

A licence to rent

A joint research project between
Chartered Institute of Environmental Health
and Chartered Institute of Housing

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About CIEH

Chartered Institute of Environmental Health (CIEH) is the professional voice for environmental health representing over 8,000 members working in the public, private and non-profit sectors. We ensure the highest standards of professional competence in our members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities, including in areas of food, public health, housing, environmental protection, and health and safety. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Introduction

The private rented sector has been growing rapidly over recent decades. As a proportion of the overall market, it has doubled in size since 1997 and now houses 20% of all households in England.

As the sector expands, private tenants are also becoming increasingly diverse, including a higher proportion of people across all income groups and a growing number of families with children. Increasingly, it is housing many of these households for the long term.

Whilst property and housing management standards are by no means universally poor, they are highly variable, and at the bottom end of the market there is a particular issue with poor property conditions and the presence of unscrupulous, exploitative landlords. Local authorities therefore have a vital role to play in understanding their local market and in working with landlords to drive up standards in their area. Licensing is one of the tools available to them to do this.

Selective licensing schemes were introduced in the Housing Act 2004 and slightly amended in 2015. The schemes are designated areas in England, where all privately rented properties have to be licensed with the local authority. These schemes are introduced by the local authority, usually in a small area within the borough, to tackle:

- Low housing demand
- A significant and persistent problem caused by anti-social behaviour
- Poor property conditions
- High levels of migration
- High level of deprivation
- High levels of crime.

Since the introduction of selective licensing, local authorities have been using these powers in a variety of ways to tackle a variety of problems. It is these variations in the intended purpose, size, design, local private rented sector, and other characteristics of the schemes that make these schemes difficult to compare and analyse.

This research offers a largely qualitative analysis of existing schemes to assess the benefits achieved in different areas and to suggest ways in which these schemes could be improved.

Methodology

Local authorities with current selective licensing schemes were recruited on a voluntary basis to participate in this research. A simple questionnaire with open text questions was then used to collect information from participants, via a combination of written submissions and telephone interviews. Once all the responses were gathered, the data was analysed and additional questions were compiled to clarify any specific points or to shed more light on specific issues. A draft report was shared with the participants and a wider set of stakeholders for comment.



Summary

Key facts in numbers

- 20 councils participated in the research
- 27 schemes currently in operation
- A further ten schemes have now concluded
- Three borough-wide schemes
- Excluding borough-wide schemes, the typical licensing scheme size sampled was around 800 licensable properties, ranging between 200 and 6000 properties.

Findings

Selective licensing is not a ‘quick win’ and it may be several years before tangible outcomes are achieved. Nevertheless, many of the schemes we looked at are delivering significant benefits.

- Selective licensing schemes are successful at improving housing conditions. We found numerous examples of inspections leading to very high numbers of serious hazards and defects being identified and addressed in licensed areas. In schemes that have ended, we found that between 69-84% of properties in licensed areas needed works to be done to bring the properties up to a decent standard. The introduction of a selective licensing scheme in these areas clearly shows that property and management standards have been improved and the schemes were well targeted to focus on areas with very poor housing stock. The fact that such large numbers of properties needed works to be done also suggests that the

schemes are largely fair to landlords – a majority of properties within licensable areas are benefitting from improvements and greater compliance.

- Several councils have highlighted that landlords had become more willing to do required works on their properties once licensing schemes had been set up in their areas. Although the exact mechanisms are unclear, this observation is backed up by the large numbers of works being done to remedy hazards and defects, without formal action being taken by the local authority. We therefore consider that the success of selective licensing schemes cannot be measured in prosecutions data alone and needs to take into account the number of properties or management practices improved.
- Some councils are also able to provide clear evidence of reductions in anti-social behaviour. Resources to support and educate landlords to tackle the anti-social behaviour of their tenants has been an essential component of successful schemes.
- Whilst not a primary aim or measured outcome of many schemes, the existence of selective licensing in the areas we studied also often led to a better understanding of the local housing market and provided opportunities to better engage with local landlords.
- Some schemes appear to have encouraged greater joint working, with many areas reporting joint inspections with the police and the sharing of various data sources to identify unlicensed landlords.



In terms of how schemes are operating in practice:

- Licensing fees vary significantly from scheme to scheme and do not always reflect the true cost of scheme administration. In some cases, the cost of running the scheme has to be met via existing staff resources, drawn from the general housing enforcement fund.
- In most areas, the identification of unlicensed properties seems to be very successful, with councils using a variety of sources of intelligence to locate and inspect unlicensed properties. All areas we spoke to are putting resources in place to find unlicensed properties and some authorities reported that they identified larger numbers of rented properties than expected at the beginning of the scheme.
- Recent case law has highlighted a weakness of selective licensing schemes: the ability of local authorities to set licence conditions, which address property standards rather than the management of a property. This seems to contradict the ambitions and aspirations attached to selective licensing schemes – the mechanisms and powers of a scheme need to enable and support local authorities in targeting and improving property standards.
- Selective licensing schemes lead to a more proactive approach to housing inspections. This is because there is usually an explicit objective to inspect all properties covered by the scheme, rather than only relying on tenants to make complaints to the council. This proactive approach is essential if schemes are to deliver positive outcomes, however it is also resource intensive and most councils are managing this by adopting a risk rating approach to determine frequency and order of inspections.
- There were some significant variations between the ways in which different areas approached the refusal to grant licences and giving some landlords a shorter licence term. Whilst variations are a sign that local solutions are being developed to solve local housing problems, this is an area that could benefit from more formal guidance or best practice.
- The majority of areas take a staged approach to enforcement, with informal approaches to start with, only escalating to formal action where this is not successful. Consequently, in most areas, the number of prosecutions is relatively small, compared with the high levels of non-compliance.
- Some areas have told us that setting up a selective licensing scheme had put pressure on the enforcement side of the housing team, due to the large numbers of hazards being discovered which need formal action. Civil penalties offer an opportunity for selective licensing areas to balance budgets for enforcement work and to ensure that a tough stance is adopted to any landlords found to be non-compliant.
- Although individual schemes are often designed and tailored to suit local circumstances, we were able to identify some common features of successful schemes. These include:
 - A high level of political support from local councillors, including a willingness to commit resources to make the scheme a success
 - A clear understanding of the outcomes the scheme is intended to achieve, defined at the outset and with clear plans in place to measure progress
 - A strong focus on proactively seeking out non-compliance, both in terms of landlords failing to obtain licences and in terms of them failing to adhere to license conditions. This is often resource-intensive but is essential if the scheme is to have a meaningful impact
 - An effective approach to partnership working with other local agencies, such as the Police. This often enables schemes to have a greater impact, particularly where they were intended to address concerns about crime and anti-social behaviour

- Borough-wide schemes, by definition, tend to be much bigger and therefore a different approach to inspections is used. Whilst most borough-wide schemes have not sought to inspect every property, they have often found evidence of non-compliance on a large scale and have taken a tough enforcement approach as a deterrent. Similar to smaller schemes, significant improvements to housing standards have been achieved in these areas.
 - Although not formally a part of this research project, we have also been told about issues associated with the setting up of a new selective licensing scheme. These included high upfront costs of setting up a new scheme, a high level of bureaucracy, and prescriptive advertising standards, all impacting on the local authorities' decisions on whether a scheme is a viable option in their area.
3. Government should commission a good practice guide to address areas where significant variations exist between schemes and to provide local areas with better information to help them to set up new schemes. Whilst some variations in approach may be justified and appropriate, this guide could usefully include approaches to:
 - Fee setting and resourcing
 - Refusal of licences
 - Scheme evaluation and data gathering
 - Improved communication (and publicity of the scheme) with landlords and the wider community
 - Escalating enforcement action
 4. Central Government should consider introducing a national landlord registration scheme, which would support and complement selective licensing schemes by making it easier for local authorities to identify the majority of landlords in their area. Whilst this would not completely remove the need for data matching and other exercises to find unregistered landlords, it would help local authorities to build a much better picture of the private rented sector in their areas and reduce the resources needed to start a new scheme.

Recommendations

For Central Government:

1. Central Government should continue to support the use of selective licensing schemes, whether these are for smaller areas or borough-wide, provided that these are informed by an understanding of the local area and a clear sense of what the scheme is intended to achieve. To aid this, Government should review the process by which councils obtain approval for new schemes. Whilst it is important to ensure that licensing schemes are appropriately targeted, the current approval process is expensive and unnecessarily bureaucratic and may be deterring some authorities from establishing schemes in their areas.
2. Government should grant local authorities greater flexibility to set licence conditions for their area. In particular, ensuring that councils are able to require landlords to evidence that all legal minimum standards are met and to set some additional standards that exceed the national minimums.
5. Government should provide more support to enable councils to make better use of new enforcement powers, such as civil penalties. Although these new powers will not be used exclusively for licensing offences, they do have the potential to greatly improve approaches to enforcing housing offences found through selective licensing schemes. Government should consider providing both financial and other forms of support to enable them to do this.
6. We were not able to ascertain from our research whether there was any relationship between many local authorities' reliance on informal enforcement and the number of retaliatory evictions. This is something that should be considered as part of the separate review by the Government of the effectiveness of the Deregulation Act 2015.

For local authorities:

1. Local authorities establishing selective licensing schemes need to be clear from the outset about the outcomes that their scheme is intended to achieve and how these will be measured and monitored. A simple count of the number of prosecutions, although useful, is not on its own sufficient to demonstrate the effectiveness of the scheme and councils should always consider how progress against wider objectives will be monitored. Using non-licensed areas as a baseline measure, is one way of doing this.
2. Many schemes are accompanied by good engagement with landlords. Review and publication of the outcomes of the selective licensing scheme at appropriate intervals, may help to engage with local stakeholders, such as landlords, about the achievements of the scheme.
3. Local authorities should consider using civil penalties to rebalance their resources for enforcement, where introducing them presents an opportunity to review their overall approach. While there will always be some role for informal approaches, some councils may want to consider escalating more quickly to issuing financial penalties.



Detailed findings

Outcomes

There is a significant lag between a scheme being established and demonstrable outcomes being delivered. Many of the councils we spoke to told us that, in the first year or two, considerable resources had to be devoted to establishing the scheme, publicising it to landlords and processing the high numbers of applications that came in as a result. Consequently, most enforcement work often takes place later in the scheme's life.

Selective licensing is therefore not a 'quick win' - it takes time for schemes to deliver tangible outcomes. However, many of the local authorities we spoke to whose schemes had been established for longer were able to provide hard data on outcomes that had been achieved. Most commonly this related to improvements in property standards, although some councils were also able to provide information about other areas such as reductions in levels of anti-social behaviour (ASB) and crime levels. Some officers also felt that there had been secondary benefits, such as improved partnership working with other agencies and a better dialogue between the council and local landlords. However, these outcomes were not always entirely quantifiable.

Improvements in property standards

Our research found clear evidence that property standards have been improved. The high number of inspections carried out as part of the schemes often shed light on the high level of non-compliance and the prevalence of dangerous properties being rented out in licensable areas. We found numerous examples of councils who could clearly demonstrate that large numbers of hazards had been identified and addressed.

- In Bristol's Stapleton Road scheme, which has now finished, 856 properties required improvements – 69% of the licensable total, and 572 notices have been issued. In the Eastville and St George West wards – where licensing was introduced in July 2016 – 646 (43%) of properties have required works so far, with 408 notices served.
- In Rotherham, 1,897 full housing inspections have been carried out to date. 36% had a category 1 hazard and only 9% of inspections have been found to be free from category 1 or high scoring category 2 hazards.
- In Blackburn with Darwen, 70% of properties inspected required works to be done in the Infirmary scheme (2009-2014) and 84% of properties inspected required works to be done in the Central Darwen scheme (2009-2014).
- In Manchester, although a full Housing Health and Safety Rating System (HHSRS) inspection has only been carried out in one in ten properties so far, 137 (61%) category 1 or 2 hazards have been found and 70 notices have been served.
- Liverpool City Council have identified 2,800 category 1 and 2 hazards in licensed properties and a further 138 hazards in unlicensed properties, since April 2017.
- In addition to finding HHSRS hazards, other housing safety laws were also not complied with. In Doncaster, 44 properties out of 641 did not have working smoke detectors, whilst Newham found that only 64% of landlords provide valid gas safety certificates.

Information about the local housing market

Several councils told us that the process of preparing for and running a selective licensing scheme in their area had provided them with a much richer and more detailed picture of the local private rented sector.

Furthermore, the high frequency of hazards and instances of disrepair being found at properties was highlighted by the large numbers of inspections being carried out when the schemes were set up. In many cases, local authorities suspected, but were not fully aware of the extent of poor property conditions in the area.

“The scheme has provided us with a level of information and intelligence that we never had before”

West Lindsey District Council

“The data gathered is the richest source of data the Authority has ever held on tenure-type across the designated areas. The growth in the rented sector since 2011 in Rotherham is way beyond national trends. The data gathered from this exercise has been used to update and inform Council Tax & Housing Benefit data sets and helped highlight discrepancies within that data.”

Rotherham Metropolitan Borough Council

“In the year before the scheme, we completed six inspections arising from complaints about houses in North Ormesby. We found 2 category 1 hazards and 21 category 2 hazards. Whilst the scheme is still ongoing, 137 category 1 hazards and 1181 cat 2 hazards were identified [so far].”

Middlesbrough Council



Anti-social behaviour (ASB) and crime

Some areas could demonstrate reductions in ASB and crime. In these areas, councils have generally provided support to enable landlords to deal effectively with instances of ASB, alongside the introduction of the licensing scheme.

- In Blackpool, schemes are strongly focused on reducing ASB and the council employs a specialist officer for each licensing area. The officer works with landlords to help them to address issues in their properties and to reinforce the view that actively managing their properties and dealing with complaints of ASB is a key part of being a landlord. Whilst one of the council's schemes (in South Beach) has now come to an end, they have retained this service as it was so popular. The council were able to demonstrate reduced levels of ASB in all of their licensing areas, most notably in South Beach where it fell by as much as 52%.
- In Rotherham the council has written to more than 200 licence holders regarding specific cases of ASB involving their tenants. They have encouraged and supported these landlords to adopt an incremental approach to enforcement and in the vast majority of cases this has led to cases being closed with no further incidents. In seven cases, the council has had to support landlords to take formal action against tenants resulting in eviction.
- In Doncaster, 101 Fixed Penalty Notices have been issued for ASB during first 18 months of the selective licensing scheme. One area where the scheme operates has seen reductions of 35% in noise complaints, 44% in nuisance complaints and a 20% fall in reports of unkempt properties. Fly tipping has also reduced.
- In Bristol's Stapleton Road scheme, 481 referrals were made to various agencies to tackle ASB issues.

However, the outcomes do not always have linear pattern at the start of the scheme. Middlesbrough told us that after they put better processes and more resources in place to deal with ASB, at the start of their scheme, they "started to see an increase in anti-social behaviour, which was due to community confidence in reporting issues to the selective licensing team. During the second year we started to see a decrease in the lower level interventions, but an increase in the higher level as more landlords worked with the team to deal with problematic tenants in line with anti-social behaviour plans."

Other benefits

Some local authorities also identified further benefits of their schemes. These were not necessarily directly related to the problems schemes were initially set up to address and were not always entirely quantifiable, but were nevertheless considered to be positive outcomes. These included:

- **Better joint working and information sharing** – some councils are putting a strong focus on working jointly with other agencies to make improvements within the boundaries of their licensing schemes. They reported that the presence of a licensing scheme provided a focus for this work and enabled a more joined up approach. For example, in Blackpool, systematic street-by-street inspections are used to identify unlicensed landlords and those found without a licence are prosecuted. These are multi-agency inspections, carried out with partners such as the police, fire service and planning. Similarly, in Gateshead, the council is running training courses for landlords in conjunction with the police, using police data on the location and frequency of incidents to prioritise inspections and, where necessary, carrying out joint inspections.



- **Better communication/engagement with landlords** – we also found a number of good examples of work with landlords, such as providing training about their responsibilities with regards to property management and maintenance, as well as how to deal with ASB and training days delivered with the police covering issues such as modern day slavery. London Borough of Brent also set up a quarterly newsletter to all landlords, which has an emphasis on education and providing an improved service.
- **Subletting** - in Harrow, a particular problem with subletting has been revealed by the selective licensing scheme. A total of 82 cases were dealt with, including some examples of extreme overcrowding. Similarly, in Tower Hamlets the council found properties, which had been rented to agents in return for an offer of guaranteed rent and then subdivided and let it out as a housing in multiple occupation (HMO). This was, however, not a common outcome and most likely reflects the particular local housing market in these areas.
- **Tenant turnover** – Rotherham recorded falls in tenant turnover that aligned with the increasing number of inspections undertaken as part of the scheme. For example, the average occupier turnover rate across the borough has fallen by 3% over the period, whereas in the areas with selective licensing rates have fallen by 4% to 6%.¹ This could be due to improved property conditions and better property management practices.
- **Empty homes** - In many areas of low demand, homes were brought back into use. For example, Gateshead can show a reduction in empty properties. In Stoke on Trent, the scheme provides interest free loans to owners of empty homes and offered accredited landlords match-funded grants in 2016/17 to bring their empty homes back into use. In total £20,000 worth of grants have been awarded to four landlords who have spent an additional £74,956 on their properties in the selective licensing areas.

Setting up new schemes

In the course of this research we have also heard from several local authorities about the process of setting up a new scheme and the difficulties faced by authorities right at the beginning of their journey to designate a licensed area. There are specific requirements of local authorities looking to introduce a new licensing scheme, which they must follow exactly when considering and setting up a new scheme or designation. Whilst most of the requirements seem sensible, respondents told us that aspects of the process are disproportionately bureaucratic and costly, whilst not being recoupable once the scheme has been set up. For example, local authorities are often required to commission stock condition surveys and other detailed research on the local area to evidence the reasons for setting up the scheme. The advertising requirements of a new scheme are also very specific and prescriptive. This high upfront cost and length of time until a scheme can be set up is a real barrier and may therefore be putting off some local authorities from using selective licensing as a tool in their areas.

Recommendation: Central Government should continue to support the use of selective licensing schemes, whether these are for smaller areas or borough-wide, provided that these are informed by an understanding of the local area and a clear sense of what the scheme is intended to achieve. To aid this, Government should review the process by which councils obtain approval for new schemes. While it is important to ensure that licensing schemes are appropriately targeted, the current approval process is expensive and unnecessarily bureaucratic and may be deterring some authorities from establishing schemes in their areas.

1 Rotherham Metropolitan Borough Council, Public Report: Improving Places Select Committee, Jan 2018.

Recommendation: Local authorities establishing selective licensing schemes need to be clear from the outset about the outcomes that their scheme is intended to achieve and how these will be measured and monitored. A simple count of the number of prosecutions, although useful, is not on its own sufficient to demonstrate the effectiveness of the scheme and councils should always consider how progress against wider objectives will be monitored. Using non-licensed areas as a baseline measure, is one way of doing this.

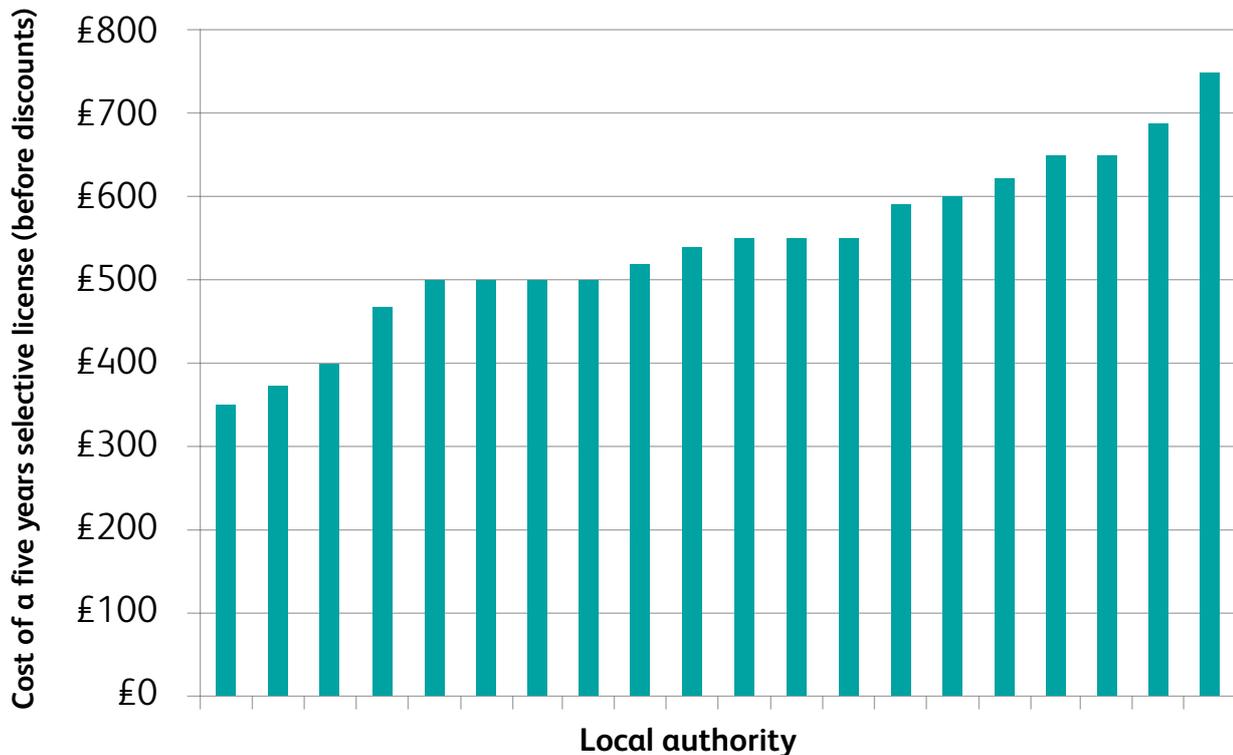
Recommendation: Many schemes are accompanied by good engagement with landlords. Review and publication of outcomes relating to the selective licensing scheme at appropriate intervals of the scheme, may help to engage with local stakeholders, such as landlords, about the achievements of the scheme.

Licensing fees and resources

Licensing fees

Licensing fees vary significantly between schemes. Among the 20 local authorities we spoke to, prices ranged between £350 and £750 for a five year licence. The average fee is £543.

Licensing fees by local authority





However, while these figures represent the standard fees charged by local authorities, it is common for many to offer discounts for some landlords. Most commonly these are:

- ‘Early bird’ discounts for landlords who signed up in the first six or 12 months of a scheme. For example, Waltham Forest gave a £250 (50%) discount to landlords who applied for a licence in the first three months of the scheme. In Blackburn and Darwen a licence costs £750 but this was reduced to £600 if paid in the first six months, or increased to £900 after 12 months.
- Multi-property discounts. For example, in Manchester the standard licence fee is £650 for one property, or £550 each for multiple properties.
- Discounts for landlords who are part of a recognised accreditation scheme or trade body. For example, in Stoke on Trent the £500 licence fee is reduced to £400 for landlords who are part of an accreditation scheme. In Liverpool, the council have established a co-regulatory approach with partners, the Association of Residential Letting Agents (ARLA), the National Landlords Association (NLA) and the National Approved Letting Scheme. Those organisations take on some responsibility for ensuring that their members are complying with the terms of the scheme and in return they can obtain a licence for half the usual fee.
- In Blackpool, landlords were also given a discount on the licence fee if they met a higher housing standard than the legal minimum.

Fees do not always completely reflect the cost of administering a scheme, which may help to explain some of the variation between authorities. We spoke to a number of councils who had initially charged lower fees when first setting up a new scheme, but who had subsequently raised (or are currently consulting on raising) these when either expanding or renewing their scheme. For example, in Newham a licence initially cost just £150 but this has been increased to £400 when the scheme was renewed earlier this year.

This may be due to difficulties in accurately estimating the future costs of scheme administration, or it may be because fees were set deliberately low initially to secure political support and/or to help mitigate local landlords’ concerns about schemes and to seek landlord engagement.

Recommendation: Government should commission a good practice guide to address areas where significant variations exist between schemes and to provide local areas with better information to help them to set up new schemes. Whilst some variations in approach may be justified and appropriate, this guide could usefully include approaches to:

- Fee setting and resourcing
- Refusal of licences
- Scheme evaluation and data gathering
- Improved communication (and publicity of the scheme) with landlords and the wider community
- Escalating enforcement action

Resources

A third of councils we spoke to reported that resourcing allocated was not enough to cover all the work resulting from running the scheme. The shortfall was usually absorbed by the existing housing enforcement team to ensure the scheme could run effectively. Limitations on what can be funded by licensing fees mean that funding from other sources must also be used to run a scheme effectively. A possible explanation is that higher numbers of hazards are being identified through the selective licensing schemes and are subsequently generating higher enforcement costs.

One authority has successfully secured funding via the Warmer Homes on Prescription scheme, as there is a high level of fuel poverty in their area and one of the scheme’s aims is addressing disrepair. However, in most cases many of the costs associated with enforcement action are being met through existing staff resources, drawn from the general fund.



There is therefore a lot of interest from local authorities in the use of civil penalties because the proceeds from these can be retained to fund enforcement action. A number of authorities explicitly told us that these would help to reduce costs or that, when combined with licensing fees, they might help to balance budgets, thus allowing the schemes to become genuinely self-financing in the future.

Usually a wide mix of skills is reported in the composition of a licensing scheme team – most have environmental health officers, licensing officers and admin support but other areas also use the scheme to recruit tenancy relations officers, neighbourhood safety officers, and legal workers, which provide wider benefits to the community.

Two London areas reported difficulties in recruiting qualified and experienced environmental health professionals. The schemes often require a big increase in capacity and recruiting the right people quickly is an issue, especially in the capital.

The size of the team funded to administer the schemes varies in size and this is not always related to the size of the scheme. For example, in Newcastle and West Lindsey, there is only one dedicated officer for each scheme. The number of properties in the schemes range from 500-800.

Licence refusal and 'fit and proper person' checks

Most schemes we have analysed have a 'fit and proper person' check in place to determine whether the landlord or licence holder is a suitable person to manage rented properties.

The approach to refusing licences varies quite a bit between different local authorities:

- In some areas, like Waltham Forest, the absence of a valid gas safety certificate leads to a licence being refused and the landlord having to reapply and pay the fee a second time. They have so far refused 103 licences.
- In Rotherham, if the landlord has any debt outstanding to the council, their selective licensing application is refused as they are not deemed to be in a stable financial position to be able to repair or manage a property.
- In Doncaster, only incomplete applications or unpaid applications have been refused.
- Manchester have not refused any licences, however they have decided to grant a shorter term on some licences due to a landlord's previous poor management of waste, disrepair or noise at their property.
- In Blackburn with Darwen, no licence has been formally refused. Where the landlord has failed the fit and proper person check, the council works with the landlord to find a suitable alternative person to manage the property.

In general, most local authorities told us that very few landlords have failed the fit and proper person test. In cases where a landlord has failed, the issue is usually resolved by another person being appointed to manage the property. Landlords tend to fail this test when they have had a previous prosecution against them by

the council and therefore are not seen as being fit to manage property directly. In addition, some councils are finding landlords who reside abroad and have no local managing agent to look after the property.

Documentation and licence conditions

The most commonly collected documentation includes Energy Performance Certificates (EPCs), tenancy agreements, gas safety certificates and Electrical Installation Condition Reports (EICRs). In general, documentation was found to be a useful indicator of both the professionalism of landlords and the need for further investigation. For example, West Lindsey reported that their checks often highlighted missing, inadequate or in some cases falsified safety certificates: *“It is very clear to us, via the scheme, that a large number of landlords and managing agents do not understand their obligations or the legal implications of not being compliant or not applying for a licence”*.

In Manchester, landlords are also required to provide copies of specified policies and procedures, to ensure a good standard of management. Officers we have spoken to felt that this approach has helped to professionalise some landlords who have had to develop formal processes to manage their properties.

However, a recent Court of Appeal decision has shed light on the scope of local authorities’ powers to set conditions in licences, which are granted under the selective licensing regime.² The Court of Appeal decided that the landlord cannot be required by the local authority to provide a valid EICR report or a carbon monoxide alarm where a gas appliance is installed, because this extends beyond the powers of a selective licensing schemes.³ However, electrical safety is impossible to determine through a visual inspection alone and therefore many other local authorities are still requiring this in areas of poor property conditions. The limitations of selective licensing schemes in setting meaningful conditions into licences calls into question whether selective licensing currently provides adequate tools to achieve the outcomes expected, such as better property standards and tackling low housing demand.

Recommendation: Government should grant local authorities greater flexibility to set license conditions for their area. In particular, Government should ensure that councils are able to require evidence that all legal minimum standards are met and to set some additional standards that exceed the national minimum.

² Paul Brown vs Hyndburn Borough Council (Case No: C3/2015/4280)

³ Section 90 (1), Part 3, Housing Act 2004

Approach to inspection

Smaller schemes

Every council we spoke to which is running a non-borough-wide scheme planned to inspect every property at some point during the scheme's operation. However, with the typical designated area being made up of around 800 properties, it was recognised that this would take time.

Most areas take a risk-based approach to prioritising visits, with landlords considered most likely to be non-compliant being first on the list. Missing documentation and landlords known to the authority as being subject to previous enforcement action are usually highlighted for an earlier property inspection. In Newcastle, landlords with an unknown history were also targeted first. Doncaster Council managed to inspect 75% of properties (471 out of 636) in the first year of the scheme being set up by working with a partner agency, Home Safe.

In all schemes, complaints also drive inspections, whether these come from tenants, neighbours or other local landlords. Where the primary reason for the scheme is to deal with ASB, there is usually an arrangement with the police, including data sharing to target inspections and also joint visits to properties. In Blackpool, all inspections are done together with the police, fire service and planning.

Borough wide schemes

Only three borough-wide schemes were analysed as part of this research, which reflects the small number of these schemes in operation and at a stage at which analysis is possible. Borough-wide schemes captured much larger numbers of properties - around 26,500 in London Borough of Waltham Forest, 39,000 in the London Borough of Newham and 43,000 in Liverpool City Council. Even a large licensing team would struggle to inspect all the properties within these schemes, therefore a strategy is used to target inspections.

Liverpool City Council has received around 10,000 service requests from the public, so have used this to drive their priority for inspections. This is much higher than the number of complaints in other areas we studied. Liverpool is also unique in having set up a co-regulated approach with landlord representative bodies, where landlords who are members of ARLA, RLA or NALS being charged a reduced fee and also rated as lower risk than those who are not. We were not able to analyse the effectiveness of a co-regulation arrangement as part of this analysis but would recommend that the Government commissioned review looks at this model in greater detail.

London Borough of Waltham Forest plan to audit 60% of properties over the life of the scheme to ensure compliance. They use a combination of complaints from tenants and the public, irregularities in the applications and the council's data sources to trigger an inspection.

In Newham, document audits were used during the first borough-wide scheme to check compliance. 'On average, only 50% of landlords with a selective licence were able to produce key documents to show they were complying with licence conditions.' Newham is planning to inspect all properties falling within their renewed borough-wide scheme.

Identification of unlicensed properties

Our research found that all local authorities had proactive plans in place to identify unlicensed properties within designated areas. The numbers provided by local authorities showed how widespread the non-compliance was. Newham had found 7,500 unlicensed properties and up to 5,000 extra houses in multiple occupation as part of the work done on their selective licensing scheme. Liverpool has found 5,900 unlicensed properties within the city and a further 2,700 are still being investigated. In Harrow, the council issued 800 selective or additional licences but has found 250 unlicensed properties as a result of work on their selective licensing scheme – a significant proportion of the total.

Most areas are using a combination of data sources to find unlicensed landlords. The vast majority interrogate council tax records, but in some cases information from the police and other council services was also used. London Borough of Ealing has been using information provided by tenancy deposit schemes to identify unlicensed landlords and some councils are also carrying out door knocking exercises. The vast majority also said that complaints from tenants, tip-offs from the public and from other landlords are also being used to find any landlords failing to licence their properties.

Recommendation: Central Government should consider introducing a national landlord registration scheme which would support and complement selective licensing schemes by making it easier for local authorities to identify the majority of landlords in their area. Whilst this would not completely remove the need for data matching and other exercises to find unregistered landlords, it would help local authorities to build a much better picture of the private rented sector in their areas and reduce the resources needed to start a new scheme.

Approach to enforcement

Overall, informal approaches are used widely in managing selective licensing areas. There are two distinct areas where it is relevant to explore the approach to enforcement. The first is in response to safety issues and other breaches of scheme conditions which are often in the form of hazards or lack of safety documentation. The second relates to the scheme itself and the approach taken with landlords or properties found to be unlicensed once the scheme is under way. In relation to the former, landlords are often given schedules of work to complete and another inspection scheduled, while landlords who are found to have unlicensed properties are often given a second chance to licence before prosecution is attempted.

In most areas formal enforcement action is therefore used as a ‘backstop’ with improvement notices, and ultimately prosecution/financial penalties, only being used where landlords continue to fail to comply with scheme requirements.

Approach to HHSRS hazards

The majority of areas we surveyed told us that, if a hazard was discovered, a schedule of work was given to the landlord rather than formal action being taken straight away. This approach did seem to be fairly successful. For example, Rotherham found that 92% of properties had been improved quickly after inspection and formal enforcement action was only needed for 139 cases out of 1,816. Blackburn with Darwen also deal with many landlords informally, where the landlord seems cooperative and does not have any history of non-compliance.



However, there were some exceptions. Newham and West Lindsey deal with every serious hazard with some kind of formal action. In Waltham Forest, the level of penalty given depends on how many properties a landlord has, as well as how serious the breaches are as this determines the level of professionalism that is expected of the landlord.

However, even in Newham, informal action has a role to play in improving housing:

“In the absence of selective licensing it was difficult to get repairs carried out by landlords as there was little incentive for them to do so. Since the introduction of selective licensing, landlords are now much quicker to carry out works when asked due to concerns about the implications for their licence.”

Newham Council

Other areas have also reported a similar experience with increased landlord cooperation after the setting up of a licensing scheme in their area.

“Previous “pro-active” inspection regimes in targeted areas have not enjoyed anywhere near the amount of cooperation as the resource to enforce failed inspections has not been to hand. Selective licensing has focused minds on both sides of the fence.”

Rotherham Metropolitan Borough Council

Approach to unlicensed properties

In relation to identifying unlicensed properties, we found more of a mixture of formal and informal action.

In many areas, an informal approach is still prevalent. For example, in Middlesbrough, landlords identified as having unlicensed properties are sent two letters and given six weeks to apply for a licence before any enforcement action is taken in an escalation procedure. The increased cost of a late licence is also relatively low at £100. The subsequent number of prosecutions for non-compliance has therefore been much lower in Middlesbrough than many other schemes we have analysed. Similarly, in the London Boroughs of Tower Hamlets and Harrow, a suspected unlicensed property is first sent a letter and, if no application to licence is received, a visit is scheduled. In Stoke-on-Trent, three letters are sent to the landlord whose property is found unlicensed before formal action begins.

Liverpool found 4,500 unlicensed properties. The council prioritises enabling landlords to comply with the scheme and as a result, there have been only 106 prosecutions, which were largely related to failures to obtain a licence. In Ashfield, an unlicensed property leads to an interview under caution, which usually prompts an application. They have 37 cases which are being considered for prosecution on the grounds of failure to licence.

Unusually, London Borough of Harrow has taken the approach of using students to do systematic door-knocking. As a result, 250 extra unlicensed properties have been identified. The approach taken by the council is to give the landlords an opportunity to licence, before formal enforcement action is taken.

In Gateshead and Bristol, unlicensed landlords are given the opportunity to licence but there is a significant difference in the fee for fully compliant landlords and those found by the council to have unlicensed properties – a difference of £400-500. A higher fee to licence ‘late’ is present in most of the schemes we looked at but the levels of penalty vary across schemes.

However, in other areas, councils are adopting a stricter approach towards non-compliance with licensing. West Lindsey consider formal action for all unlicensed properties. In Salford, a high number of landlords have been prosecuted for not licensing their properties.

“Formal action is always taken now where there are deliberate breaches. We have updated enforcement policy to include civil penalties and intend to use these.”

Newcastle City Council

In Ealing, a softer approach was taken in the first year of the scheme, helping landlords to licence, but as the scheme entered its second year, the focus has shifted to prosecution for unlicensed properties.

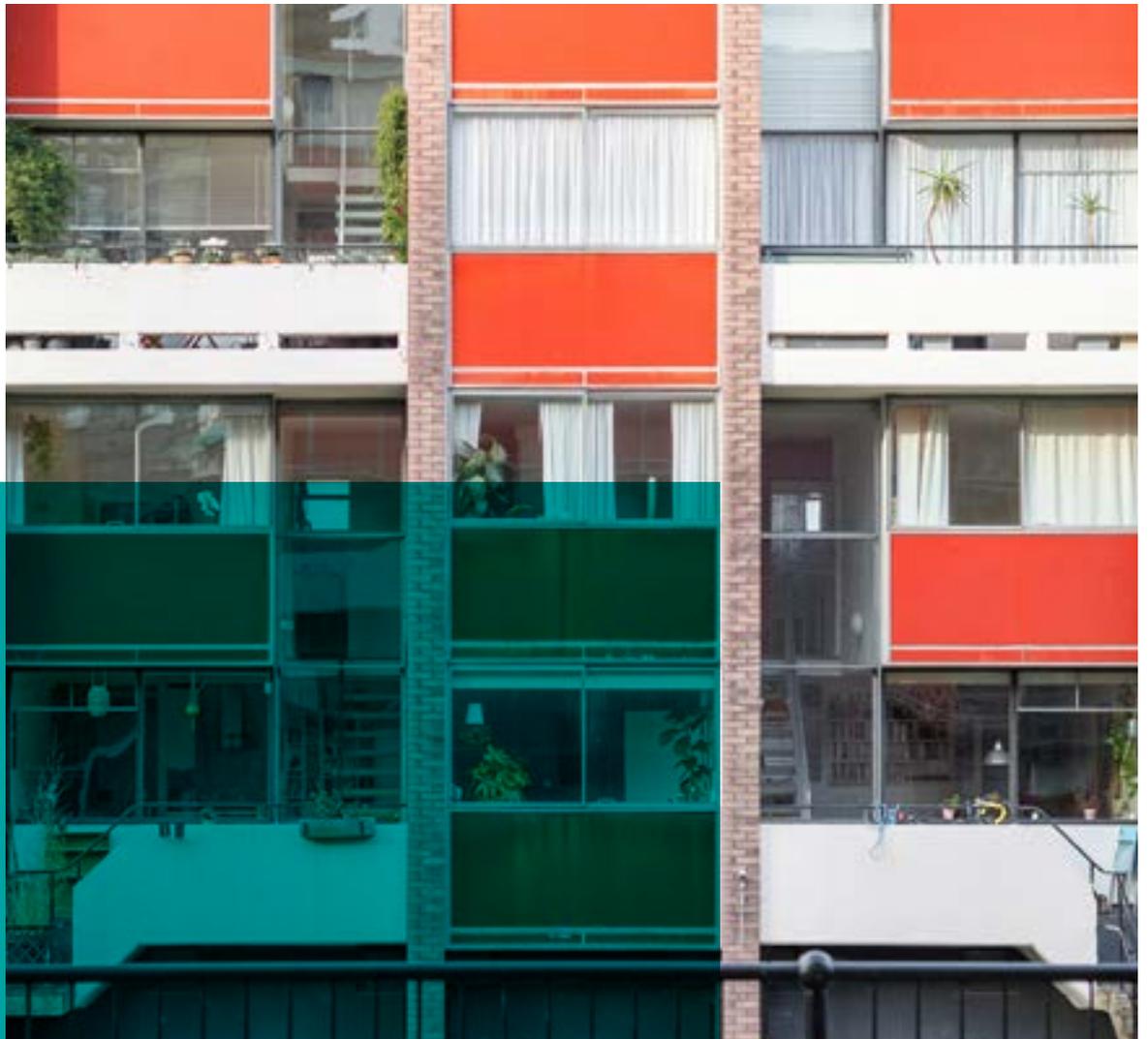
The ongoing use of informal enforcement work in many areas may have something to do with the disincentives that have existed in the system until relatively recently. Until civil penalties were introduced, a prosecution was generally costly for the council, and the fines given have been relatively low for the non-compliant landlord, therefore not much of a deterrent. Having a strategy that collected the licence fee and penalised late applications created more of a deterrent and was less costly for the council. For example, the three prosecutions for failure to license in Stoke on Trent led to fines which were identical to the values of the licence fee for the area (£500 each).

However, the introduction of civil penalties has the potential to transform selective licensing schemes by shifting the financial burden from the compliant landlords to those who avoid licensing. Liverpool have begun to use civil penalties and have so far issued 25 of these. The average penalty for failure to licence is around £5,000. However, in Harrow, ‘early experience is that securing payment is a challenge’, with 45 civil penalties having been issued so far but none being paid at the time of this data collection. Whilst use of civil penalties is at different stages within different boroughs, we have identified many boroughs taking the opportunity to amend their enforcement policy and starting to use civil penalties in conjunction with non-compliance as part of selective licensing schemes.

Recommendation: Government should provide more support to enable councils to make better use of new enforcement powers, such as civil penalties. Although these new powers will not be used exclusively for licensing offences, they do have the potential to greatly improve approaches to enforcing housing offences found through selective licensing schemes. Government should consider providing both financial and other forms of support to enable them to do this.

Recommendation: We were not able to ascertain from our research whether there was any relationship between many local authorities’ reliance on informal enforcement and the number of retaliatory evictions. This is something that should be considered as part of the separate review by the Government of the effectiveness of the Deregulation Act 2015.

Recommendation: Local authorities should consider using civil penalties to rebalance their resources for enforcement, where introducing them presents an opportunity to review their overall approach. While there will always be some role for informal approaches, some councils may want to consider escalating more quickly to issuing financial penalties



Appendix

Borough	Scheme (where more than one exists in the same borough)	Established (and concluded, where applicable)	Size (total number of properties covered/ estimated licensable properties/ number of licences issued)
Ashfield District Council		February 2017	Estimated 650 licensable properties
Blackburn with Darwen Council	Infirmary	February 2009 – February 2014	Estimated 250 licensable properties, 330 licences issued
	Central Darwen	May 2009 – May 2014	Estimated 250 licensable properties, 361 licences issued
	Griffin	January 2013 - January 2018	Estimated 400 licensable properties, 581 licences issued
	New Infirmary	March 2016	Estimated 400 licensable properties,
	Darwen	May 2017	Estimated 600 licensable properties
Blackpool Council	South Beach	2012 – 2017	800 licensed properties
	Claremont	April 2014	1,400 licensed properties
Brent Council	3 Wards	January 2015 Designation 1	4,100 properties covered



Borough	Scheme (where more than one exists in the same borough)	Established (and concluded, where applicable)	Size (total number of properties covered/ estimated licensable properties/ number of licences issued)
	5 Wards	June 2018 Designation 2	4,300 properties covered
Bristol City Council	Stapleton Road	April 2013 – April 2018	1,226 licensed properties
	Eastville & St George	July 2016	2,454 licensed properties
Doncaster Council		October 2015	641 licences issued
Ealing Council		January 2017	Estimated 5,000 licensable properties
Gateshead Council	Sunderland Road	2007 - 2012	264 licences issued
	Chopwell River	2010 - 2015	277 licences issued
	Central Bensham	2012 - 2017	500 licences issued
	Swalwell	2013 - 2018	207 licences issued
	Central Bensham	2018	Estimated 224 licensable
	The Avenues	2018	Estimated 880 licensable
Harrow Council		2015 (with an additional ward added in 2016)	800 licences issued [^]
Liverpool City Council		April 2015	43,000 licences issued [*]



Borough	Scheme (where more than one exists in the same borough)	Established (and concluded, where applicable)	Size (total number of properties covered/ estimated licensable properties/ number of licences issued)
Manchester City Council		Staggered introduction beginning in March 2017	Estimated 2,000 licensable properties
Middlesbrough Council		January 2016	787 licences issued
Newcastle City Council	Greater High Cross	2010, renewed October 2015	Estimated 150 licensable properties
	Byker Old Town and Allendale Road South	April 2011, renewed October 2016	Approximately 500 licences issued
Newham Council		2013 – 2017, renewed until 2022	39,321 licences issued*
Rotherham Metropolitan Borough Council	Seedley and Langworthy	2007- 2012	541 licensed properties
	Broughton	2009-2014	811 licensed properties
	NDC	2011-2016	484 licensed properties
	Langworthy 2	2013-2018	802 licensed properties
	Barton & Eccles	2015	782 licensed properties
	Broughton	2016	1163 licensed properties

Borough	Scheme (where more than one exists in the same borough)	Established (and concluded, where applicable)	Size (total number of properties covered/ estimated licensable properties/ number of licences issued)
	Charlestown	2017	541 licensed properties
Salford City Council	Broughton	January 2016	1,146 licensed properties
	Barton and Eccles	January 2015	752 licensed properties
	Charlestown and Lower Kersal	November 2017	531 licensed properties
Stoke on Trent City Council	Tunstall	November 2011 – November 2016	894 properties covered
	Fenton	August 2014	977 properties covered
	Hanley	August 2014	798 properties covered
Tower Hamlets Council		October 2016	Estimated 6,000 licensable properties
Waltham Forest Council		April 2015	23,500 licences issued*
West Lindsey District Council	Gainsborough South West Ward	July 2016	Estimated 700 licensable properties

* Borough-wide schemes

^ Selective and additional scheme total

POL16.119

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