

**21 June 2018**

**Standards in the Private Sector and Selective Licensing**

**Ward(s)** All

**Portfolios:** Councillor A Andrews – Deputy Leader and Regeneration  
Councillor T Wilson – Children's and Health and Wellbeing

**Executive Summary:**

The report provides information on the standards in the private rented housing sector in Walsall and gives an overview of tools available to the Council to help improve conditions for local residents, including proposals on the introduction of private sector Selective Licensing.

**Reason for scrutiny:**

The Chair of the Committee has asked for an update report on the standards in the private rented housing sector in Walsall, following a report from Housing, Communities and Local Government Committee on the Private Rented Sector that was published in April 2018.

This report also follows on from discussions at the Corporate and Public Services Overview and Scrutiny Committee 5 March 2018 with an update on proposals to introduce private sector Selective Licensing in 4 parts of the borough.

**1. Report**

**Private Rented Sector Housing Standards**

In April 2018 the Government issued the results of their inquiry into the private rented sector. They highlighted their concerns that:

- With the major rise in the number of households living in the sector, and the trend towards private renting being a longer-term prospect for many people, that standards were not improving at the lower end of the market.
- The English Housing Survey estimated that 800,000 private rented homes have at least one Category One hazard, such as excess cold, mould or exposed wiring, while 41% of tenants reported that they had waited an unreasonably long time for repairs that their landlord was legally required to undertake.
- They were troubled that many local authorities appeared not to be fulfilling their statutory duties to uphold and enforce standards in the sector, leaving many tenants without the protection and support to which they were legally entitled.

The inquiry focussed on the main obstacles to Council's intervening to improve the sector and whether local authorities had the powers and resources they needed to enforce standards in the private rented sector and deal with criminal landlords. The conclusions from the inquiry report are contained in Appendix 1 and the recommendations are summarised below.

- a) Tenants need further protections from retaliatory eviction, rent increases and harassment so they are fully empowered to pursue complaints about repairs and maintenance in their homes.
- b) A specialist housing court would provide a more accessible route to redress for tenants and we urge the Government to publish more detailed proposals.
- c) The Law Commission should undertake a review of private rented sector legislation.
- d) The Housing Health and Safety Rating System (HHSRS) should be replaced with a more straightforward set of quality standards.
- e) Enforcement by local authorities has been far too low and inconsistent.
- f) We heard that local authorities do not have sufficient resources to undertake their enforcement duties.
- g) A new fund should be established to support local authorities with this work, especially those that prioritise informal approaches to enforcement.
- h) A national benchmarking scheme should be introduced to support local authorities with enforcement.
- i) Councils should publish their private rented sector enforcement strategies online.
- j) Local authorities should be able to levy more substantial fines, which might stand a chance of breaking the business models of the worst offenders.
- k) Councils should have power to confiscate properties from landlords committing the most egregious offences and whose business models rely on the exploitation of vulnerable tenants.
- l) Decisions to implement selective licensing schemes should be made locally, where there is greater understanding of local needs and politicians are directly accountable to the electorate for their decisions.
- m) However, the Secretary of State should retain a power to require local authorities to reconsider a decision to implement a licensing scheme that does not meet the strict criteria already set out by the Government.

The national Registered Landlord Association (RLA) in their evidence to the inquiry identified three reasons why levels of formal enforcement activity undertaken by local authorities were so low:

1. the legislation was “too patchy and complicated, and far too much of it is cross-cutting” meaning that Councils found it difficult to use their powers;
2. local authorities had insufficient resources to undertake their enforcement duties;
3. many local authorities lacked the political will to address low standards in the sector; David Smith cited in the report explained that, “Not every local authority is prepared to commit aggressively to this area, which is unfortunate”.

The above inquiry followed on from the study by the Citizens Advice Bureau, ‘*A state of disrepair, Why renters deserve a better deal*’ (February 2017). This report concluded that renters often live in poor conditions:

- More than 70% of renters have experienced health and safety issues during their current tenancy, from rodent infestations to doors that don't lock.
- In 40% of these cases, the issues were present when the tenant moved in. As a private tenant, you are more likely to have 3 or more health and safety issues during your current tenancy than none at all.
- A third of renters spent time or money fixing the issues, but only half of them were partially or fully refunded. Those on the lowest incomes are the least likely to be refunded.
- 40% of renters have avoided asking for repairs because they are worried about their landlord's reaction.

### Standards in Walsall

Whilst the borough undoubtedly has some excellent private landlords with high quality housing the standards in the private rented sector are not expected to be significantly better than those reported nationally.

Housing standards in the private rented sector were last assessed on a strategic level in Walsall in 2007. This highlighted that the sector is highly transitional, 57% of private rented households have been resident in their current dwelling under 2 years and 14% intend to move within the next year.

Household attitudes to private-rented accommodation are significantly more negative than those held by owner-occupiers. This also applies to area attitudes. Thus: 14% of private-rented households were dissatisfied with their current homes compared to 2% of owner-occupiers. 10% of private-rented households were dissatisfied with their local area compared to 7% of owner-occupiers.

Poor quality accommodation was recorded as higher in the private rented sector than the owner occupied as highlighted by the key issues listed in the table below.

	Private rented sector	All private sector i.e. including owner occupied
Levels of overcrowding	12%	5%
Vulnerable Households in Non-Decent Homes	51%	28%
Had a Category 1 Hazard	30%	10%

In 2007 the cost to address non-decent homes in the private-rented sector were estimated at over £27M (averaging £7,504 per non-Decent home).

Table A on page 4 highlights the lower super output areas (LSOAs) in the borough with the highest level of private rented dwellings and a range of key issues. A ranking of 3 means the area is in the top 10% in the country for the issue considered in the heading, 2 means top 20% and 1 means in the top 30%. It highlights for example that,

<b>Table A: LSOAs over 20% private rented in order of highest overall score for key factors for selective licensing</b>								
LSOA Code	Local Name	Ward (best fit)	Private rented %	Overall Deprivation Score	Living Environment Score	Crime Score	Population Change score	<b>Total Score</b>
E01010368	Walsall Town Centre West	Birchills Leamore	31.7	3	2	3	3	<b>11</b>
E01010371	Caldmore North	St Matthew's	21.8	3	2	3	3	<b>11</b>
E01010375	Ryecroft South	Birchills Leamore	31.2	3	1	3	3	<b>10</b>
E01010406	Willenhall South	Willenhall South	26.6	2	1	3	3	<b>9</b>
E01010404	Willenhall North	Willenhall South	20.1	2	1	3	3	<b>9</b>
E01010408	Spring Bank	Willenhall South	23.9	2	3	3	0	<b>8</b>
E01010283	Harden North West	Blakenall	21.2	3	1	2	2	<b>8</b>
E01010342	Caldmore South	Palfrey	36.4	3	3	0	1	<b>7</b>
E01010363	Alumwell East	Pleck	30.6	2	1	1	3	<b>7</b>
E01010269	Birchills East	Pleck	27.4	3	2	0	2	<b>7</b>
E01010268	Reedswood	Birchills Leamore	23.3	2	2	1	2	<b>7</b>
E01010343	Palfrey North	Palfrey	22.3	2	2	2	0	<b>6</b>
E01010367	Pleck West	Pleck	22	3	2	1	0	<b>6</b>
E01010374	Ryecroft North	Blakenall	20.8	3	2	0	1	<b>6</b>
E01010372	Caldmore East	St Matthew's	20.4	2	2	2	0	<b>6</b>
E01010364	Alumwell South	Pleck	20.4	3	1	2	0	<b>6</b>
E01010340	Caldmore West	Palfrey	20.1	3	0	0	3	<b>6</b>
E01010403	Chapel Green West	Willenhall South	22.4	2	0	1	2	<b>5</b>
E01010327	Chuckery West	Paddock	27.3	1	2	0	1	<b>4</b>
E01010330	Chuckery South	Paddock	28.2	0	2	0	1	<b>3</b>
E01010361	Pleck South	Pleck	21	0	2	0	0	<b>2</b>

Walsall Town Centre West is in the top 10% of LSOAs for deprivation, crime and population change and in the top 20% for living environment score all key factors for consideration of Selective Licensing.

The Council in line with national best practice (as i) on page 2) has an adopted, and published on-line housing enforcement policy.

The service has been receiving an increasing number of private rented disrepair complaints in the last 3 financial years. Numbers of complaints have increased by 24% since 2015/16 as shown below:

Financial Year	2015/16	2016/17	2017/18
Complaints received	473	558	585

Key to the current approach however, is the reliance upon tenants to report issues to the Council. This is significantly impacted by 3 key issues, summarised below.

### 1. Tenants knowledge / lack of knowledge

Firstly tenants knowing that they have rights and the extent of their rights. There are significant issues with tenant knowledge of their rights (and responsibilities). The Council continues to undertake outreach work to tackle this. Examples, of the level of 'housing knowledge' include on a monthly basis the Standards service receiving calls from:

- Tenants who wish to complain about housing conditions but don't have a tenancy agreement or knowledge of who their landlord is;

○

Tenants who aren't aware they have a right to:	When law came in
Be given a minimum of 24 hours notice from their landlord to access their property	Over 33 years ago
A gas safety certificate	20 years ago
Energy Performance Certificate	Almost 11 years ago
Their deposit being protected in regulated scheme	Almost 11 years ago

- Whg tenants who despite stock transfer over 12 years ago still consider they have a house owned and managed by the Council.

### 2. Fear of retaliatory evictions

Whilst legislation from 2015 seeks to prevent retaliatory evictions lack of knowledge by many tenants and some landlords continues to hamper this provision. In some instances landlords are still intentionally ignoring the provisions and relying on the tenants keeping 'quiet' about their concerns. It is also noted that a tenant needs to evidence that they have put their concern in writing for them to become accorded protection. Research by the Joseph Rowntree Foundation highlighted that for those tenants who could be considered to have been evicted through no fault evictions 16% were based on what appeared to be retaliatory grounds.

### 3. Resources

Whilst legal powers allow the Council to proactively research and identify properties that may require enforcement action currently staff resources only permit a triage service

that is a reactive response to the most serious tenant complaints. The current team has 2 qualified housing environmental health officers supported by a technical officer.

Using the triage approach officers must also balance the issue of taking time consuming legal action (serving notices) with seeking to encourage landlords to improve through negotiation (which can be less time consuming). The numbers of legal notices that have been served (8 in 2017) do not therefore reflect the number that could be if staffing levels were increased.

Information presented to MP Karen Buck who is leading on the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19 highlighted that *“if local authorities are serious about tackling the bad landlords they need the staff, and authorities that are doing the most on the PRS seem to have about 6 staff for 10,000 households in the PRS. It is arguable whether this is still insufficient, given the time that will also be spent on carrying out associated activities such as checking on ownership, preparing reports, notices and schedules of work and ensuring correct legal procedures are followed”*. The estimated number of private rented households in Walsall is 15,000 (compared to the 12,615 identified in the 2011 census). Using the above resourcing equation this would equate to circa a total of 9 members of staff to tackle the private rented sector issues.

### **Concerted Pro-active action**

Use of time limited additional staffing has enabled two key activities to take place on proactive work in the private rented sector:

- a) Letting Agent Redress Scheme – (2016) a student EHO supported the team and found and enforced against 23 managing / letting agents operating in Walsall who despite legislation being in place for over 2 years had still failed to join a mandatory scheme.
- b) Energy Work - (May to June 2018) targeted action highlighted 100 cases which didn't meet the legal minimum standard of energy efficiency. Whilst the majority have sought to remedy this 26% of the landlords involved have still failed to ensure that they are renting out legally and legal action is being considered.

### **New legislation**

There are estimated to be circa 500 houses in multiple occupation (HMO) that will require a licence with the much expanded statutory powers that come into force from October 2018. Whilst HMOs can have a major impact on specific areas / streets they form a small part of the overall private rented accommodation in the borough. Concerted advance publicity is underway to bring the amended legislation to the attention of landlords / agents and their tenants.

### **Selective Licensing**

In 2017 and 2018 Cabinet agreed for the Council to undertake statutory consultation on the proposal of Selective Licensing in the private rented sector initially for two specific areas with a further two added.

Selective licensing is proposed for the areas of Willenhall Town Centre, Walsall Town Centre and adjoining areas, for which statutory consultation was undertaken for both in line with legislation. Subsequent to the consultation and consideration and approval of the designation by cabinet of these two schemes a decision in the Court of Appeal in the case of Brown -v- Hyndburn Borough Council was made. This decision highlighted that the conditions which Councils include in their licensing schemes may not duplicate their powers in Part 1 of the Housing Act 2004. As a result of the Court of Appeal decision a full review of the proposed Walsall Selective Licensing conditions has taken place and a new Condition Schedule has been recently produced which has split the conditions into:

- a) Those 6 mandatory conditions required nationally for all selective licensing schemes as contained in Schedule 4 of the Housing Act 2004
- b) Those currently being proposed for Walsall (i.e. local conditions)

The proposed Condition Schedule also provides (in line with best practice) information for landlords and tenants on matters:

1. Covered by other legislation (i.e. those that aren't required by Selective licensing) and;
2. Which the Council seeks to highlight as Advisory / Recommendations that the Council considers all landlords and property managers should seek to meet when managing and operating rented dwellings in the borough. These will not be 'enforced' and failure to meet them will not prevent a licence under Selective Licensing from being issued.

It is considered that the revised Condition Schedule is in full accordance with both the legislation and Court of Appeal decision.

It has been proposed to undertake a statutory consultation process on all 4 areas mentioned above.

It is noted that HMOs are not the primary private rented property type within the proposed selective licensing areas.

### **Accreditation Schemes and National bodies**

The Council has for many years encouraged landlords and agents to join the Midland Landlord Accreditation scheme that is managed by Homestamp (a multiagency award winning partnership seeking to secure improvements in private rented sector). This is directly referenced in the Council's adopted Housing Strategy and mentioned at all private sector landlord forums that are undertaken.

The Council has additionally encouraged landlords and agents to join appropriate national organisations such as the RLA, NLA etc. who provide a wealth of advice and support for members and seek to ensure a 'professional' approach to private renting. Whilst these schemes are very valuable the drawbacks are:

- In most cases only the 'good' landlords tend to join;
- Landlords cannot be compelled by legislation to join any accreditation scheme or national trade body and as a result has limited impact / benefit on the volume of private rented tenants in the proposed areas;

- The bodies are self-regulating and the conditions of membership do not extend to all of the local conditions that are proposed for the Selective Licensing areas in Walsall.

#### **Background papers:**

- a) Private Rented Sector, Housing, Communities and Local Government Committee, 19 April 2018. Available from: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44003.htm>
- b) Private Rented Sector Inspections and Local Housing Authority Staffing Supplementary Report for Karen Buck MP prepared by Stephen Battersby March 2018. Available from: [http://www.sabattersby.co.uk/documents/Final\\_Staffing\\_Report\\_Master.pdf](http://www.sabattersby.co.uk/documents/Final_Staffing_Report_Master.pdf)
- c) 'A state of disrepair, Why renters deserve a better deal' Citizens Advice Bureau, (February 2017) Available from: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Housing%20Publications/PRS-AStateofDisrepair.pdf>
- d) Walsall Private Sector House Condition Survey 2007 - David Adamson & Partners Ltd (2008)
- e) Poverty, evictions and forced moves, Joseph Rowntree Foundation, July 2017. Available From: <https://www.jrf.org.uk/report/poverty-evictions-and-forced-moves>
- f) Corporate and Public Services Overview and Scrutiny Committee 5 March 2018

#### **Contact Officer(s):**

David Lockwood,  
Manager Integrated Facilities Management and Housing Standards and Improvement  
[lockwooddavid@walsall.gov.uk](mailto:lockwooddavid@walsall.gov.uk)  
Telephone no: 01922 658459

Appollo Fonka,  
Team Leader - Housing Standards,  
[fonkaA@walsall.gov.uk](mailto:fonkaA@walsall.gov.uk)  
Telephone no: 01922 650947



**Private Rented Sector, Housing, Communities and Local Government Committee,  
19 April 2018.**

The main conclusions and recommendations are as follows:

- **Tenants need further protections from retaliatory eviction, rent increases and harassment so they are fully empowered to pursue complaints about repairs and maintenance in their homes.**
- **A specialist housing court would provide a more accessible route to redress for tenants and we urge the Government to publish more detailed proposals.**

There is a clear power imbalance in parts of the sector, with tenants often unwilling to complain to landlords about the conditions in their homes for fear of retaliation. Consumer rights are meaningless without the ability to use them in practice.

- **The Law Commission should undertake a review of private rented sector legislation.**
- **The Housing Health and Safety Rating System (HHSRS) should be replaced with a more straightforward set of quality standards.**

The legislative framework, through which local authorities derive their powers to intervene in the sector, is outdated and too complex. A new approach is required, to bring more clarity for tenants, landlords and local authorities.

- **Enforcement by local authorities has been far too low and inconsistent.**

While prosecution statistics may not reflect the informal enforcement work undertaken by many local authorities, it is nevertheless striking that six out of 10 councils had not prosecuted a single landlord in 2016. While the Government has introduced a range of legislation in recent years to strengthen protections for tenants and new powers for local authorities – including civil penalties and banning orders for criminal landlords – these powers are meaningless if local authorities do not, or cannot, enforce them in practice.

- **We heard that local authorities do not have sufficient resources to undertake their enforcement duties.**
- **A new fund should be established to support local authorities with this work, especially those that prioritise informal approaches to enforcement.**

While local authorities have welcomed their new powers to retain civil penalties and rent repayment orders, some felt this did not go far enough. Local authorities that pursue more informal enforcement strategies are unlikely to generate significant funding through civil penalties. Further, many councils told us there was often a financial disincentive to pursue prosecutions against criminal landlords, as the costs of investigations were rarely recovered through the courts.

- **A national benchmarking scheme should be introduced to support local authorities with enforcement.**

- **Councils should publish their private rented sector enforcement strategies online.**

▪

We heard that some local authorities lacked the political will to address low standards in the sector. To make the best use of limited resources, local authorities need to work together more effectively and share best practice.

- **Local authorities should be able to levy more substantial fines, which might stand a chance of breaking the business models of the worst offenders.**
- **Councils should have power to confiscate properties from landlords committing the most egregious offences and whose business models rely on the exploitation of vulnerable tenants.**

We heard that there was a need for more robust penalties to deal with the worst, criminal landlords. Civil penalties are not strong enough to deter landlords who are prepared to commit the most serious offences.

- **Decisions to implement selective licensing schemes should be made locally, where there is greater understanding of local needs and politicians are directly accountable to the electorate for their decisions.**
- **However, the Secretary of State should retain a power to require local authorities to reconsider a decision to implement a licensing scheme that does not meet the strict criteria already set out by the Government.**

We received mixed evidence on the value of selective licensing schemes, reflecting the different circumstances that exist in different parts of the country. We believe that the current process of application to the Secretary of State is too slow, lacks transparency, and is overly bureaucratic and unduly expensive.