

LGA Response to the Consultation on rogue landlord database reform

September 2019



1. About the Local Government Association (LGA)

- 1.1. The Local Government Association (LGA) is the national voice of local government. We are a politically-led, cross party membership organisation, representing councils from England and Wales.
- 1.2. Our role is to support, promote and improve local government, and raise national awareness of the work of councils. Our ultimate ambition is to support councils to deliver local solutions to national problems.

2. Overall view

- 2.1. The Local Government Association is supportive of proposals to widen access to the national rogue landlord database to tenants and prospective tenants. We are also supportive of expanding the scope of offences leading to entries on the database.
- 2.2. The private rented sector has doubled in the last 20 years¹. Whilst the majority of private tenants are satisfied with the quality of their accommodation, there are still demonstrable issues with quality and safety in the private rented sector.
- 2.3. There is a strong public interest case for supporting tenants to make informed decisions about which landlords they choose to rent from, and for supporting enforcement agencies with their efforts to identify the worst landlords and work across local authority borders.
- 2.4. The LGA recommends that the existing Greater London Authority rogue landlord checker is used as a model for the expansion of the national register. Its high take-up suggests that it is genuinely useful for enforcement agencies – a result of the broad set of infractions which allow for inclusion on the register.
- 2.5. Expansion of the landlord register must be accompanied by a package of measures for improving quality of the private rented sector. In particular, the LGA urges the Government to remove the 20 per cent threshold needed for councils to secure Secretary of State approval for local licensing schemes.
- 2.6. The LGA has not responded to the consultation questions in detail, but instead set out our broad views below.

¹ English housing survey 2017/18

3. The case for expansion

- 3.1. The private rented sector has doubled in the last 20 years, and now accounts for 19 per cent of households in England, including an increasing proportion of young people, families and lone parent families².
- 3.2. The majority of private tenants (84 per cent) are satisfied with the quality of their accommodation³. However, privately rented homes tend to perform less well against established measures of housing quality than owner occupied homes or social housing. A quarter of privately rented homes failed to meet the decent homes standard (25 per cent) and 14 per cent had at least one category one hazard on the housing, health and safety rating system (HHSRS)⁴.
- 3.3. The report of the Housing, Communities and Local Government Private rented sector inquiry identified a “power imbalance in the private rented sector”⁵, supported by the increasing unaffordability of rented homes: the English housing Survey 2017/18 found that, on average, private renters spend one third of their household income on rent, compared to 28 per cent for social renters⁶. However, affordability varies significantly across the country, with renters in London spending an average 42 per cent of household income on rent.
- 3.4. Against the context of an increasingly pressurized rental market, allowing prospective tenants access to the rogue landlord register would act as an important way to support them to make more informed decisions about which landlords they rent from, and to protect them from the very worst landlords. This layer of due diligence would in turn deter poor practice by these landlords, and would be most effective if landlords or agents were required to disclose to existing or prospective tenants that they were on the database.
- 3.5. For existing tenants, access to the rogue landlords database would support their representations to advice agencies, enforcement

² Ministry of Housing, Communities and Local Government, *English housing survey headline report*, 2018, Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834603/2017-18_EHS_Headline_Report.pdf

³ Ministry of Housing, Communities and Local Government, *English housing survey private rented sector*, 2018, Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817630/EHS_2017-18_PRS_Report.pdf

⁴ Ibid

⁵ Housing, Communities and Local Government Committee, *Private Rented Sector*, 2018, Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>

⁶ Ministry of Housing, Communities and Local Government, *English housing survey private rented sector*, 2018, Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817630/EHS_2017-18_PRS_Report.pdf

agencies, or – if enforcing their rights under the Homes (Fitness for Human Habitation Act) – directly to court.

3.6. Expansion of the register would also support local authorities to use their enforcement powers more effectively, by providing a data source through which they can compare their enforcement decisions with those of other local authorities. It would also allow for more effective action against those landlords which work across local authority borders, and particularly those which move their base of operations following enforcement action by one local authority.

3.7. The expansion of the register to include a broader range of infractions would also support other agencies such as local housing authorities' homelessness teams, which are increasingly reliant on the private rented sector as a means of securing suitable accommodation for homeless households.

4. Model for expansion

4.1. The LGA's view is that the Greater London Authority's rogue landlord checker⁷ provides a model for how such a register could be implemented successfully – both in terms of which data is visible to tenants, and in terms of which infractions are allowed to be recorded.

4.2. The GLA system allows for entries relating to a significantly broader range of infractions – some of which are displayed publicly for a certain length of time, and others which are visible only to enforcement agencies using the register. This in turn has supported its take-up by local authorities, the London Fire Brigade, and other relevant enforcement agents.

4.3. The take-up of a broader rogue landlord register derives from its usefulness to enforcement agents. The LGA's view is that implementing the changes proposed in the consultation document, and ensuring that the register is user-friendly, would make it highly useful to enforcement agencies. Use of the register therefore does not need to be made mandatory for local authorities.

4.4. However, the register's success is partially contingent on enforcement agencies' ability to proactively manage and inspect properties, and to take enforcement action where it is needed.

4.5. Its expansion therefore needs to come as part of a package of measures for improving the enforcement of quality and safety in the private rented sector.

5. Supporting enforcement of quality in the private rented sector

⁷ Greater London Authority, Available at: <https://www.london.gov.uk/rogue-landlord-checker>

5.1. The LGA has the following recommendations for supporting the enforcement of quality in the private rented sector.

5.2. Adequate funding for enforcement agencies

5.2.1. LGA analysis shows that local services face cost pressures of £2.5 billion each year due to demand and inflation alone⁸. Councils' environmental health offices have been particularly hard-hit, and spending on enforcement activity decreased by one quarter between 2009/10 (when they spent £44.7 million) and 2017/18 (when they spent £33.5 million), resulting in an average annual spend of £7.45 per privately rented home in England⁹.

5.2.2. Against this context, local authorities are disincentivised from prosecuting landlords by the fact that they are often not able to recover the full costs of taking action. A successful prosecution can lead to an award of costs to councils. However the amount awarded often does not reflect the full cost, as a council can only claim costs from the point that a decision was made to prosecute. Any preliminary investigation or time spent collecting evidence cannot be counted in the application for costs.

5.2.3. The LGA welcomes civil penalties as an alternative to prosecution, and a means of supporting local authorities to recover some of the costs of enforcement action. However, there will still be cases when a council chooses to prosecute. For example, a conviction must be secured in order for the council to apply for a banning order.¹⁰ Moreover, local authorities that prioritise informal enforcement activity cannot benefit from changes to formal enforcement options.

5.2.4. The Government could help councils by removing some of the financial burden from interventions such as discretionary licensing – allowing for improved enforcement action on both a formal and informal basis - and ensuring that councils are able to reclaim the full costs for action such as prosecutions for landlords for letting a dangerous property.

5.2.5. Fire and rescue services also play an important role in enforcing quality in the private rented sector through the

⁸ Available on request

⁹ Analysis based on Local Authority revenue expenditure and financing data (RO5), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387069/RO5.xls
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/787870/RO5_2017-18_data_by_LA_-_revised.xlsx

Analysis assumes 4.5 million privately renting households in 2017/18, as per English housing survey 2017/18

¹⁰ Ministry of Housing, Communities and Local Government, *Banning Order offences under the Housing and Planning Act 2016*, 2018, Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf

Regulatory reform (Fire Safety) Order 2005. However, according to NFCC figures, the reduction in Government funding for all standalone Fire and Rescue Authorities since 2015/16 is expected to be approximately £135 million by the end of 2019/2020.¹¹

5.2.6. Similarly we are concerned by the reduction in staff in fire and rescue services over recent years, including full-time fire fighters, and control and support staff. In order to respond comprehensively and proactively, fire and rescue services need to be adequately funded and resourced to respond to risk, not demand.

5.3. Removal of restrictions on discretionary licensing schemes

5.3.1. While landlord licensing schemes will not be appropriate in every council area, they can have significant benefits for landlords and tenants.

5.3.2. In a licensed property, the landlord must meet standards for property management. For example, the tenant can expect to be given an emergency contact number for the landlord and provided with fire safety advice. The landlord must also provide evidence to the council that they are a “fit and proper person” to hold a license.

5.3.3. Effective complaint mechanisms which put tenants at ease are much easier to implement among licensed properties than non-licensed properties. Licensing conditions require the landlord to provide a tenancy agreement and a contact number. With this in place, complaints can be raised and addressed promptly, saving councils the time of identifying the landlord or agent, which can be a lengthy process.

5.3.4. In licensed areas, the landlord must have a valid license in order to give notice to a tenant without specifying a reason (a Section 21 eviction notice). If the landlord of an unlicensed property has carried out a so-called ‘retaliatory’ eviction in response to a complaint, the notice can be overturned, allowing the tenant to remain in the property while the complaint is investigated.

5.3.5. Where a selective license (or statutory HMO license) has been denied or revoked, the local authority could also include the landlords’ details on the national rogue landlord register.

5.3.6. The London Borough of Waltham Forest operates a borough-wide landlord licensing scheme. As well as a reduction

¹¹ National Fire Chiefs Council, *Spending Review 2019*, 2019, Available at: https://www.nationalfirechiefs.org.uk/write/MediaUploads/NFCC%20meetings/2019/January/Item_4_-_Spending_Review_update_and_progress_Jan_2019_v1.pdf

in anti-social behaviour the scheme has led to better engagement with landlords. The council has issued 22,000 licenses and undertaken 60 prosecutions.¹²

5.3.7. As of 2017, The London Borough of Newham had recovered over £3.1 million in council tax since the introduction of its licensing scheme. The council, police and HMRC officers have carried out 4,670 multi-agency operations, supporting 1,225 prosecutions and 28 bans which have been brought against criminal landlords¹³.

5.3.8. Local authorities need the flexibility to take forward whole area or area-specific licensing schemes. From April 2015, councils have been required to secure Secretary of State approval for licensing schemes that cover more than 20 per cent of the area or 20 per cent of privately rented homes.¹⁴

5.3.9. We are urging the Government to heed the recommendation of the Housing, Communities and Local Government Committee, and remove this 20 per cent threshold.

5.4. Landlord and tenant engagement

5.4.1. Reform of the private rented sector will only be effective where it is accompanied by a programme of landlord and tenant engagement. This will support tenants who want to hold their landlords to account, and landlords who want to provide tenants with a good service. The Government should consider how it will support tenants and landlords to respond to their changing rights and responsibilities, so that new requirements are embedded effectively.

¹² Waltham Forest analysis showing 60 prosecutions between January 2016 and July 2017

¹³ Inside Housing, *Government approves council's PRS licensing scheme renewal*, 2017, Available at: <https://www.insidehousing.co.uk/news/news/government-approves-councils-prs-licensing-scheme-renewal-53476>

¹⁴ Department for communities and local Government, *Selective licensing in the private rented sector*, 2015, Available at: <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities>