

# Landlord licensing in England

Review of licensing by



THE  
LETTINGS  
INDUSTRY  
COUNCIL

# Contents

|    |  |    |
|----|--|----|
| 1. | Executive summary  | 3  |
| 2. | About Landlord licensing in England                              | 5  |
| 3. | Other costs associated with licensing schemes                    | 9  |
| 4. | How many licences have been issued?                              | 9  |
| 5. | What is the average licence fee?                                 | 10 |
| 6. | How many prosecutions has landlord licensing generated?          | 11 |
| 7. | What is the cost of licensing versus the number of prosecutions? | 12 |
| 8. | What difference has licensing really made?                       | 12 |
| 9. | Views from TLIC members and reports on Licensing                 | 16 |

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## Review of licensing by The Lettings Industry Council



### 1. Executive summary

#### Houses in Multiple Occupation (HMOs)

Large HMO licensing schemes should stay in areas that require it, but 82% of TLIC members think that additional licensing should go and 81% of TLIC members think that selective licensing should go.<sup>1</sup>

Mandatory licensing in England (and Wales) was first introduced in 2006, following provisions made in the Housing Act 2004. Due to different schemes, such as landlord registration being implemented across Wales, N.Ireland and Scotland, this report focuses on England.

The aim and rationale of introducing the original licensing scheme for Houses in Multiple Occupation was primarily due to the high proportion of fires recorded in HMOs, questioning their safety. In a more recent paper rationalising the extension of [HMO licensing](#) the government stated that licensing would raise “standards in HMOs more generally, so they are a safe place to live in and do not blight the neighbourhoods in which they are found.” This latest paper suggests the current focus is to widen the use of licensing to become a tool to prosecute landlords, in general, who are not letting property legally and safely.

Other reasons for licensing HMOs include:-

1. It is believed that HMOs provide the ‘poorest homes’ , with Oxford council suggesting that within their borough “70% were unsafe”.<sup>2</sup>
2. Complaints about the Private Rented Sector to Local Authorities are typically from tenants living in HMOs
3. HMOs are believed to be adversely affect neighbourhoods, including generating too much rubbish and tenants being accused of causing anti-social behaviour.

A parliamentary briefing paper suggests at the time that over 40,000 mandatory licences for house in multiple occupation have been issued in England, charging around £500 per licence. This would generate around £20,000,000.

#### Additional and Selective Licensing Schemes

Selective and additional licensing was introduced in 2006, to reduce anti-social behaviour and improve the conditions of properties. It is estimated by GetRentr that in England a new scheme was introduced every 13 days in 2018 and that there are 65 councils implementing Additional or Selective licensing, with 28 new schemes expected to convert in 2019, including new schemes and renewals. Scotland and Wales both have landlord licensing for all landlords, so anyone letting a rented

property requires a licence, while Northern Ireland has a registration system. The use of licensing in cores cities and national schemes in Scotland and Wales are explained in this report ([https://metastreet.co.uk/files/Core\\_Cities\\_UK\\_Metastreet\\_licensing\\_report\\_Oct\\_2018.pdf](https://metastreet.co.uk/files/Core_Cities_UK_Metastreet_licensing_report_Oct_2018.pdf)).

However, it is clear from individual borough numbers issued on licensing that this underestimates the reality, especially with initial estimates of several hundred thousand properties/landlords requiring licences post the new definition of licences implemented in October 2018. For example, according to Richard Tacagni from London Property Licensing, research shows the fees here are over £1,100 for a 5-person HMO. He estimates there are approximately 165,000 HMOs with 100,000 under selective licensing at a lower cost of around £700, which would potentially generate over £140,000,000.

To date, our research estimates the average licence charged by boroughs is £750 and aggregating information from individual boroughs, suggests that licensing schemes are actually generating around £150,000,000 income for local authorities. (see “How many licences have been issued?” below)

In addition, applications for landlords and letting agents to secure licensing are extremely laborious, frustrating and systems vary dramatically across local authorities. Some licences are taking up to 2.5 years to be issued.

Rather than introduce similar schemes at a local level, there are now:-

1. Huge discrepancies between the schemes run
2. Vast charging differences. Some charge zero through to others charging several thousand pounds, with the London Borough of Lewisham charging £500 per bedroom
3. Enforcement varies from zero through to the most in Newham<sup>3</sup> which has:-

Instigated 1,225 prosecutions for housing crimes (60 per cent of all prosecutions in London);

Banned 28 of the worst landlords from operating in the borough

Recovered over £3.1m a year in unpaid council tax;

Served 2,834 notices to address and tackle serious hazards in rented property.

Source: 1. TLIC Licensing Survey. Based on 64 responses.

2. [https://www.oxford.gov.uk/info/20113/houses\\_in\\_multiple\\_occupation/374/houses\\_in\\_multiple\\_occupation\\_background](https://www.oxford.gov.uk/info/20113/houses_in_multiple_occupation/374/houses_in_multiple_occupation_background)

3. <https://www.newham.gov.uk/Pages/News/Bad-news-for-rogue-landlords-as-Newham's-property-licensing-scheme-gets-the-green-light.aspx>

## Landlord licensing in England cont.

The group also understands that when councils are seeking government approval for a scheme which covers over 20% of the local authority, they will secure approval almost every time, as long as they are not requesting 100% of the local authority to be covered. Some in the TLIC are finding that LAs are even launching schemes that capture new build blocks of apartments which because they have to meet strict building guidelines, the property standards should automatically be achieved and they should not need their standards raising and as the blocks are 'new' there can be no evidence of anti-social behaviour. This suggests that licensing is being implemented for properties and areas which don't meet the aims of introducing the scheme. And although some reports have been produced to suggest licensing has had some impact, the reality is this remains unproven.

Unfortunately just because a property has a licence, it doesn't mean it is safe to live in as a property may not be visited for 18 months to two years after the licence has been issued.

Experts in the industry are currently 'at odds' as to whether licensing should continue:-

### **Russell Moffatt Director and Co-founder Metastreet Ltd**

"Licensing schemes are an important tool for local authorities seeking to tackle rogue landlords and improve standards in the private rented sector, as well as helping to address wider issues such as anti-social behaviour. Licensing offers greater:

- Enforcement capability and resources
- Data and intelligence
- Improvements to housing conditions and management
- Extra tools to tackle anti-social behaviour

However, licensing itself is not a 'catch all' solution. Criticisms raised in relation to schemes that are overly bureaucratic, insufficiently targeted, and poorly enforced, are valid where the approach has not been well designed and implemented. To maintain effectiveness and legitimacy, large-scale licensing schemes should be backed by robust, targeted enforcement, and be part of a wider strategy to improve the PRS and/or tackle ASB."

### **John Stewart Policy Manager RLA**

In terms of licensing, the RLA recognises that small scale licensing schemes, established to tackle particular issues and with clear objectives and measurable outcomes can be effective.

However, too many licensing schemes fail to meet these criteria. They are simply too large, have no clear objectives and are under-enforced, when implemented.

Few councils have an efficient administrative function in place to deal promptly with applications, with most councils taking longer than 3 months to issue a licence, some are taking two years (e.g. Bristol). Some do not have application forms or processes available prior to or at the time the scheme starts.

Councils also seek to place unlawful conditions on licences, or fail to properly understand the legislation surrounding licensing. However, few landlords appeal these conditions, as the cost of going to tribunal too often outweighs the cost of complying with the council's demands.

Councils are introducing increasingly complex fees structures. Some are, laudably, seeking to penalise those who fail to licence promptly, and reward compliant landlords through accreditation, professional memberships or for early applications. We are seeing an increase in councils issuing licences for less time than the lifetime of the scheme (typically one or two year), as default.

There is no consistency in information required, fees charged, conditions imposed or enforcement levels. This goes beyond simply reflecting local needs and priorities, but reflects a widespread misunderstanding of the principles and practical application of licensing.

### **Theresa Wallace, Head of Customer Services and Compliance at Savills**

If you let a property before you submit a complete licence application you are in breach, can be fined and can't serve a section 21. However, a landlord/agent cannot submit a complete application in full until they have found a tenant and can provide information about them. Some schemes ask for the signed Tenancy Agreement which we might not have until the day before the start date. It can take up to two hours to complete a licensing application as each scheme has very different requirements and there is no consistency. As a result, the current licensing system is onerous, asks for unnecessary information and is usually expensive. It feels like agents and landlords are being set up to fail.

When a new scheme is launched we have experienced problems with the Local Authorities websites, files not uploading and other technical difficulties. A positive change would be to allow a minimum three month application period prior to implementation for every new scheme.

Whilst there is a requirement to publish a scheme designation at least three months prior to implementation, we have come across situations where councils have launched the licence application system just a few days before the scheme comes into force.

Our findings suggest that large HMO schemes should stay, for 5 or more people in 2 or more households and reinstate over 3 or more floors. Selective and additional licensing should be replaced by the Property MOT Checklist.

## 2. About Landlord licensing in England

### Definitions of Landlord Licensing

Landlord licensing in England is typically applied to 'house shares' otherwise known as 'houses in multiple occupation.'

The widest definition of a "house in multiple occupation" (HMO) from <https://www.gov.uk/house-in-multiple-occupation-licence> is:-

A property rented out by at least 3 people who are not from 1 'household' (e.g. a family) but share facilities like the bathroom and kitchen. It's sometimes called a 'house share'."

Prior to the 1st October 2018, a house in multiple occupation required licensing in England or Wales if all of the following applied:

- it was rented to 5 or more people who form more than 1 household
- it was at least 3 storeys high
- tenants shared toilet, bathroom or kitchen facilities

Source: <https://www.gov.uk/house-in-multiple-occupation-licence>

From October 1st 2018, the mandatory HMO licensing criteria in England 'dropped' the requirement for a property to be 3 storeys high, so the new definition is:-

All HMOs with 5 or more occupiers from 1 or more households regardless of the number of storeys.

This means more landlords are likely to require a licence. For example, if a landlord has purpose built flats, "where there are up to two flats in the block and one or both of the flats are occupied by 5 or more persons in 2 or more separate households" a licence will be required for each flat, even if the block is classed as 'mixed use' incorporating commercial premises. However, this does not apply if the block has three or more flats.

Landlords had to apply for a licence by October 1st 2018 and if this isn't secured they may not be able to serve a section 21 until a licence application has been submitted.

MHCLG estimate the number of mandatory licences in England was around 60,000, but were set to increase to 174,000 under the new definition. The RLA suggest that the impact of the extended licensing definition will impact differently on local authorities. For example, Boston in the East of England which will now move from 22 licensed HMOs to requiring 1,400 properties to be licensed.<sup>4,5</sup>

### Additional and Selective licensing

However, this 'one definition' of landlord licensing isn't the only type of licensing a landlord may be subjected to.

Included in the Housing Act of 2004, local authorities were allowed to require a licence for all HMOs, including those with just three or more sharers in a property, two authorities which have used this power include Newham and Oxford.

Currently, there are three types of licensing:-

1. Mandatory HMO licensing
2. Selective Licensing
3. Additional Licensing

'Selective licensing' is where all rented properties in a particular area require a licence and 'additional licensing' is where local authorities have the power to licence small HMOs (three and four person) from more than one household.

According to a latest independent report on Selective Licensing:-

"As of the 1st of January 2019, 44 local authorities reported operating one or more such schemes. 4 local authorities operate schemes that cover 100% of the local area, and 9 further authorities report operating a scheme that required approval because of the 20% criterion."

All schemes are mandatory from when they are implemented.

GetRentr estimate in England there are currently 124 live and up and coming licensing schemes, with 31 consultations under way (May 19)

Different licensing schemes and costs

One of the key issues with licensing is the variation in definition, application and cost of licensing. Some even require planning permission (at a cost) to convert a property to an HMO and then convert it back again to a family let.

Below we explain some of the vast differences between the schemes

Oxford's definition of those requiring a licence across the whole of Oxford City includes flats and houses which are:-

1. Occupied by three or more people (this includes children and adults)
2. They form two or more households
3. Share basic amenities
4. The property is their only/main residence
5. Rent is payable.

## Landlord licensing in England cont.

Fees: -

Higher Rate New Application £1,550

New application for a one-year licence where the HMO has been operating unlicensed for more than 12 weeks

Standard New Application £420

New application for a one-year\* licence

Standard Renewal £197

Annual renewal where there are no management concerns or outstanding licence conditions<sup>6</sup>

Higher Rate Renewal £377

Two-year Renewal £222

Full Scheme or Five-Year Renewal £315

### Woking

Woking Council introduced Selective Licensing for the Canalside ward, with the scheme going live on 1st April 2018. Uniquely, for landlords who applied for a licence before the start of the scheme, there would be no licensing fee charged. Likewise, licensing for newly acquired properties after the start date is also free.

The standard licensing fee for applications after 1st April 2018 is £560, lasting three years and for accredited landlords a reduced fee of £200 is payable. Renewals fees are £420 standard and £200 accredited.

### Liverpool

Liverpool implemented a 'selective' licensing scheme, as a result: "all private landlords in the city must obtain a licence for each of their rented properties".

Landlords not only need to keep properties legally and safely maintained, but also need to prove they are a 'fit and proper' person to let to tenants:-

"The scheme will ensure that licensed landlords in the city are 'fit and proper'. Before they are granted a licence we'll be asking landlords to declare convictions for dishonesty, violence or drug-related offences, or breaches of housing, landlord or tenant laws."

Fees: -

First property: £412

Each additional property: £360

Discount for members of one of our approved co-regulation organisations: £206

Every build to rent block of apartments must apply for a licence for every flat at the individual rate<sup>7</sup>:

Block of 100 flats = £20,600

Block of 200 flats = £41,200

Block of 300 flats = £61,800

### Greenwich

Royal Borough of Greenwich has implemented an "additional HMO licensing scheme, which means all HMO properties (more than 2 tenants from 2 or more households) need to be licensed, not just those under the Government's mandatory scheme." And they require a copy of criminal convictions disclosure for both the licence holder and the manager of the property.

HMO licence Fees<sup>8</sup>: -

| Fee type  | Normal fee    |
|---|---------------|
| Standard  | £377 per Unit |
| Member of the Landlord's professional association or accreditation scheme                           | £261 per Unit |
| Enhanced (where the council have discovered the HMO use and written to the property owner/landlord) | £490 per Unit |
| Variation to a HMO licence  | £200          |
| Assistance with completing application  | £150          |

The fees are VAT exempt. The cost of the fees is a valid business expense for tax purposes.

According to James Clemmow from Savills, the additional licence for Greenwich is £377 per bedroom without accreditation, while a three bed and a five bed HMO licence would cost £1,131 and £1,885 respectively.

The council has stated that if you want to let your property to a family you will need to apply for planning permission to convert it back from C4 (HMO letting) to C3 (family letting) and will have to pay £462 to do so. This would also apply to properties where the planning permission was 'gifted' due to the scheme being retrospective.

This is the second most expensive scheme in London.

### Doncaster (sign up 3rd party, pay monthly fee)

Doncaster operate a mandatory HMO licensing scheme and in addition, they run two Selective licensing schemes which cover Hexthorpe and Edlington where anyone renting a property is likely to require a licence.

They are also planning to implement further additional licensing schemes across "in parts of Doncaster Town Centre, Hyde Park, Balby North, Wheatley and Intake"

Doncaster offer a co-regulation scheme for selective licensing, delivered through one approved partner. Landlords can either pay one up-front fee to the council £245 or join the co-regulation scheme, paying a smaller initial fee (£75), registration fee (£25 plus VAT), inspection fee (£50 plus VAT) and a monthly fee (£4.50 plus VAT) to the partner organisation.

Fees: -

Fees are charged for licensing a house in multiply occupation and licences are valid for up to 5 years.

|                 |  |
|-----------------|--|
| New application | £800 (up to 5 bedrooms)<br>+ £55 per additional room |
| Renewal*        | £740 (up to 5 bedrooms)<br>+ £55 per additional room |

### Southwark

This scheme fees are based on the number of bedrooms:-

HMO licence fees (mandatory & additional schemes)

£262.65 per bedroom for the first 10 bedrooms

£157.59 for each bedroom in excess of 10 bedrooms

Mandatory licences typically last for 5 years. Additional licences are typically valid up to 31 December 2020 (when the scheme ends).

This means that for a three bed property, the cost is £787.95 and for a 5 bed it's £1,313.25

Selective licences are £525.30 per flat / house (all properties) and are typically valid up to 31 December 2020 when the scheme ends<sup>9</sup>.

### Applying for a licence: key issues

As an agent or landlord, very few feel this is a simple process. The key issue is that each local authority has developed their own application process as opposed to using one and as a result there is no way of ensuring each time an application is filled you have all the information you need.

Generally the view from users is that the systems appear not to have been tested prior to launch. When a scheme is launched the Local Authority can be overwhelmed by the volume making it impossible for agents or landlords to meet the required deadline - which happened in Greenwich. When applying, some councils do not provide a facility to download a copy of the completed application, so where the system "caused errors" such as incorrect addresses, this is not always picked up until much later on in the process.

### Licence applications can take from 45 minutes to two hours

Once a landlord/agent has obtained all the information the LA requires - which in itself can be time consuming - each application can take anywhere from 45 minutes to two hours to fill in. In some cases, property inspections and/or a fire risk assessment may be needed. As such the actual timescale can be much longer.

The time it takes to apply for a licence depends on familiarity with the scheme and the detailed information being requested. As per definitions and costs for licensing, the information required differs from one scheme to another.

### Lettings licensing experts explain issues with the application system

Experts in licensing applications from TLIC explain below some of the issues they face, often on a daily basis.

For example if the landlord has several properties, there is rarely a facility to fill in 'multiple applications'. This means that the name and address could have to be filled in on several separate occasions. Other online applications allow you to save landlord/agent details and then reinsert those details into another application.

An extreme example from Savills is one client who purchased a new build block in Liverpool in 2017 had to fill in 324 individual applications despite the fact the information needed for the properties within the applications was practically identical. When the block was transferred to Savills to manage in 2018 the landlord had to reapply in full and pay in full again for 324 applications to change the 'property manager' name to Savills. The licences were issued for 2 years. If the scheme renews the client will have to apply for a third time in 3 years.

A further example from Richard Tacagni at LPL also explains that occasionally council online application systems restrict landlords/agents from completing more than one application at a time. Once an online account had been created, one council system prevented applicants from starting a new licence application until the previous application had been submitted. Recently, in applying for a licence in SE London, Richard reached the last page of the licence application, tried to make the fee payment and was told there was a fault and he needed to start the process again - no indication of what the fault was and no opportunity to amend the form. The whole form was then wiped and had to be re-entered.

## Landlord licensing in England cont.

The RLA has collated a series of case studies which found that via several FOI LA requests, processing times were a major issue:-

**Gedling Council** introduced a Selective Licensing Scheme on 1st Oct 2018, receiving £160k in licence fees from 398 applications submitted, 0 applications had been approved so far nearly 3 months after the start of the scheme. They had in addition stated that it takes the council 26 weeks to process a licence application from receipt to a decision.

**Nottingham City Council** estimated that it would cost them £25 million over the lifetime of the scheme and have received over £5 million in licence fees so far, and since the scheme starting on 1st August 2018, the council has received 14060 licence applications, processed 7,712 applications, and just 20 draft licences had been completed.

For HMO Licensing, **Bristol City Council** stated to the RLA in their FOI response that they take 730 days/104 weeks to process an HMO application from receipt to decision. Recently Bristol City Council have approved another Additional Licensing Scheme due to come into force on 8th July 2019, with a new application costing landlords £1255 per licence. This is being suggested as the one of the highest additional licensing fees in England currently.

The RLA conclude that "The majority of Local Authorities with Selective Licensing Schemes cannot provide a formula for how they calculate their fees, suggesting that costs that landlords have to pay being classed as unreasonable and excessive."

### Information requested is not consistent

There is a wider issue of being asked information that doesn't appear to have any connection to the licence (for example a landlords mortgage account number or if the tenants know to put rubbish in the bins), which if you leave blank or fill in as 'don't know,' have no bearing on whether the licence is granted or not.

This can also delay the time it takes to fill in an application, especially if an agent has to go back to a landlord.

It begs the question why it's there in the first place or what the local authority is intending to gain from having that information if it's not actually necessary.

### Requirements to simplify the Licensing Application Process

We need a system which is consistent and clearly states at the start of the application:-

What is legally required - information and documents?

Why it's required?

What does the local authority use the information for?

For example, Hammersmith and Fulham only ask for a gas safety certificate and floorplan to be uploaded, while Greenwich requires:-

### Greenwich

Floor plans for the property (showing layout, facilities, bedrooms and where the fire precautions are)

Latest gas safety certificate if the property has gas

Latest Electrical Installation Condition Report (EICR - previously known as Periodic Electrical Inspection Report)

Portal Appliance Test (PAT) reports if you provide portable electrical equipment such as kettles and microwave ovens

Latest Energy Performance Certificate

Latest inspection certificates and/or log book records for your automatic fire detection or emergency lighting systems, if applicable

Evidence the furniture and fittings you provide comply with fire safety regulations

Copies of current tenancy agreements

Copies of inventory lists

Copy of management contract if you use a managing agent

Latest asbestos report if there is asbestos in your HMO

Copy of criminal convictions disclosure for both the licence holder and the manager of the property

### Different local authority interpretations of a 'fit and proper person' test

Greenwich have interpreted this to require a DBS certificate from the licence holder and in the case of an agent applying on behalf of a landlord a DBS certificate from a senior director and local branch manager. This needs to be clarified as this request seems to contradict MHCLG guidance and may conflict with DBS guidelines.

Hammersmith and Fulham take a different approach asking the applicant to instead sign a declaration stating they know all persons in the application, including the Freeholder, are fit and proper persons.

Questions agents have to ask people are invasive, including:-

- Do you plan on having children during the tenancy? Having a child may create an HMO or cause a room in the property to be unusable by a mother and baby. For example, if two sharers are together and one has a baby, this would create a basic HMO and in some local authorities, this may even need planning permission to be required as well as a licence. This potentially leads to landlords being forced to discriminate against single mothers.
- Can you confirm that the freeholder of the property doesn't have any past criminal convictions? Some local authorities will ask the applicant to declare they know the freeholder hasn't committed any serious crimes or housing related offences



- Can you provide us with the contact details for a person at your mortgage company in case the local authority would like to discuss this application with them? Most applications will want you to specify a person they can speak to from the landlord's mortgage company.
- Can we arrange a visit to check that you are using the bins in the property correctly? Local authorities will expect landlords or managing agents to check tenants are using bins properly.

In contrast, some authorities such as Staffordshire and Dorset have worked together to create a standardised application process for a licence.

Other inconsistencies are around Article 4 directives, such as Greenwich which requires planning permission to let out a property as an HMO. This costs £482 to apply online (£462 on paper) and as well as this a landlord will require a licence. If a landlord is granted an HMO (C4) permission they then need to re-apply for permission to convert the property back to a normal residential (C3) if the property is to be used as anything other than an HMO, the same costs are applied. According to LPL, Article 4 directions are having a detrimental impact on the flexibility of the PRS and this needs a separate review and Robin Stewart from Anthony Gold believes this is not actually allowed.

In addition, there appears to be confusion over who is legally responsible for ensuring an HMO licence is secured. A recent case charged a letting agent that was only finding tenants for the landlord who then failed to get the licence. Even though the agent wasn't responsible for managing the property, as they had taken the deposit and first month's rent, they were held responsible for the licence. This is despite the fact an agent in this capacity has no authority to do anything in the property including cannot arrange any works and cannot apply for the licence which also cannot be applied for until the tenancy starts as signed tenancy agreements and an inventory check in report are required.

### 3. Other costs associated with licensing schemes

The cost of licensing is also being increased by councils by making it very clear they need to attend training courses. For example, two local authorities (Sheffield and West Super Mare) require all agents attend courses, costing around £199.

In return, a certificate will be issued to approve them letting and managing properties.

However, if these courses are not attended and paid for, then Weston Super Mare makes it clear that a property will be inspected and potentially not allowed to be let.

The company they are using to run the course is: the National Landlord Code of Excellence (NLCE) and according to the council, a tender for running the course was put out, yet no-one in the industry has heard of this and other, larger organisations that currently run courses don't appear to have been included on the tender (RLA/NLA etc to confirm they weren't invited <http://westofenglandrentalstandard.co.uk/organisations/#.XIJH9Sj7RPY>)

In addition, having researched the courses, the legal requirements they say are required are way above what's actually needed. [Add letter and Q&A from Council to back the above up].

The key question is: can, under the current law, councils demand money for training courses in return for not inspecting properties and, the second question is, is this really the way to enforce licensing?

### 4. How many licences have been issued?

It's estimated that 500,000 properties in England meet the basic definition for an HMO in England. A parliamentary briefing paper on Houses in Multiple Occupation (HMOs) for England and Wales on 14th July 2017 estimated that:-

"As at 31 March 2016, local authorities provided the Department with estimate numbers of total mandatory licensable Houses in Multiple Occupation (HMOs) at 63,950. The actual number of properties which have been issued a mandatory HMO licence is 40,970. Therefore, the current proportion is 65 per cent"

According to London Property Licensing however the figure is much higher and is set to increase under the new rules implemented in October 2018:-

Mandatory HMO licensing does not apply to all HMOs. It is restricted to certain larger properties under Part II of the Housing Act 2004 - an estimated 60,000 properties across England, although this increased to an estimated 220,000+ properties when the rules changed in October 2018.

However, due to additional and selective licensing schemes, the number of licences generated are much higher than this.

According to Getrentr, the estimated number of each type of licence in England only are:

|               |                |  |
|---------------|----------------|--|
| Mandatory:    | 25,819         |  |
| Additional    | 14,625         |  |
| Selective     | 117,838        |  |
| Unknown       | 38,433         | (some licence register a mix of mandatory/discretionary) |
| <b>Total:</b> | <b>196,715</b> |  |

Although this does not encompass all local authorities (some do not publish results) this does give a good picture for all major towns and cities.

## Landlord licensing in England cont.

On an individual council level, as at 1st September 2018, online research estimates that these are the potential number of licences and costs, but they require confirmation by the local authorities:

Liverpool is estimated to have issued 44,000 licences (1,110 mandatory, rest selective) at an average of £500 each

Croydon is estimated to have issued 33,000 licences at an average of £750 each

Waltham Forest is believed to have issued 23,700 licences (214 mandatory) at an average of £750 each

Newham is expected to have issued 22,000 licences (516 mandatory, 2,221 additional) at an average of £400 each

Barking and Dagenham has issued 10,500 licences (36 mandatory, 300 additional) at an average of £750 each

Clearly though these numbers will have increase dramatically with the new licensing rules introduced from October 2018 and is substantially higher than the previous 40-60,000 properties expected to be licensed when the scheme was introduced.<sup>10, 11, 12</sup>

### 5. What is the average licence fee?

According to the government Parliamentary Briefing from 2017, "Local authorities are free to set their own level of fees for licence applications, the idea is that the fees should reflect the actual cost of administering the licensing scheme."

From a legal perspective, under the 2004 Act, councils can only charge an applicant a single fee for licensing, on application. The fee can cover the processing and operational costs, including enforcement. However, recent court cases cast doubt on this.

In *Gaskin vs Richmond*, the court agreed that letting a house is covered by the EU Provision of Services Directive. This affects how fees can be charged. They should be split into a fee for processing and a fee for operating the scheme. Unsuccessful applicants should not be charged the operational element. Both sets of fees should only cover the costs involved. This brings the 2004 Act provisions into conflict with the EU Directive.

At the start of licensing in 2006, the expectation was that the "average fee for mandatory licensing would be approximately £500. When this cost is averaged out over the five-year life of a licence, this would result in an annual cost of around £100."

Taking the estimated 40,000 licences from the Parliamentary Briefing Paper at the predicted £500 per licence, this would have generated £20,000,000.

However, these considerably underestimate the licence fee income as Newham alone raise £11,272,000, although it does suggest the 'average' of £507 per licence, which in Newham's case is in line with original estimates.

Taking the other local authorities mentioned above, applying discounts where given and weighting similar to Newham fees, it is estimated that the five boroughs mentioned alone generate just over £52,000,000, giving an average fee across all boroughs of £390.64, which is less than the original mandatory expectation of £500.

Applying the estimate of £390.64 to each of the estimated 196,715 licences in England, this means landlords have been funding schemes to the tune of £76,844,747.60, nearly four times the original estimated income generation.

However, the fees from one council to another do vary dramatically, especially when discounts are applied and, considering all councils are, in theory, implementing similar schemes, it has to be questioned why this is the case and if it is not possible to implement a similar fee structure across all councils.

Source: 10. <https://www.gov.uk/government/news/rogue-landlords-put-on-notice-as-government-announces-tough-new-powers>  
11. <https://www.londonpropertylicensing.co.uk/mandatory-hmo-licensing> 12. <https://getrentr.com/>

## 6. How many prosecutions has landlord licensing generated?

The key aim of licensing was not to generate income for local authorities, but to improve the condition of shared housing in the UK and especially to reduce the number of fires, but although this is difficult to measure, one way to measure its success is to look at the number of prosecutions to see how many poor landlords and properties have been 'taken out' of the market.

Currently there is only a limited amount of publicised research on enforcement and prosecutions. However, Caroline Pidgeon MBE AM, London wide Member of the London Assembly produced a report on prosecutions taken by London councils against criminal landlords in October 2017.

The report's survey found:-

More than a quarter of councils in London (9 boroughs) failed to prosecute a single landlord for providing unsafe accommodation in 2016/17.

A further half of London's councils (16 boroughs) prosecuted fewer than 10 landlords for providing unsafe accommodation in 2016/17.

One council alone (Newham) was responsible for 57 per cent of prosecutions taken under the Housing Act (2004) in London.

Brent was responsible for the second highest number of prosecutions (65), accounting for 11 per cent of all prosecutions taken under the Housing Act (2004) in London.

The number of inspections resulting in formal housing prosecutions varies significantly across the boroughs. Croydon prosecutes 0.03 percent of properties inspected, while Newham prosecutes 38 percent.

Almost 4,000 Category 1 hazards (i.e. those representing the most serious risks to tenants) were identified in London's private rented sector properties in 2016/17 alone.

On average, London boroughs inspected one in every 45 homes in the private rented sector using the Housing Health and Safety Rating System (HHSRS)

Caroline Pidgeon concluded:-

The increased number and profile of private renters has done little to improve conditions in the sector, which remain highly variable. Around a third of homes fail to meet the Government's Decent Homes standard.

And

In 2016, I conducted a survey into the enforcement of standards in the private rented sector by local authorities, which established that enforcement was highly variable. This remains the case. Cuts to Local authority budgets have reduced the resources available to tackle landlords who provide poor or unsafe living conditions. The resulting patchwork enforcement has left thousands of Londoners at the mercy of rogue landlords.<sup>13</sup>

In addition, there is useful data on London, thanks to the Mayor's 'rogue landlord and agent' database. GetRentr have aggregated the information on the site to help understand how many prosecutions have been generated since January 2017 93 cases (out of 1552 total as of 08 Jan 2019), generating £2,965,195 in fines, with an average of £4,278 per offence.

At time of writing, not all councils have added their data to the Mayor of London's database, and those that have, cases do not cover the same periods (for example, cases in Barnet and Enfield started appearing in December 2018). This means the prosecution rates are not comparable between boroughs from this dataset and would require FOIs to get a fuller and comparable picture.

More recently, the **RLA's PEARL Research** has shown that:-

- 53% of local authorities do not have a policy in place for issuing a Civil Penalty Notice against a private landlord or letting agent
- Local Authorities have collected £621,760 in Civil Penalty Notices against private landlords, across the Local Authorities that have served a Civil Penalty Notice, the average amount levied was £6,392
- Only 11% of Local Authorities have issued a Civil Penalty Notice against a private landlord or letting agent and only 332 Civil Penalty Notices in 2017/2018 were issued in England against private landlords, with the majority of these notices being served from Local Authorities in London.

They believe these figures prove that it is a "postcode lottery" when it comes to implementing and using Civil Penalties by Local Authorities and even if issued, the money may not be collected with "28% reporting that they had not collected any of the monies owed." They conclude that "analysis of the introduction of Selective Licensing schemes across 32 Local Authorities against complaint and enforcement data shows that there was no significant difference in the before or after the introduction of the scheme."

## Landlord licensing in England cont.

### 7. What is the cost of licensing versus the number of prosecutions?

It's clear that with over 500 prosecutions taking place in London, the changes have made some impact and raised an average of £4,485 per prosecution. However, it is important to note that this money, unless a civil penalty goes to the Treasury, not the Local Authority.

Essentially it could be argued that licensing is costing compliant landlords £76,844,747.60, money which they could be investing into repairing and improving property condition but is not currently having as big an impact on rogue or non-compliant landlords as hoped.

Bearing in mind the PRS is still constantly criticised for not delivering safe and legally let properties and continues to operate like the 'wild west', it is clear that licensing has done little, if anything, to improve the view of the sector.

Taking a case of an individual borough, Newham has generated over £11 million revenue from landlord licensing which has funded 1225 cases and 450 simple cautions. The council admits though that despite raising this money and funding this many cases, it estimates that 10,000 properties in the area still have Category 1 hazards.

### 8. What difference has licensing really made?

The government's recent consultation on HMOs concludes that the:

"licensing of HMOs has: ...helped tackle overcrowding, poor property management and the housing of illegal migrants. Partly as a result of these improvements, the issues have now moved to smaller HMOs. This is because the market has grown and rogue landlords are choosing to let smaller HMOs to avoid the licensing requirements of larger properties and the attention of enforcement authorities"

However, there is little evidence to support this conclusion. Currently there are three reports which have attempted to review the success of licensing schemes and their conclusions are summarised below.

#### **Report 1: [MHCLG: Evaluation of the Impact of HMO Licensing and Selective Licensing, 2010](#)**

This paper was fairly extensive, (over 270 pages) and included bespoke surveys on 69% of local authorities in England implementing licensing schemes (including those carrying out selective licensing) and 12 local authority case studies.

Overall the conclusion was that licensing was a 'success', however, many of the actual statements in the report suggest their research was inconclusive and seemed to 'assume' rather than evidence positive change.

For example:-

**Physical condition.** The exact number of properties where landlords have carried out improvement to the physical condition of the property as a direct result of licensing is unknown. However, LAs, landlords and tenants reported that various works had been carried out to HMOs as a result of licensing. A good proportion of mandatory licensable HMOs will now have fire safety measures installed, additional bathrooms and toilets, up-to-date gas safety inspections and improved electrical wiring.

**Tenants.** Students living in shared accommodation that fall inside the mandatory licensing threshold were most likely to experience the impact of licensing... Many of these HMOs were accredited, so were already of a fairly good standard generally, but licensing would have ensured the installation of fire detection devices, which many lacked before licensing. Young professionals and other employed people can usually afford good quality HMO accommodation and are likely to have seen little change as a result of licensing.

There are clear statements where licensing hasn't made a difference:-

**Migrant workers** tend to live in HMOs that fall outside the mandatory licensing threshold. Too many of them are living in overcrowded conditions with few amenities. Mandatory licensing has not tackled the problem landlords that continue to exploit migrant workers who need affordable basic accommodation.

**Standards of management.** Tenants reported little change to the overall management of HMOs.

The report also concluded that these areas were not working well:-

1. **Inconsistency between Local authorities.** The paper stated back in 2010 that "Licensing is mandatory and landlords are entitled to expect a higher degree of consistency" but little has been done to achieve this.
2. **Bureaucracy.** Licensing is largely an administrative process but it is made inefficient by the increased amount of bureaucracy associated with it. Officers are issuing notices when simpler forms of communication may be more expedient.
3. **Lack of resources.** Many authorities are struggling to find sufficient resources to licence, inspect, and carry out enforcement work. Some are therefore prioritising their workload by licensing based on the application form only. Others are concentrating their limited resources on HHSRS to the detriment of licensing.
4. **Licensing and the Housing Health and Safety Rating System (HHSRS).** Licensing without HHSRS inspections has meant that licensed HMOs are not always free from Category 1 or 2 hazards. Yet, carrying out HHSRS inspections as part of the licensing process has led to confusion for landlords who expect to comply with prescribed HMO standards and do not fully understand the risk based approach associated with HHSRS or how it relates to their HMO licence.

**5. Communication between LAs and HMO landlords.**

There has been a great deal of communication between LAs and landlords during the course of licensing. However, the type of information provided to landlords, and the way that they have been consulted about certain aspects, has left a lot to be desired.

**6. Lack of tenant engagement.** Very few tenants were aware of licensing or knew what it meant in terms of their tenancy. This was because local authorities varied in the level of information that they disseminated to tenants.

**7. Publicity about licensing.** The national advertising campaign produced a confused message about licensing for tenants and landlords resulting in an increased work load for local authorities.

**8. Prosecutions.** Local authorities have been slow to carry out enforcement action against unlicensed landlords. Therefore, there have been very few landlords prosecuted for operating unlicensed HMOs. Unscrupulous landlords have continued to operate these properties under the radar in authorities that have concentrated on licensing rather than enforcement.

**9. Management orders.** There were two main issues with management orders. Firstly those few authorities that were prepared to use them thought that they benefited the landlord rather than the local authority and secondly, authorities were avoiding setting them up as they were considered resource intensive.

Although selective licensing was reviewed in this paper, it seemed too early and evidence was poor to come to any major conclusions.

This paper was published in 2010 and many of the criticisms of the licensing schemes are still relevant today - nine years later.<sup>14</sup>

**Report 2: [Environmental Health News](#)**

A special EHN investigation in 2013 revealed that the 16 English local authorities with selective licensing regimes have prosecuted 217 landlords for failing to obtain a licence and 87 landlords for HMO and hazard offences.

The report suggested that selective licensing schemes were being utilised to:-

1. Fund the recruitment of housing officers
2. Drive up standards in the PRS
3. Prosecute hundreds of rogue landlords

According to the report Stephen Battersby, former CIEH president and chair of National Private Tenants Organisation, stated 'The survey seems to indicate that selective licensing was an effective tool to improve conditions in the private rented sector and reduce anti-social behaviour.'

The report concluded:-

1. Newham took more legal action than any other council.
2. Leeds, which introduced its scheme in October 2009, prosecuted 42 landlords for licence offences and six for HMO and hazard offences.

But it also stated that Hartlepool, Hyndburn and Bristol hadn't at the time prosecuted any landlords, while Durham didn't respond to the survey.

As far as investing income earned from licensing:-

1. Six of the authorities had self-financing fee structures, enabling them to recruit 28 additional housing officers.
2. Blackpool (charging £670 per licence) recruited eight extra housing officers
3. Newham, (charging £500 per licence) recruited six extra housing officers.
4. Thanet recruited six officers.

However, Blackburn, Gateshead, Hyndburn, Wolverhampton, Sunderland, Salford and Stoke did not employ additional members of staff.

Feedback from the Local authorities suggested that improvements had been made,

1. Leeds -said enforcement action had forced a minority of landlords to 'sell their properties and leave the area' and there is now 'less churn of properties in the area' and 'void rates have slightly reduced'. Evidence also indicates fewer incidents of anti-social behaviour in the area and waste, fly-tipping and graffiti complaints have fallen.
2. Stoke, which has one scheme covering 900 homes in the Tunstall area of the city, said all landlords have had to pass a 'fit and proper person test'. Nearly all the properties in the licensing area had either category 1 or 2 hazards so action was taken against the landlords. 'Only three landlords have had to have an improvement notice served on them for failing to carry out the works, all other landlords have completed or are completing repair work.'
3. Blackburn, said it had inspected all licensed properties and has required landlords to carry out work in a large number. All landlords have been required to meet gas safety and electrical safety minimum standards.
4. Hartlepool said statistical analysis indicated that there had been a reduction in anti-social behaviour, a reduction in long-term empty homes and a reduction in the number of complaints about disrepair and housing.

## Landlord licensing in England cont.

5. Newcastle, which has two schemes, said a number of landlords had sold their properties and 'more reliable landlords' have started to carry out refurbishment works. 'Thirteen properties have been the subject of management orders, one was sold as a consequence, the remainder have had fit and proper property managers appointed. Landlords are keen to work with the council and we have had fewer complaints about property conditions and management practices since licensing standards were introduced.'
6. Middlesbrough said the number of anti-social behaviour incidents fell by 26 per cent between 2006 and 2008.
7. Blackpool said a number of landlords failed its 'fit and proper person' test and the inspection programme led to improved conditions.
8. Gateshead, which has three schemes, said the turnover of residents in the licensing area has reduced over the five-year period and that the number of empty properties in the area has nearly halved. Anti-social behaviour rates have reduced and the number of properties that meet the decent home standard has increased.

However, even though some progress has clearly been made in these areas to drive up standards due to selective licensing, Bob Mayho, CIEH principal policy officer, "warned that the process was too costly and bureaucratic." and 'Many colleagues working to improve standards in the private rented sector tell us that the licensing approach is fraught with difficulties and carries with it, high levels of bureaucratic burden.'

### Report 3: [Closing the Gap - University of Kent and Bristol](#)

This report was commissioned by Shelter to look at the gap between existing legislation which may make housing less safe; set out where lack of enforcement 'undermines' existing legal protections and to identify legal remedies to strengthen tenant protection.

The report concluded that the law in relation to the condition of a property is a 'mess'. The view was the law was out of date and enforcement was 'variable' - in some cases even just of 'symbolic value'.

### Report 4: Generation Rent research

In an email from Generation Rent, they reported that:-

"just one in every 20 private renters who complain to their council about poor living conditions gets protection from a revenge eviction. Even when councils find serious hazards, just 1 in 5 tenants are protected."

In addition, they stated that

"if you complain about black mould in your bedroom or water dripping from light fittings, you've got just a 5% chance of the council forcing your landlord to make a change."

These conclusions suggest that licensing hasn't had the impact originally hoped for.

### Report 5: A Licence to Rent

In a recent report by the [Chartered Institute of Housing and Chartered Institute of Environmental Health](#), they summarise that "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." From their perspective, it is down to Local authorities to drive up and one route is via Licensing.

Their research into the value of licensing involved 20 councils running 27 schemes, including three borough wide schemes.

They concluded that "Selective licensing schemes are successful at improving housing conditions." And that the schemes had identified that "between 69-84% of properties in licensed areas needed works to be done to bring the properties up to a decent standard." They believe that licensing was "largely fair to landlords" and that it promoted better working relationships between landlords and the LA.

In addition their research suggested that:-

1. Identifying unlicensed properties was successful
2. Although prosecutions are low this was due to a cautious, encouraging good practice approach

However, they also concluded that "Licensing fees vary significantly from scheme to scheme and do not always reflect the true cost of scheme administration."

And that:-

Not all schemes focused enough on property condition, with some focusing too much on property management

There needs to be a more "proactive approach to housing inspections" as opposed to "relying on tenants to make complaints to the council."

There is a requirement for more "formal guidance or best practice" for councils to run licensing schemes.

The report also covered requirements for successfully running licensing including high level local support and a clear understanding of the outcomes to be achieved as well as working with other organisations to identify issues, such as the police.

Newham has been and the forefront of Licensing and this feedback is from Russell Moffat who was part of the team that implemented the scheme and an agent, Chris Baker from McDowalls who was proactive in supporting it:

### Report 6: Selective Licensing Review

This was an independent review of the use and effectiveness of selective licensing on behalf of the government, to assess:-

- Whether the powers selective licensing provides are sufficient to deliver the intended outcomes
- To identify the mechanisms by which licensing achieves its aims

- To seek commonalities of successful schemes
- To identify issues impacting on the effectiveness of selective licensing.

In addition, it set out to objectively establish whether selective licensing achieves its intended outcomes, through analysis of publicly available data

The review concluded that:-

“The report finds that selective licensing is an effective tool when implemented properly, and identifies a range of areas where the operation or implementation of selective licensing schemes could be improved.”

The report suggests that of the Local Authorities that have introduced selective licensing:-

“With a single exception, local housing authorities with schemes in operation considered their schemes to be at least “fairly effective” in tackling one or more of the issues licensing was introduced to address. Of the responses to this question, 41% were “very effective”, 51% were “fairly effective” and only 9% were “fairly ineffective” or “very ineffective”.<sup>2</sup> The figures clearly suggest that, in the opinion of authorities currently operating schemes, selective licensing is an effective policy tool.”

The report identifies key characteristics of effective schemes are:-

- Careful planning, in particular with respect to anticipated costs and also to mitigate the potential impact of underestimating the number of licensable properties;
- Well thought through and diligent approach to evidence gathering and consultation;
- A realistic approach to area definition with boundaries carefully drawn to focus on areas with demonstrable problems, although it was clear that problems could genuinely be district wide in some authorities;
- Licensing forming part of a wider suite of community-based measures aimed at effecting change consistent with the aims and objectives of selective licensing, with a clear political will to support the scheme;
- Effective engagement with both landlords and tenants, but especially raising, through dialogue and training, landlord awareness of their responsibilities;
- An inspection regime that is robust, consistent and targeted – dealing with contraventions firmly but fairly, where possible dealing with the worst first;
- Regular and open publication of progress against targets and outcomes - this encourages trust and support from stakeholders

They did identify some issues which included the following (more are listed in the report):-

They are not permitted to include conditions on the licence relating directly to property conditions, despite that often being the key reasons for designation.

Have to give 24 hours’ notice for formal action under the Housing Health and Safety Rating System (HHSRS).

Difficulties identifying the true extent of the private rented sector, although most reported finding more privately rented properties than anticipated.

The process of making a designation is perceived to be highly complex and unnecessarily bureaucratic, requiring significant time, money and other resources.

Size of the scheme - as schemes get larger, any problems caused by unanticipated circumstances are magnified. Many costs cannot be set directly against the licence fee (e.g. landlord training, tenant support, increased workload for the legal department) and the larger a scheme is, the more problematic resourcing such services can prove.

Larger schemes also tend to suffer particular difficulties with recruitment and retention of staff. Any inadequacies in initial fee setting can be severely exposed.

Inflexible licence fees - most licence fees take no account of the remaining time of the licensing designation, with landlords required to pay the full cost of re-licensing after holding a licence for a short time only. This can result in understandable resentment and increased non-compliance from landlords.

The largest single cost of operating a scheme is staffing; setting a fee too low can have significant consequences – usually a reduction in the percentage of properties inspected, delays in issuing licences etc.

Several respondents reported that completion of the application form was often undesirably onerous, with a typical application form comprising 15-25 pages. The length is dependent on the extent of information required by local authorities in addition to extensive mandatory questions required by legislation. Many considered several of these mandatory questions to be of limited relevance or utility.

This independent report is primarily based on evidence provided by a range of stakeholders through a series of detailed depth interviews, in addition to the results of an online survey sent to every local authority in England.

## Landlord licensing in England cont.

### 9. Views from TLIC members and reports on Licensing

These range from making licensing more consistent, though to scrapping selective and additional licensing altogether and replacing with a Property MOT.

Metastreet's summary on the current licensing schemes

Property licensing is an important tool in local efforts to improve standards in the private rented sector, as well as helping to address problems such as anti-social behaviour and poor property management which can have a significant impact on local areas.

However, licensing is clearly not a 'catch all' solution, and some of the criticisms raised... in relation to schemes that are overly bureaucratic; insufficiently targeted; and poorly enforced are valid where the approach has not been well designed and implemented. To maintain effectiveness and legitimacy, large-scale licensing schemes should be:

- backed by robust, targeted enforcement, and
- part of a wider strategy to improve the PRS and/or tackle ASB.

#### Chris Baker – McDowalls Agents

Operating within our local borough of Newham, we see the awareness of possible prosecution from non-compliant landlords as vital. Local communities and landlords operating within this borough have slowly woken up to the risks involved and the fines they are facing.

When landlords are prosecuted others fall into line as the word spreads. For compliant landlords we have found working with the Local Authority useful but in the past 12 months Newham's dialogue with landlords has fallen away completely. In our view, licensing fails without effective dialogue and enforcement.

#### Will local authorities be able to continue to charge to run and enforce licensing schemes?

In a recent case "R(Gaskin) vs LB Richmond Upon Thames(2018) EWHC 1996 (Admin) the High Court" overturned a prosecution against Mr Gaskin and gave substantial guidance on fees and other points associated with HMO licensing, and by implication selective licensing, schemes under the Housing Act 2004.

According to David Smith from the RLA, local authority:-

1. Licence renewals can only ask for the information set out in the relevant regulations
2. Currently include substantial elements of enforcement and management activity in their licence fees and this decision suggests they may not do so.

This suggests schemes may have to be dropped and, worse for councils, that they may have to refund licences already paid for.<sup>15</sup>

In order to comply with the directive, councils should be charging a two-part fee, with unsuccessful applicants being refunded the second part. In practice, few councils operate fees in this way, and, it is far from clear whether even a two-part fee would be allowed by the 2004 Act. As it stands, most councils' fee structure are likely to be unlawful, although most councils are now aiming to move to a two part fee and they have been provided with a directive along with a [presentation from Adrian Chowns of Coventry City Council](#)

#### Chris Baker – McDowalls agents

The cost per licence has been rising over the last five years and there is rarely an "early bird" introduction fee as landlords have benefited from in the past. Landlords are generally willing to pay £500 every five years and although reluctant to pay, it is a necessary cost. However, as costs rise past this point landlords tend to see it more and more as a money-making exercise from the local authority. They will still comply but there is less goodwill from landlords as a result of them feeling it operates as a local tax. Given that licensing schemes all arise out of statute why the cost should vary by area so dramatically when the same laws are being applied by councils up and down the country is a mystery. We appreciate that London councils generally face higher staff and running costs, but believe it must be possible for a limit on the cost per licence.

#### Conclusion about the current schemes/sustainability

Every Local Authority in England runs a mandatory Licensing scheme for Houses in Multiple Occupation. They can also apply to the government to run selective and additional licensing schemes.

Below we have summarised various views from the industry, academics and members of The Lettings Industry Council with regards to whether licensing should continue or take on another form. **John Stewart, Policy Manager from the Residential Landlords Association**

If discretionary licensing is to continue it must:

- Be small-scale
- Have clear objectives
- Have properly resourced application system and processing
- Have clear targets for issuing of licensing and apply tacit consent
- Have a transparent and lawful fee structure
- Have lawful conditions
- Be properly enforced
- Report annually against finance and objectives



### Metastreet's Licensing recommendation for central and local government

Central Government Recommendations to support local authorities:-

- **Return selective licensing powers to local authorities:** Since April 2015, local authorities have had to seek approval from the Secretary of State for selective licensing schemes which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the area. The current application process places a significant burden on applying authorities: it is bureaucratic, subject to lengthy delays, and based on unclear, outdated criteria. While acknowledging a potential role for central government in quality-checking the operation of schemes, decisions to implement selective licensing should ultimately rest with local authorities, where there is a greater understanding of local need. This would require a review of the general approval powers and changes to The Selective Licensing of Houses (Additional Conditions) (England) Order 2015.
- **Consider introducing a national landlord registration scheme:** This could support and complement selective licensing schemes by making it easier for local authorities to identify landlords in their area. While 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 PRS in their areas and reduce the resources needed to start a new scheme. Any national scheme would require local enforcement to work effectively and should learn from the experience of Rent Smart Wales on the need to set out clearly defined roles in the relationship between national and local schemes, particularly in relation to enforcement.
- **Introduce stronger penalties for the very worst landlords and support local authorities to step up enforcement:** While local authorities can currently issue civil penalties up to a maximum of £30,000, we support calls for higher financial penalties and property forfeiture in the worst cases. The government should also look at a new fund to support local authorities with initial investment to step up enforcement.
- **Review and simplify existing regulation around selective licensing:** While licensing is valued by many councils and residents, landlords and many councils also find current regulations bureaucratic and costly. While acknowledging the value of selective licensing, the government should seek to simplify regulations and processes where possible. For example, reducing the mandatory application questions landlords must answer.

- **Update government guidance on fees, licensing conditions, and enforcement policy:** the government could provide improved guidance to encourage greater standardisation in the operation of licensing schemes across the country, learning from existing best practice. Areas where guidance could be updated include:
  - **Fees:** Licensing fees vary significantly from scheme to scheme, and government should consider introducing clearer guidance on fees, while taking into account the need to sustainably fund the costs of administering an effective licensing scheme.
  - **Licensing enforcement policy:** There is significant variation in how licensing schemes are enforced. Government could create a more consistent approach by encouraging councils to adopt a national enforcement policy and publishing clear guidance, as well as ensuring enforcement in this area is adequately funded.
  - **Licensing conditions:** The wording of licensing conditions varies outside of the mandatory conditions set by government. Government could consider introducing clearer guidance on what new licensing conditions can be set to help provide greater consistency.
  - **Review of linked legislation and addressing loopholes:** Definitions contained in council tax, housing benefit and planning are contradictory and often confusing, especially around HMOs. In particular, the turning of bedsit accommodation into 'self-contained' properties has led to exploitation at the lower end of the market. These units are not truly self-contained and often lack kitchen areas and are below acceptable room sizes to accommodate proper amenities.

Local government recommendations are:-

As noted above, the most effective licensing schemes are backed by robust enforcement and operate as part of a wider strategy. Beyond this, local authorities should prioritise:

- **Intelligence Led Enforcement:** Councils should be encouraged to adopt a data and intelligence-driven approach to identify PRS properties at greater risk. Councils using this approach are having more success, particularly in addressing unlicensed properties.
- **Encourage proactive multi-agency housing enforcement:** Councils should be supported to develop effective and proactive multi agency housing enforcement. This might include Environmental Health Practitioners (EHP), the Police, Planning Enforcement, Immigration Enforcement (UKBA) and Her Majesty's Revenue and Customs (HMRC). Police presence is also a useful asset to assist in accessing properties.

## Landlord licensing in England cont.

- **Develop licensing skills and resources strategy:**  
As noted in the literature review, a recent report highlighted that a shortage of skilled council officers to set up and deliver a licensing scheme is developing.<sup>43</sup> Councils and regions should work together to develop a workforce plan to ensure that skilled resources are available to deliver effective licensing schemes into the future.

GetRentr, technology company which simplifies the complexity of Property Licensing.

“We believe there are significant economies of scale that are yet not being exploited which are wasteful and causing problems for all stakeholders. For example, resource sharing and using common IT systems are easy ways for Local Authorities to save money and reduce the cost of licensing. For example, Dorset councils have grouped together to provide <https://www.dorsetforyou.gov.uk>.

Arguably, all council websites should be identical in form and function with their localised variations in predictable locations and formats, but that is a question much larger than property licensing.

Caroline Pidgeon MBE AM, London wide Member of the London Assembly made several recommendations to the London Mayor:-

### **Recommendation 1**

To undertake an urgent review of conditions in the private rented sector. The Greater London Authority should lead on establishing best practice, in conjunction with local authorities, to improve the consistency of enforcement across the capital.

### **Recommendation 2**

To work with Government to increase the resources available to councils and reduce the timescales involved in prosecuting private landlords in cases of poor property conditions.

### **Recommendation 3**

To set out a timescale for including all boroughs on his proposed database of rogue landlords. He should also include details of landlords who do not comply with new energy efficiency standards in future iterations of his database

### **Recommendation 4**

The Mayor should lobby Government for the power to introduce a mandatory licensing scheme for all private landlords in London, with the aim of professionalising the sector, improving conditions and removing rogue landlords from the housing market.

### **Recommendation 5**

The Government should abolish restrictions on the size and coverage of selective licensing schemes in London.

### **Recommendation 6**

The Mayor should encourage all boroughs to keep an up-to-date record of the number of inspections carried out using the Housing Health and Safety Rating System, including when and where Category 1 hazards are identified

### **Rugg and Rhodes review** (source: Metastreet)

Recommended replacing licensing and agreed with the TLIC's recommendation of a 'Property MOT'.

1. Replacement of existing regulation (mandatory, additional and selective licensing) by simpler regulation - all property used as HMO to be registered with local authorities and remain subject to 'MOT' requirements.
2. Establishing a national landlord and letting agent register which every landlord would have to sign up to before being able to let out a property.
3. All properties to be certified as 'fit for letting' and gain an "MOT" by being independently inspected.
4. All properties to be required to meet a minimum property standard, which should be developed in consultation with industry, environmental health professionals and tenants.
5. All properties to be inspected annually.
6. Reform the redress system by expanding the remit of the Ombudsman and creation of a specialist housing court.

### **Selective Licensing Review Recommendations**

The key recommendation is that selective licensing should be retained, however it could be improved, here is a summary of some of their suggestions:-

Government should consider introducing a national registration scheme for landlords to support and complement selective licensing

Government should consider amending the mandatory licence conditions with which a landlord must comply to include a standard requirement on property condition that covers the absence of serious hazards, for example: "the landlord should ensure that the property is in such a condition as to comply with the condition obligation of a landlord under section 9A of the Landlord and Tenant Act 1985 to let and keep a property fit for human habitation within the meaning of section 10 of the Landlord and Tenant Act 1985"

Authorities should be permitted to enforce directly against this condition if prescribed hazards (or other matters set out in section 10) which amount to the property not being fit for human habitation are discovered during a selective licensing inspection (see paragraphs 8.19 to 8.48).

Government should consider issuing best practice/guidance as appropriate to support local authorities and improve the implementation of schemes.

Government should consider adding to the specific exemptions from selective licensing schemes e.g. purpose-built student accommodation that follows a Government approved code<sup>8</sup> and non-profit charitable institutions that are not registered social housing providers

A local authority should be able to take emergency remedial action without 24 hours' notice in respect of a Category 1 HHSRS hazard if there is an imminent risk of serious harm

Government should consider reviewing the 20% threshold to ensure it relates to up-to-date data sources in the absence of a recent census

Government should explore options for a "light touch" process for authorities seeking to re-designate an area at the end of a period of licensing.

In most cases, licenses are issued for a full five-year period regardless of the time remaining on the designation. Local authorities introducing new schemes should adopt the practice of charging the enforcement element of the licence fee on a prorated basis to allow this element of the charge to reflect the remainder of the designation period.

Currently there is an extensive mandatory list of questions that must be asked on any licensing application, this should be allowed to be streamlined

For a comprehensive list of recommendations read [the full report](#).

#### Chris Baker – McDowalls

It is clear that what was originally laws which over a five-year period would deal with poor standards of living in small areas in the private rented sector, now appears to have become a rolling programme of licensing scheme after scheme and fee after fee. This suggests that it is not a long term solution to the issues raised or the golden bullet it is often sold as.

From our perspective, standardisation is key if licensing is to remain. For example, there should be:-

1. One form for all councils to follow
2. One fixed fee of £500
3. Councils need to be able to deal with portfolios of properties via bulk entry
4. A consistent payment method applied across all councils.
5. Councils should provide a postcode checker so landlords and agents can easily identify whether or not a property requires a licence.

These five simple steps would lead to a better more landlord /agent friendly solution.

If councils wish to licence I strongly recommend they should be forced to use a standardised process.

Recommendations to change licensing from CIH and CIE.

From a Central government perspective, they recommend:-

- Selective licensing schemes should be continued but approval should be assessed based on clear objectives
- Councils should be given more flexibility to set licence conditions, including exceeding national minimum standards

Good practice guides should be issued to reduce local scheme variations including:-

- 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

In addition to Licensing, it is recommended that there is a "national landlord registration scheme"

6. Financial support should be provided to aid Local Authorities implementing schemes and especially regarding enforcement

For local authorities:

Objectives and outcomes for the scheme need to be clear and success based more on property standard improvements as opposed to purely the number of prosecutions

Improve engagement with stakeholders, including landlords.

Utilise civil penalties to "rebalance their resources for enforcement".

#### Richard Tacagni, MD from London Property Licensing

Richard is incredibly knowledgeable and experienced in property licensing matters

Some of the important issues he has highlighted include:-

- Licences cannot be transferred, so in areas with selective and additional licensing (SL and AL), a new licence application will be required if the tenancy changes from a single family let to a small group of sharers which can restrict flexibility in the housing market
- Some councils seek to restrict AL & SL licences to the end date of the scheme rather than 5 years, with some such decisions being overturned on appeal
- Some councils add excessively long lists of standard conditions to all licences (40+ not unusual), whilst at the same time councils are not always correctly applying the suite of mandatory conditions

## Landlord licensing in England cont.

- Some councils unaware of the recent Court of Appeal decision that narrows their ability to apply selective licensing conditions: <https://www.londonpropertylicensing.co.uk/selective-licensing-and-licence-conditions-court-appeal-gives-narrow-interpretation-local-authority>
- Some councils misunderstanding the status of local HMO standards and applying them as a prescriptive set of requirements rather than guidance that needs to be interpreted with a degree of flexibility
- Some councils failing to take account of the views of tenants when proposing to prohibit bedrooms from use and sometimes reaching such decisions based solely on a desktop review of the application
- Some councils still seeking to charge for licence variations, which is not permitted under the Act
- Some councils 'rejecting' applications rather than refusing or approving them by following due process
- Some councils failing to allow sufficient time for applications to be submitted before a scheme starts which hugely increases the compliance risk - the period can sometimes be just a week or two before the scheme starts, which is unacceptable. One suggestion is to amend the MHCLG general approval to make it a requirement to promote new schemes and accept licence applications throughout the three month period leading up to scheme implementation

Richard is incredibly experienced with applying for and querying licensing applications.

Issues to be resolved:-

- Licences cannot be transferred, so in areas with selective and additional licensing (SL and AL), a new licence application will be required if the tenancy changes from a single family let to a small group of sharers
- Councils restricting AL & SL licences to the end date of the scheme rather than 5 years - some such decisions have been overturned on appeal
- Long lists of licence conditions added at the discretion of the local authority (40+ not unusual)
- Council's unaware of recent Court of Appeal decision that restricts selective licensing conditions: <https://www.londonpropertylicensing.co.uk/selective-licensing-and-licence-conditions-court-appeal-gives-narrow-interpretation-local-authority>
- Applying a standard suite of licence conditions and refusing to negotiate or agree changes to appropriately fit with the property being licensed
- Misunderstanding status of local HMO standards and applying them as a prescriptive set of requirements rather than flexible guidance, adding compliance with HMO standards as a licence condition with associated compliance risk, whereas it is guidance.

- Removing bedrooms from use, or even proposing licence refusal based solely on a desktop review of the application.

Serious issues which need to be quickly addressed:-

- Some councils trying to charge for licence variations, which is not permitted
- Increasing concern about councils 'rejecting' applications rather than refusing or approving them by following due process
- Councils failing to allow sufficient time for applications to be submitted before a scheme starts which hugely increases the compliance risk

Councils failing to correctly apply mandatory licence conditions - particularly with the new complex HMO minimum room size requirements.

- All additional and selective licensing schemes are implemented under a general approval last updated by MHCLG in 2015. There are a limited number of conditions attached to the approval process. If councils allow a minimum three month application period prior to implementation of a new scheme, this would fit in well with the scheme designation processes.

### Jacky Peacock, Director of Advice4Renters

Advice4Renters (A4R) is the only advice organisation in London for private renters. Their goal is to transform the private renting sector through legal advice services for tenants, as well as through campaigning - telling policy makers what the problems are and what can be done to solve them.

Their recommendations on licensing are:-

- Licensing requirements should be standardised and applied consistently by all local authorities
- All HMOs should be inspected before a licence is issued
- Where health and safety risks are identified landlords should be required to remedy these before a licence is issued, with an appropriate increase in the licence fee to cover the additional work needed by the local authority
- The 'fit and proper test' should go beyond a check on criminal convictions and the test for a 'fit and proper' manager should relate directly to evidence of the manager's competence to manage
- All local authorities should be required to have policies and procedures in place for the implementation of Management Orders and for the management of properties subject to Management Orders

- MHCLG should issue guidance on how local authorities should go about obtaining the views of occupiers in relation to proposed enforcement and ensure that their health and safety is protected at all times, including protection against tenants being told the leave, or being evicted unlawfully. This must include the service on Management Orders where appropriate.

#### Kate Faulkner, consumer champion

I understand the reason why licensing was introduced, but unfortunately the complexity and cost of its implementation are clearly horrendous. Although some say it is working, if that was the case, why is renting still be referred to as 'the wild west' and why are tenant groups still requesting more laws to protect tenants from landlords?

If it had been a success, there would have been a substantial reduction in reported PRS issues and the English Housing Survey would be reporting huge reductions in the number of properties which are 'non-decent'. Licensing is part of a long trail of failed legislation which includes HHSRS, retaliation laws, grey rules around electrical safety, the rogue landlord/agent database in London etc.

All these laws have failed to me for two reasons:

1. Lack of enforcement
2. Most tenants don't want to complain

The problem with licensing is that it has become more of an expensive administrative exercise rather than focus on achieving the original aims such as reduce the number of fires and latterly to improve the quality of HMO properties.

The only way of achieving this, in my view, is for each property to be visited and checked that it is safe to rent BEFORE it can be marketed. This is particularly important for anyone that is vulnerable - for example on benefits.

The cost of visiting and assessing a property's safety can be done for less than a few hundred pounds. It is therefore much cheaper to implement than licensing and if without, for example a valid Property MOT, a property could not be advertised for rent and certainly not be secured by a tenant on benefits, this would have far more impact on improving tenant safety in homes than the current poorly enforced licensing.

This was a system close to how Wokingham Council operated when I rented to people on benefits. I had to send pictures of the property and the relevant safety certificates, they would then advertise the property to let to tenants on their waiting list and prospective tenants would visit the property, knowing whether it was as per the photos.

The issue with licensing is that once a tenant is in the property, the cost and time it takes to enforce licensing is exponential. The second issue is even bigger - if the property isn't fit to live in, where does the council put the tenant(s)? As we know in areas such as London, homelessness is becoming a serious problem, so kicking people out of illegally let properties because the landlord won't do the required work and putting tenants into a B&B room instead is hardly an incentive for tenants to complain. The property MOT idea is much cheaper and easier to implement and means rather than tenants reporting landlords to councils, they should rarely have to as the property shouldn't be let without a safety check in the first place.

Although scrapping licensing could cost councils millions initially, if a property is assessed before it goes to market, this substantially reduces the number of poor quality properties being allowed onto the market and reduces the work cash and people strapped councils have to commit. It could even naturally increase the number of decent homes - not really something that Licensing has proved to do.

From a communication perspective to the media and tenants it is also so much easier. People know they shouldn't buy a car without an MOT, so educating tenants they need a Property MOT to rent a property isn't a big leap. Currently the tenant has to understand the 400 rules and regulations an agent/landlord has to comply with, then identify which one of these the landlord/agent has broken and then complain/report them to the council. If they are moving, they are likely to be having a baby, getting divorced, married, someone died, or they are in debt. As a result, in my experience most tenants don't want to add a complaint to their list of to dos.

For me the Property MOT is a clear a win-win for everyone in the PRS. I hope very much this system will be implemented by the government - if they really want to make life better for tenants. If it isn't, I fear the complaints against the PRS will continue due to failed legislation as the 'good guys' will comply and have their profits reduced, while the rogues and those that just aren't bothering to find out about the laws to let a property will continue to prosper at tenants expense.



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