



Chartered
Institute of
Environmental
Health

Memorandum to the Commons Select Committee on Communities and Local Government Inquiry into the Private Rented Housing Sector

January 2013

1. Executive Summary

1.1 **On the quality of the private rented sector and steps that can be taken to ensure that all housing in the sector is of an acceptable standard**, the Chartered Institute of Environmental Health (CIEH) believes:

- That the housing renewal budget needs to be restored and that local authorities should use the funds in a strategic way.
- That the Government should conduct a review of the Housing Health and Safety Rating System (HHSRS) Enforcement Guidance and the ODPM Circular 5 (Regulatory Reform Order) on Housing Renewal.
- That too few LHAs use the HHSRS strategically; considerable improvements in the standards and quality of local PRS stock can be achieved, targeted at properties containing the most serious hazards.
- Pro-active inspections of larger landlords by LHAs would improve poor quality accommodation in the PRS.
- Closer co-operation between the LHAs and third sector bodies providing support or advice on housing related matters should be encouraged, helping tenants approaching the CAB and others by signposting them to the appropriate body to address poor housing conditions.

1.2 **On levels of rent within the PRS**, the CIEH believes rents should be limited, with regional variations, unless increases are necessary for investment in maintenance, in order to bring much needed stability and the conditions for sustained improvement in accommodation condition.

1.3 **On regulation of landlords**, the CIEH

- Supports the case for a national register of landlords, alongside action by LHAs to establish properly developed strategies for dealing with the PRS based on sound evidence.
- Believes that the criteria for establishing selective licensing schemes should be widened and the schemes made more flexible; this should be developed and prescribed by government and should form unequivocal guidance to LHAs
- Believes that landlords should be required to be accredited
- Supports an exemption to notice of entry where an imminent risk is anticipated or where giving notice could be detrimental to the purpose of the visit or where the LHA cannot easily obtain contact details for the landlord

1.4 **The CIEH supports the compulsory regulation of letting and management agents by an independent body.**

1.5 **On the regulation of HMOs** the CIEH

- Supports the setting up of a national accreditation scheme setting standards on minimum room size, fire safety and amenities for example.
- Supports additional guidance on the "only or main residence" criteria
- Believes that the Government should correct the anomaly which allows individual units within HMOs not to need an Energy Performance Certificate, since an individual unit is not defined as a dwelling and is not deemed to be covered by the EU Energy Performance of Buildings Directive.

1.6 **On tenancies**, the CIEH:

- Believes that they should be increased; that powers to evict a tenant should be reduced if a Housing Act notice for a Category 1 hazard is outstanding and that LHAs should only be required to give notice to the occupiers to inspect property and not the owners; and
- Supports the establishment of written tenancy agreements using a model agreement set out in government guidance.

1.7 **On the ways that local authorities are discharging their homelessness duty**, the CIEH believes:

- That the wording of the Homelessness (Suitability of Accommodation) Order 2012 should be amended to make clear that local authorities **MUST** arrange an inspection of a property to ensure no Category 1 hazards exist before it is used; and
- That such inspections must be carried out by suitably qualified persons and/or those trained properly in the use of the HHSRS system.

1.8 **The CIEH would welcome the opportunity to give oral evidence to the Select Committee in support of its submission.**

2. The quality of private rented housing, and steps that can be taken to ensure that all housing in the sector is of an acceptable standard

- 2.1 The private rented sector (PRS) has increased by 1.5 million homes since 2001, with the proportion of 17% equalling that of the social rented sector in 2010¹. Demand has outgrown supply, increasing the cost of renting, with average rental increases in the last year being 4.3%².
- 2.2 40% of PRS homes are over 90 years old, and nearly 30% have serious hazards compared to 13% in the social rented sector³. One of the most common hazards is excess cold and the PRS has the lowest levels of cavity wall insulation, loft insulation and double glazing. Overall average energy efficiency ratings are considerably lower; DECC's own estimates show 42% of PRS households in F or G rated homes are in fuel poverty.
- 2.3 The PRS is an increasingly important source of housing for vulnerable people. Changes taking place in respect of homelessness and housing benefit are likely to increase the reliance of vulnerable households on low cost private accommodation. Standards of management vary enormously and there is a particular problem of upholding acceptable standards in some parts of the sector.
- 2.4 The increase in demand comes at the same time as reductions in local authority housing budgets. So while complaints about the most serious hazards under the HHSRS are reported to have risen by 25% in the last two years, the number of local authority staff available to respond to those complaints has fallen, probably by at least 10%.
- 2.5 The housing renewal budget in 2010/11 was £308m. Now it is zero. The impact of these cuts has been vast. Its aim was to deliver change and regeneration on a large scale, working through partnership across areas with weak housing markets, irrespective of local authority boundaries. Its loss has also had an impact, a "reverse multiplier" effect on small builders and other allied businesses. The budget needs to be restored and local authorities will need to use the funds in strategic ways.
- 2.6 GIS mapping facilities used within local authorities can map data on demographic change to correlate against that on disrepair and category 1 hazards and areas of high benefit dependency. This data can be used more effectively to justify allocation of funding from Health and Wellbeing Boards to reduce such hazards and so further reduce the burden on health care services. Mapping and highlighting of indices of deprivation strengthens the case for funding using tools such as the HHSRS Cost Calculator to demonstrate the cost of intervention against NHS costs, for allocation of funding of grants and loans or even budgets for works in default.
- 2.7 Spending cuts alone do not fully explain lower standards of repair in the sector. Local authorities need to make more effective and consistent use of their powers and duties under Part 1 of the Housing Act 2004 to improve health and wellbeing. The CIEH has pressed the Government to review HHSRS Enforcement Guidance and Advice and the ODPM Circular 5 (Regulatory Reform Order) on Housing Renewal.

¹ English Housing Survey Homes Report 2010 (DCLG)

² RICS Residential Lettings Survey July 2012

³ EH Survey, *ibid*

- 2.8 Considerable improvements in the standards and quality of local PRS stock can be achieved by a strategic approach which will, by definition, be targeted at the worst properties containing the most serious hazards to the health and safety of tenants. Enforcement activity is but one tool to be used together with advice and education. Enforcement, properly used should be constructive and balanced; it should also cultivate a climate of cooperation and engagement with local landlords.
- 2.9 Pro-active inspections of larger landlords by LHAs would improve poor quality accommodation in the PRS. Councils should already be aware of where the worst housing conditions exist in their area and which landlords are less likely to maintain acceptable standards of accommodation; proactive inspection of a proportion of larger landlords' stock should be targeted and effective.
- 2.10 Closer co-operation between the local authority and third sector bodies providing support or advice on housing related matters should be encouraged, helping tenants approaching the CAB and others by signposting them to the appropriate body to address poor housing conditions.

3. Levels of rent within the PRS

- 3.1 With the housing market displaying an imbalance of demand over supply and the cost of renting increasing consistently since 2009, access to suitable housing for lower income groups increasingly depends on housing benefit payments. This has serious inherent problems.
- 3.2 Recently published research for the Pro-Housing Alliance⁴ shows that welfare reforms are having a detrimental effect on the health and wellbeing of private tenants who claim Housing Benefit.
- 3.3 We think that action is required to bring much-needed stability to the market and for sustained improvement in accommodation condition. Rents should be therefore limited, with regional variations, unless increases are necessary for investment in maintenance.

4. Regulation of landlords

- 4.1 The CIEH supports the case for a national register of landlords, alongside action on the part of LHAs to establish properly developed strategies for dealing with the PRS, based on sound evidence. Responsible landlords need have no fear of registration or accreditation.
- 4.2 It is important that responsibility for any enforcement activity in respect of a register should not place undue burdens on LHAs, the majority of which experience difficulties in fulfilling their current duties and responsibilities in respect of the PRS.
- 4.3 We believe that the criteria for establishing selective licensing schemes should be widened and schemes made more flexible. There would be considerable merit in adding to the criteria for schemes the existence of a high proportion of properties containing category 1 hazards as well as other local issues, such as crime, vandalism, graffiti, high levels of harassment or eviction etc, that may be having an adverse effect on the sustainability of the local community.

⁴ See <http://www.prohousingalliance.com/wp-content/uploads/2012/11/GLHS-report-final4-11-12W2007NoLogo.pdf>

- 4.4 The PRS has too many inexperienced landlords who own a small number of properties and are unaware of their legal obligations. 89% of all landlords are private individuals, with 78% owning just one dwelling⁵. There should be a renewed focus by government to support landlord organisations in their efforts to increase membership.
- 4.5 Improving competence among landlords is critical to improving standards and management in the PRS. The basis of more effective coverage is consistency and a national model based on the best of the existing schemes needs to be developed and prescribed by government and should form unequivocal guidance to LHAs. Greater regional collaboration between small LHAs should be actively promoted and encouraged to enable all landlords to have access to the benefits of accreditation.
- 4.6 We believe that landlords should be accredited, with training being an essential element. This also represents an opportunity for greater self regulation, a necessary element of efficient regulation in a climate of diminishing resources. Accreditation and training should include property and management standards, together with a requirement for landlords to sign up to a code of good practice in return for tangible benefits such as subsidised training to support continuing professional development and tax breaks for landlords who certify they have improved the sustainability of their properties.
- 4.7 Self-accreditation schemes on their own are insufficient; they could bring formalised schemes into disrepute, since they allow the possibility for landlords to declare themselves accredited with no sanction if they do not properly manage their properties or comply with their legal responsibilities. Schemes such as the London Landlord Accreditation Scheme have generated significant improvements in the rental stock.
- 4.8 Our members working in housing often find there is little consistency in fines imposed by magistrates on landlords; neither do they act as effective disincentives. More training is needed for magistrates and members of Residential Property Tribunals so that fines are levied that act as a proper incentive for landlords to properly manage their portfolios.
- 4.9 Criminal landlords can be difficult to trace. Local authorities must give a minimum 24 hours notice to effect powers of entry in order to take formal action and whilst mandatory licensing and voluntary accreditation schemes allow for efficient registration systems enabling a local authority refer to identify relevant person(s), tracing elusive landlords can be costly and time consuming delaying enforcement action and prolonging the risk of illness or injury to occupiers living with disrepair.
- 4.10 We think that there should be an exemption to notice of entry where an imminent risk is anticipated or where giving notice could be detrimental to the purpose of the visit or where the LHA cannot easily obtain contact details for the landlord.

5. Regulation of letting agents

- 5.1 We support the compulsory regulation of letting and management agents by an independent body. It is simply not acceptable that any person can set up a lettings agency without appropriate qualifications, knowledge or understanding of the rental process. Letting and managing agents should be required to be members of an approved scheme. It is important that regulation incorporates a robust complaints and

⁵ CLG 2010 Landlord survey

redress system which has a clear independent focus. The regime should encompass agents operating in all tenures so as to ensure comprehensive coverage.

6. The regulation of houses in multiple occupation (HMOs) and the operation of discretionary licensing schemes

- 6.1 Although the Housing Act 2004 has been effective in improving conditions in HMOs through licensing, different Councils use the regulations for different purposes. A national accreditation scheme setting standards on minimum room size, fire safety and amenities for example should be established. The law should require landlords to inform the council if they have a HMO. This then allows councils to programme and prioritise in relations to the size and type of HMO.
- 6.2 The definition of an HMO in Housing Act 2004 has proved to be overly complicated and has substantially reduced the number of properties deemed to be HMOs. It should be broadened to include any property that has been converted to provide multiple dwellings and is mainly let on short term tenancies.
- 6.3 Our members have questioned whether the number of storeys in an HMO should be relevant to licensing criteria; some of the worst managed HMO's being only two storeys in height. Occupancy levels are felt to be incorrect: the requirement for three storeys **and** amenity sharing **and** five persons or more means that a three storey HMO can drift in and out of being licensable depending on its level of occupancy. This is cumbersome and complicated for both landlords and LAs.
- 6.4 There is a growing problem of HMOs above commercial premises (particularly food outlets or takeaways), where occupants sleep whilst working but have a permanent address elsewhere. In such cases standards of accommodation and fire precautions are often at the lower end but local authorities cannot treat them as an HMO. We would support additional guidance on the "only or main residence" criteria.
- 6.5 To date, the Government has not addressed a loophole in the regulation of HMOs which allows individual units within HMOs to not need an Energy Performance Certificate. As an individual HMO unit (rather than the whole property) is not defined as a dwelling, it is not deemed to be covered by the EU Energy Performance of Buildings Directive. We believe that the Government should correct this anomaly.

7. Tenancy agreements and length and security of tenure

- 7.1 Greater stability needs to be encouraged in the PRS; only with stability will come all-round incentives to improve standards in the sector. Tenancies should be increased as a start, with clauses that allow exit at six months. Powers to evict a tenant should be reduced if a Housing Act notice for a Category 1 hazard is outstanding.
- 7.2 Current powers of entry require notice to owners and occupiers. This has proved to be very bureaucratic and has delayed or hindered action against criminal landlords. Local authorities should only be required to give notice to the occupiers to inspect property and not the owners.
- 7.3 We support the establishment of written tenancy agreements using a model agreement set out in government guidance. The reluctance of tenants to complain is a direct consequence of the shortage of accommodation, insecurity of tenure and the fear of

retaliatory eviction. Landlords can simply refuse to renew short term tenancies and tenants can be intimidated from complaining about inadequate standards. For as long as the majority of tenancies are short term, proactive enforcement activity to identify and improve the poorest standard properties is essential to driving up standards.

8. How local authorities are discharging their homelessness duty

- 8.1 Local authorities can discharge their duty to house eligible homeless persons by allocating housing in the PRS, but it must be satisfied that the premises meet the necessary standards. To this end, we believe LHAs **must** arrange inspection of premises to ensure that there is an absence of any Category 1 hazards under the HHSRS; such an inspection is essential for there to be an assessment of the fitness for purpose of the property.
- 8.2 In this regard the wording of the Homelessness (Suitability of Accommodation) Order 2012 is ambiguous; since it merely refers to a "reasonable physical condition" being necessary and further goes on to suggest a lower standard might suffice.
- 8.3 It would not be sufficient for a local authority to satisfy itself on the fitness for purpose of private rented homes to discharge its homelessness duty by relying on inspection by someone with no such competence, which would include most letting agents, unless they have been trained properly in the use of the HHSRS system.
- 8.4 If the PRS is to bear the burden of meeting homelessness allocations, local authorities will have to address the issue of cold homes. Excess cold is the second most frequently identified Category 1 hazard. Moving vulnerable people into poorly insulated homes with high energy bills will have a big impact on their residual disposable income and their health and wellbeing. This is a powerful reason why an inspection for Category 1 hazards prior to people moving in must take place.