain types of costs that the landlord may incur at the end of a tenancy including damages and in some cases rent arrears. In some areas of the country, including London, the package of support which is provided by Help to Rent projects (including our Skylight centre in Brent) has encouraged landlords to lower rents to homeless households, making the market more affordable and sustainable for low income households.

Cambridge City Council – Town Hall Lettings

Cambridge City Council formed Town Hall Lettings in January 2014 in response to the needs of people seeking accommodation and the needs of local landlords. The social lettings services helps people who are homeless or at risk of homelessness to access good quality, local, affordable accommodation, and provides a service for landlord that makes financial sense and addresses their concerns about renting properties to people on low incomes.

Oxford City Council – Deposit Guarantee Scheme

Oxford City Council have set up a Deposit Guarantee Scheme that aims to help people in need of housing and on a low income afford to move into private rented accommodation. Through the scheme the council can issue a Deposit Guarantee Bond to a landlord to cover rent arrears to damage causes by the tenants of the property. The scheme is especially aimed at provided support for people who are homeless or at risk of homelessness but are unlikely to be entitled to the full statutory homelessness duty from the local authority.

Help to Rent projects have been shown to be very successful for helping homeless people to access a home in the private sector and sustain their tenancy. From 2010 to 2014 Crisis ran the Private Rented Sector Access Development Programme, a £10.8m DCLG funded programme that saw the set up of 153 Help to Rent projects across England. More than 8,000 tenancies were created through the programme and they had a 90% sustainment rate of tenancies at the six month point and made over £13.5m savings in one quarter through their intervention¹².

Despite this clear success, many project have struggled to secure funding since the DCLG programme ended in 2014. Although, some additional funding was provided between 2014 – 2016 and some schemes have been successful at securing funding through alternative sources, an increasing number of schemes have reported difficulties acquiring funding and insecurity about their future beyond the programme. There is clear demand for further funding for Help to Rent projects. In 2016 Crisis received 129 applications for a £300,000 funding programme to help homeless people access private rented sector accommodation and in some cases also to help people access shared

¹¹ Gousy, H (2016) Home: No less will do. London: Crisis.

¹² Gousy, H (2016) Home: No less will do. London: Crisis.

accommodation in the social rented sector. We were only able to provide funding for six projects over two years, demonstrating that demand for these services far exceeds the funding available.

Crisis is calling for the government to fund the expansion of Help to Rent projects and a national rent deposit scheme to ensure low income households who are homeless or at risk of homelessness can access affordable accommodation in the private rented sector.

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

Sustain, a three-year longitudinal qualitative study of people housed in the private rented sector by local authorities and other organisations, conducted jointly by Crisis and Shelter, found of the 128 households that participated in the research, all of them experienced a problem with conditions over the 19 month period that they were interviewed¹³. Over time landlord responses to repair or conditions requests became a major factor in how the tenant felt about the property and its impact on their life. Landlords tended to be more responsive to repairs (for example, fixing heating issues) than conditions (such as damp). But often the standard of repair was very low and addressed the problem in a superficial way. When landlords did agree to undertake repairs, delays were common, which kept tenants waiting and prolonged their impact. For example, malfunctioning boilers generating no hot water meant people had to try alternative options to wash.

The Housing and Planning Act 2016 extended rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences. Crisis supports this extension, as if a property is not considered safe for the tenant to live there, then the landlords should be expected to repay some of the rent money they have been receiving.

Crisis also agrees that local authorities and tenants should have the right to apply for a Rent Repayment Order where a tenant has been illegally evicted. However, we are concerned that very few people would be eligible to claim a Rent Repayment Order because cases are rarely investigated and very few landlords are prosecuted. Local authorities rarely used the enforcement powers they have under the Protection from Eviction Act 1977 and police forces often think that illegal eviction is a civil matter and it is rare that they would investigate an offence unless violence has been used. This is largely because tenancy relations teams, who would have traditionally carried out this function, have faced significant cuts and many councils no longer a team at all. In 2011 only 13 successful prosecutions occurred for unlawful eviction¹⁴. Crisis strongly recommends that DCLG issue a toolkit for police to inform them of their duty and the actions they should be taking in this situation.

Crisis supports the Association of Tenancy Relations Officers' recommendation to make it mandatory for local authorities to investigate alleged illegal eviction offences, and to prosecute cases where there is sufficient evidence. Crisis also recommends that government place a statutory duty on local authorities to provide a tenancy relations service, whose role is to help mediate between tenants and landlords when problems arise and to investigate allegations of illegal evictions.

The government should monitor the number of Rent Repayment Orders and introduce measures to make them easier to claim. This should include clear guidance to local authorities and tenants about

¹³ Smith, M., Albanese, F. and Truder, J (2014) A Roof Over My Head: Sustain: A longitudinal study of housing outcomes and wellbeing in the private rented accommodation. Crisis and Shelter: Big Lottery Funded.

¹⁴ Shelter FOI, 2012

their rights to make a claim, as well as giving magistrates the power to issue a Rent Repayment Order when prosecuting for illegal eviction and offences committed under the Housing Act 2004.