



Chartered
Institute of
Environmental
Health

The private rented sector: professionalism and quality

The Government response to the Rugg Review

Response to Department of Communities and Local
Government consultation

August 2009

The Chartered Institute of Environmental Health

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Introduction

The CIEH has given careful consideration to the issues raised in the consultation paper and has responded in line with its charitable aims and objectives. The CIEH fully supports the government in its drive to professionalise the Private Rented Sector; the key aim must be to improve standards in the sector for the benefit of tenants and thereby to raise standards of public health generally.

Environmental health officers working in local housing authorities (LHAs) are responsible for maintaining standards in the private rented sector. The Human Rights Act requires a proper balance of support and enforcement. The CIEH welcomes the Rugg review supported by government of a housing sector that is rapidly growing as a consequence of the inability of many UK residents to buy their own homes and the low level of affordable social housing.

Summary

The CIEH:

- supports the establishment of a national landlords register
- believes that the criteria for establishing selective licensing schemes should be widened and the scheme made more flexible
- supports the establishment of written tenancy agreements
- believes the threshold level for assured shorthold tenancies should be raised to £100,000
- supports the regulation of letting and management agents
- recommends the production of statutory guidance on the duty of local housing authorities under Section 3 of the Housing Act 2004
- firmly believes that LHAs should take a strategic rather than a reactive approach to raising standards in the PRS
- proposes that a national model for landlord accreditation should be produced by government

1. A national register of private landlords

- 1.1. The CIEH recognises the government's intention to introduce a register but has concerns as to how effective such a register will prove to be in raising standards. It is crucial that admission to the register should contain sufficient information of value but without deterring participation by landlords.
- 1.2. The purpose of the register should be clearly set out which should be complementary to the activity of local housing authorities (LHAs) to professionalise the PRS. This also requires action on the part of LHAs to establish properly developed strategies for dealing with the PRS which are based on sound evidence. As identified in the Rugg Review it is too often the case that LHAs do not have the right information nor have

they taken account of market segmentation. There is a need for CLG guidance to ensure the establishment of a sound evidence base.

- 1.3. Clearly the register of landlords will not in itself identify all landlords, but it will assist in screening and will help to identify responsible landlords. If the registration is accompanied by sufficient information then it will raise awareness of landlords' obligations. In such circumstances the CIEH does not see any value in creating a new criminal offence of "non registration" as the registering body/regulator is unlikely to have the resources to take the necessary enforcement action.
- 1.4. LHAs will need clear guidance as to appropriate action to take in respect of landlords who do not register. In particular, tenants who rely on benefits to support rental payments should not be penalised if they need a unique landlord reference number before payments are made. It is important that scarce resources are not unduly diverted away from essential work to raise standards.
- 1.5. It is likely that landlords who do not register will have committed other offences, or will own properties which require enforcement action by an LHA. Failure to register should render tenancy terms unenforceable e.g. rent could not be demanded nor possession obtained. This demonstrates the need for LHAs to be rigorous in enforcement, using effective regulatory strategies and to work more closely with advice agencies in developing and implementing these strategies. LHAs will need to be proactively identifying those landlords who are not registered; it is doubtful if the registration authority will have the resources to undertake this work. The CIEH's own research has shown that many LHAs carry out inadequate enforcement and have poor quality private sector strategies.
- 1.6. The CIEH urges the CLG to produce clearer guidance on the duties of LHAs under Section 3 of the Housing Act 2004. In addition it is appropriate that the Enforcement Code under Part 1 of the Act and ODPM Circular 5/2003 (Housing Renewal) be reviewed.
- 1.7. As a minimum the register should include the landlord's name, address and contact details together with the addresses of properties owned by the landlord and a method of unique identification (such as date of birth or a national insurance number.) The CIEH believes that a register that does not include addresses of properties owned by a landlord would constitute an unjustifiable waste of scarce resources.
- 1.8. Careful consideration will need to be given to how the proposed register dovetails with HMO licensing so as to ensure that the register is not unduly onerous for landlords. In particular it is not clear what the implications for the proposed register would be in the event of an LHA refusing an application for an HMO licence on the ground that the landlord was not considered to be a fit and proper person.

- 1.9. It is noted that the Building Research Establishment will be reporting to CLG on its research into the operation of the licensing provisions in the Housing Act 2004.
- 1.10. To maximise the effectiveness of the register, it would be ideal if a clear link could be established between the register and current local authority databases. The provision of additional information to landlords is attractive on the surface, but the CIEH is concerned that extending the register too far beyond the collation of essential basic information would endanger its effectiveness and acceptance. Efforts should be concentrated on the basics, with added value considerations deferred until it is in effective operation.
- 1.11. Notwithstanding this concern, information that might be provided includes:
- A code of practice on good management (as a model, the CIEH commends the draft code prepared some years ago for the (then) ODPM by the University of Warwick for HMOs, covering and including how landlords should deal with problems such as non-payment of rent, anti-social behaviour etc and the correct way to seek possession.
 - Published guidance on the Housing Health and Safety Rating System (HHSRS) and guide to the law including repairing obligations gas safety, electrical safety and energy performance certificates.
 - Model tenancy agreements.
 - Guidance on what justifies removal from the register and the implications thereof.
- 1.12. There is no doubt that the energy performance of the private rented sector is generally poor and efforts to mitigate the worst effects of climate change must include measures to address this. However inclusion of such information on the register will be of limited value as not all properties require a certificate (and for those that do, landlords already have to provide the information to tenants) and it is considered unlikely that tenants would use the register to find accommodation.
- 1.13. The key information in the register will need to be kept up to date. The CIEH endorses the suggestion for aligning this with the current requirements for road vehicle licensing with the onus placed clearly on the landlord to update the information whenever necessary.
- 1.14. A key question that needs to be addressed is the management of properties owned by a landlord who has been removed from the register. Many LHAs have experienced considerable difficulties in identifying partners able and willing to take responsibility for managing properties which have been subject to management orders. The CIEH recommends that the possibility of the Tenant Service Authority developing a service with registered social landlords should be investigated.
- 1.15. The CIEH believes it would be better if the provisions relating to management orders could be revised so that the removal of a landlord from the register would require the LHA to make an interim management order. Removal from the register can be appealed so there should not be any need for the Residential Property Tribunal (RPT) to be further involved.

- 1.16. The CIEH supports the suggestion for the introduction of a points system for landlords found guilty of offences under legislation identified in Section 66 (2) of the Housing Act 2004. It is important that responsibility for any enforcement activity in respect of the 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 private rented sector.
- 1.17. Appeals against decisions of the registering body should be to the RPT in the first instance; before removal, except in the worst cases, prior notice (e.g. 14 days) should be given of removal and appeals heard by the Lands Tribunal. The register should record that this action is being taken until the appeal is determined.
- 1.18. If the register/regulator has the power to remove landlords from the register on the basis of performance this will require LHAs to record and submit information on enforcement action to the register, not least because landlords may have properties in a number of local authority areas and this will have resource implications for LHAs. There needs to be a clear indication of how removal from the register can be achieved.
- 1.19. It will be important to ensure that tenants who rely on benefits to support rental payments are not penalised if they need a unique landlord reference number before payments are made.
- 1.20. Universal access to the public part of the register should be granted; access to private information on the register should be restricted to landlords and their agents and to duly authorised LHA staff including those working in regulation, housing benefit and tenancy relations. Access to the private part of the register should be password protected to those who have a legitimate interest i.e.
 - Owners or managers of specific properties
 - LHA regulators (in respect of specific properties located in the authority's area)
- 1.21. Tenants access could be through evidenced representations to the LHA possibly channelled through a landlord and tenant forum or scheme of arbitration as part of local accreditation.
- 1.22. The CIEH is willing to offer its services to the government to operate the register as an independent professional national body.

2. Assessment of existing licensing regimes

- 2.1. The CIEH believes that the criteria for establishing selective licensing schemes should be widened and the scheme made more flexible. It is accepted that government needs to maintain a level of control to avoid the establishment of inappropriate schemes but the presumption should be that applications are accepted unless there are overriding reasons for rejecting them. Target turn round times for processing applications should be published.
- 2.2. There would be considerable merit in adding to the criteria the existence of a high proportion of properties containing category one hazards under the HHSRS as well as practical examples of local issues (e.g. crime, vandalism, graffiti, high levels of harassment or eviction etc) that are having an adverse effect on the sustainability of the local community.

2.3. There would be little merit in including low EPC ratings for the reasons identified above.

3. Written tenancy agreements

3.1 The CEH supports the establishment of written tenancy agreements using a model agreement set out in government guidance (which can be added to as appropriate). The scope of any such requirement will need to be clear – e.g. the application or otherwise to lodgers.

4. Ensuring the right coverage for the legislative framework

4.1 The threshold level for assured shorthold tenancies should be raised to £100,000. This figure should be index-linked and reviewed regularly

5. Regulation of private sector letting agents and management agents

5.1. The case for regulation of letting and management agents is well made in the Rugg Review and the CIEH supports the proposal for compulsory regulation by an independent body. The CIEH believes that the regime should encompass agents operating in all tenures so as to ensure the comprehensive coverage of the scheme; some agents may extend their sphere of operations and thereby escape appropriate regulation.

5.2. The proposal in the consultation paper could be achieved by compelling all letting and managing agents to be members of an approved scheme(s). Alternatively the remit of the Tenant Services Authority could be extended to take on this role.

5.3. It is important that the regulation incorporates a robust complaints and redress system which has a clear independent focus.

5.4. Greater clarity is needed as to the ways in which this regulation will integrate with the proposed landlords register

6. Private rented sector and the voluntary sector

6.1 The valuable role played by voluntary organisations should be enhanced by the production of guidance about establishing partnerships between the PRS, the voluntary sector and LHAs and identifying their respective roles in delivering effective local housing strategies.

6.2 The CIEH is aware of the effective role voluntary organisations play both nationally and locally and regularly works with the voluntary sector at national level in addressing housing issues. Their role could be enhanced at the local level if LHAs were encouraged to engage them in the development of local housing strategies and involve them in regional partnerships.

7. LHAs and the private rented sector

- 7.1. It is clear in the CIEH view that LHAs should first and foremost take a strategic approach in dealing with the PRS. A crucial part of this is to ensure that LHAs undertake their statutory duties under Section 3 of the Housing Act 2004. Such an approach should be based on local evidence with a combination of enforcement and incentive with effective consultation through accreditation schemes.
- 7.2. Reactive services (i.e. responding primarily to tenants' complaints) do not address priorities; issues identified in tenant complaints are not necessarily ones which should receive priority attention over other more serious issues which remain unreported. Complaints are generally not made by transient tenants (who frequently occupy high risk properties in multiple occupation) and from tenants who, justifiably or not, fear retaliatory eviction.
- 7.3. Enforcement activity is but one tool to be used together with advice and education. Enforcement, properly used in accordance with the compliance code (established under the Legislative and Regulatory Reform Code of Practice Order 2007) will, by definition, be constructive and balanced; it should also cultivate a climate of co-operation and engagement with local landlords.
- 7.4. However comparing advice and enforcement represents a false dichotomy for LHAs that struggle to achieve the necessary balance with limited resources. The key barriers to effective delivery remain funding and recruitment.
- 7.5. The Rugg Review and the earlier Law Commission report both cast doubt on the validity of the case made in respect of retaliatory evictions. The CIEH nevertheless believes that considerable effort needs to be made by government to address the *fear* of retaliatory eviction and afford it the same priority as the fear of crime generally. The aim should be to cultivate an environment in which such fears are demonstrably unfounded.
- 7.6. The CIEH also believes that too few LHAs use the HHSRS strategically. Considerable improvements in the standards and quality of local PRS stock can be achieved by such an approach which will, by definition, be targeted at the worst properties containing the most serious hazards to the health and safety of tenants.
- 7.7. The CIEH believes that there should be renewed focussed effort by government to encourage landlords organisations in their quest to increase membership. The overwhelming majority of landlords own one or two properties; most of these landlords do not belong to a landlord organisation and do not regard themselves as businesses or as professionals.
- 7.8. The CIEH commends the NLA training model identified in the consultation paper and would welcome its wider dissemination.
- 7.9. The CIEH will continue to support its members through training advice and guidance. We would draw attention to the certificate in housing practice (aimed primarily at support staff and as a mechanism for refreshing and updating members moving from a different specialisation into the housing field) and the housing competence framework (for regulators), which is in the final stages of development prior to launch.

- 7.10. One of the most effective ways of helping LHAs to engage constructively with the PRS is through the identification and dissemination of good practice of which there are numerous examples nationwide. All organisations and individuals respond positively to practical examples from their peers. Financial incentives to LHAs are meaningless (and unlikely in the foreseeable future) but specific awards to authorities that demonstrate such good practice would recognise effort and encourage emulation. A good model and example is the Peer Challenge Excellence Framework supported by the Local Better Regulation Office (of the Department of Business, Innovation and Skills), the CIEH and the Trading Standards Institute.
- 7.11. The CIEH does not believe that engaging with landlords in the first instance through small businesses unit (SBU), rather than through the environmental health department is appropriate. SBUs can provide very useful information for landlords on issues such as business start-up and planning, taxation, company law etc but are not in a position to provide detailed advice on housing law nor are they in a position for example, to organise landlord forums.
- 7.12. Environmental health services cover a wide range of business regulation including food safety, occupation health and safety and licensing. The National Indicator on measuring business satisfaction with local authority regulatory services (NI 182) specifically includes PRS landlord businesses within "Environmental Health".
- 7.13. Any initiative which risks weakening the current link between landlords and environmental health services would have an adverse effect on the strategic understanding of local housing markets.

8. Improved coverage for accreditation schemes

- 8.1. Accreditation has a clear role to play in the improvement of standards and management in the PRS. The key to more effective coverage is consistency and now is the ideal time to develop a national model based on the best of the existing schemes. This should 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.
- 8.2. Improving the coverage of accreditation schemes represents an opportunity for greater self regulation, a necessary element of efficient regulation in a climate of diminishing resources. This concept has received insufficient attention in the consultation paper.
- 8.3. The model should include both 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. The four key elements are declaration, verification, CPD and a complaint system.

8.4. The model should include the following:

- basic knowledge of the HHSRS
- self certification in accordance with the "Fit & Proper person" criteria for HMO licences
- adequate insurance cover
- provision of all required certification for properties
- property condition support for both landlords and tenants
- acceptable behaviour contracts arbitration and mediation incentives for best practice

8.5. It will be important to ensure that the proposed landlords register does not detract from accreditation (particularly in respect of any accreditation fees). Landlords should be able to identify added value in accessing accreditation over and above the imposition of compulsory registration.

8.6. Most accreditation schemes are not predicated on fee income; indeed the absence of fees is considered to be a key element of maximising participation. National fee levels should not be set; LHAs should be encouraged to support schemes as part of their housing strategies and seek regional financial support in pursuit of supporting landlords (and thereby tenants) through accreditation.