



Memorandum to the Communities and Local Government Select Committee

Inquiry into the private rented housing sector

16 January 2013

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1.0 Executive Summary

1. Introduction

2. HouseLet Direct is the stand alone portal for housing services provided by Sanctum Consultants; a company specialising in providing Environmental Health services to a diverse client base including local authorities, RSL's private and corporate landlords, agents, freeholders, leaseholders and tenants.

3. HouseLet Direct and Noisedirect provide fixed fee advice and professional advice on statutory minimum standards for housing including statutory noise nuisance and ASB

4. Quality and standards of housing

5. HouseLet Direct believes that a universal improvement in the quality and standards of the PRS can only be achieved by introducing a mandatory requirement to provide tenants with a HHSRS certificate at the commencement of a tenancy.

6. Levels of rent within the PRS

7. HouseLet Direct encourages landlords to use average rental values based on three similar properties.

8. Regulation of landlords and rogue landlords

9. HouseLet Direct does not believe that the blanket regulation of landlords through licensing or registration will discourage rogue landlords. Local authorities already have a significant array of powers, to deal with poor housing. Improved enforcement activity could be achieved by ring fencing fees generated by licensing or registration schemes.

10. Regulation of letting agents

11. A legal requirement for letting agents to only let properties where landlords have provided appropriate HHSRS certification should be introduced.

12. Regulation of HMOs and discretionary licensing schemes

13. The single most effective measure to proactively raise standards is for all HMO's to be annually inspected and PRS landlords to provide all prospective tenants with a valid HHSRS certificate.

14. Tenancy agreements and security of tenure

15. The current system of Assured Shorthold Tenancy (AST) agreements allows sufficient flexibility for both tenants and landlords.

16. Local authorities use of PRS to discharge their homelessness duty

17. All local authorities should require PRS leased properties to be provided with HHSRS certificates; subject to annual inspection by an independent competent person.

18. Recommendations for action

- **Introduce a mandatory requirement for PRS landlords and agents to provide tenants with a HHSRS certificate at the commencement of a tenancy.**
- **Introduce a National Register to allow tenants to verify that a property is safe and does not contain any HHSRS Category 1 Hazards and or multiple Category 2 Hazards before entering into legally binding tenancy agreements.**
- **Through a programme of advertising and education, empower tenants by raising awareness of their rights and obligations for landlords and letting agents to comply with statutory minimum standards for housing.**

2.0 Introduction

19. HouseLet Direct is the stand alone portal for housing services provided by Sanctum Consultants; a company specialising in providing Environmental Health services to a diverse client base including local authorities, RSL'S, private and corporate landlords, letting agents, freeholders, leaseholders and private and social tenants.
20. All HouseLet Direct consultants are qualified and experienced EHPs, registered members of the CIEH and have extensive enforcement experience through previous local authority positions. Our consultants are able to use their knowledge of the regulatory enforcement regime to help proactive landlords achieve compliance with statutory minimum standards for housing.
21. The HouseLet Direct ethos of safe homes for all; encourages other sectors to voluntarily improve housing conditions for all tenants, particularly those in the public sector, where local authorities do not take any statutory enforcement action.
22. HouseLet Direct provides professional advice to letting agents and seeks to educate and inform agents of rights and responsibilities through informal discussions; and fixed fee inspection services, without the fear of regulatory sanctions.
23. HouseLet Direct seeks to empower tenants by making them aware of rights and obligations for the PRS to comply with statutory minimum standards for housing.
24. Where tenants are not able to use the statutory regime to resolve issues of disrepair and unsafe housing, HouseLet Direct experts are able to advise on civil remedies for remedial works including the issue of summons under Section 82 of the Environmental Protection Act 1990.
25. Noisedirect; National Noise Advice Line is the stand alone portal for noise services provided by Sanctum Consultants, which works in tandem with HouseLet Direct to help and advise landlords, agents, tenants, and owner occupiers on noise and ASB issues within the PRS.

3.0 The quality and standards for private rented housing

26. HouseLet Direct believes that the private rented sector (PRS) contains many anomalies, not least the widely perceived belief that all PRS landlords are bad and all public sector landlords are good¹.
27. HouseLet Direct's daily experience of the diversity of both sectors has led it to recognise that there are clear Housing Antonyms within the sectors. HouseLet Direct believes that Housing Antonyms arise where there are significant

1. Kayani N (2008) 'Social tenants also in dilemma'. Environmental Health Practitioner p7, April 2008. Online. Available. <http://www.cieh.org/ehp/ehp3.aspx?id=9884> (Accessed 8 January 2013).

anomalies between the housing reality and experience of tenants and landlords, and the focus of politicians, regulators or public health professionals; and inconsistent enforcement of housing standards, and legislation.

28. Within the PRS there are further anomalies and Housing Antonyms. The PRS is characterised by the diversity of property type and size, location and landlord. A 2010² survey of private landlords found that 89% of landlords were private individuals, 5% company landlords, and 6% were 'other organisation' landlords.
29. The survey also found that only 8% of all landlords in the PRS were full-time landlords with the remainder part-time landlords.
30. The same survey concluded that 54% of dwellings met the Decent Homes Standard; rising to nearly 74% for properties let by new landlords; and 42% of all dwellings had an Energy Performance Certificate (EPC).
31. Since 2006, the Housing Health and Safety Rating System (HHSRS) has been the statutory minimum standard for dwellings in England and Wales. The 2010 survey of PRS landlords found for 33% of landlords (who had heard of HHSRS) that 58% of the dwellings, they were collectively responsible for had received some form of assessment for potential hazards.
32. HouseLet Direct's experience, of knowledge of HHSRS amongst PRS landlords; is that most are unaware of the requirements of the standard and that letting agents do not consider HHSRS a compliance requirement for landlords, in the same manner as the requirement for EPC and Gas Safety certificates or Tenancy Deposit Schemes.
33. For a number of years HouseLet Direct has pioneered and encouraged PRS landlords to provide a HHSRS certificate for properties prior to letting. HouseLet Direct has encouraged the PRS to consider HHSRS certificates an essential legal compliance tool, but also a quality standard to reassure tenants that landlords are committed to providing safe, secure homes.
34. HouseLet Direct's experience is that newer younger, professional, and corporate landlords are also more likely to voluntarily seek professional advice from HouseLet Direct for HHSRS inspections and certificates.
35. HouseLet Direct has seen a rise in the number of tenants requesting fixed fee service for HHSRS inspections, where tenants wish to terminate tenancies due to disrepair, as part possession proceedings or in cases where there is a dispute relating to the return of a Deposit.

² DCLG (2010) Private Landlords Survey 2010 . Online. Available.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf (Accessed 8 January 2013).

36. In a small number of cases, tenants have proactively asked landlords for a HHSRS certificate prior to moving into a property; and in some cases have been willing to pay for an inspection themselves.
37. Landlords, letting agents and even tenants have a universal complaint that advice and assistance from local authorities in respect of HHSRS is not readily forthcoming. Many tenants complain of unacceptably long delays before inspections.
38. Some letting agents and landlords advise that Environmental Health Departments can be defensive and refuse to provide any proactive advice or inspections and Councils only respond to complaints from tenants.
39. HouseLet Direct believes that a universal improvement in the quality and standards of the PRS can only be achieved by introducing a mandatory requirement to provide tenants with a HHSRS certificate (with assessments to be completed by a competent person; qualified EHP registered with the CIEH) at the commencement of a tenancy. Failure to provide such a certificate could automatically incur a fixed penalty fine.
40. A National Register similar to the EPC register would allow tenants to verify that a property is safe and does not contain any Category 1 Hazards; or multiple Category 2 Hazards before entering into legally binding tenancy agreements.

4.0 Levels of rent within the PRS

41. Generally, HouseLet Direct does not perceive the level of rents within the PRS to be an issue with tenants. Most tenants are well informed about local rental rates expecting properties close to good transport links with features, such as free on street parking, or off street parking, broadband, and internet to command premium rents.
42. Tenants are not averse to asking for discounts to advertised rents at the outset when choosing properties, and often letting agents will encourage landlords to accept reduced rents for 'swift rentals or 'good tenants'.
43. HouseLet Direct's experience of proactive letting agents and landlords is that generally rents are set according to local market conditions, with rent rises in the most part relating to factors, such as the general fiscal climate, interest rates for Buy to Let landlords; the burden of legal compliance with licensing and other regimes.
44. HouseLet Direct encourages landlords to only consider annual rent rises and to provide evidence of three or more similar properties (size, type, and facilities, within the same geographical area; let within the preceding 3 months charging higher rents) before making rental increases. Where rental increases are proposed HouseLet Direct encourages landlords to use average rental values based on three similar properties, rather than simply selecting the highest rental comparator.

5.0 Regulation of landlords and rogue landlords

45. HouseLet Direct does not believe that the blanket regulation of landlords through licensing or registration will discourage rogue landlords from unacceptable practices such as overcrowding, harassment, or providing substandard accommodation to tenants and vulnerable groups in particular.
46. In Scotland, a Landlord Registration Scheme has been in place since 2004 with all private landlords required to register with local authorities. However, a 2011 review by the Scottish Government³ found that whilst there have been some improvements in landlord behaviour; it has not removed the worst landlords from the sector.
47. Local authorities have a varied and significant array of powers under housing and public health legislation, which include powers to serve legal notices, prosecute and carry out works in default and take control of properties.
48. Since its introduction in 2006, HHSRS use and enforcement by local authorities has been inconsistent. A 2008⁴ study by the CIEH questioned whether HHSRS was being used effectively by Councils in respect of public health and reducing health inequalities.
49. Another report in 2011⁵ noted that less than 10% of dwellings with Category 1 Hazards were dealt with in any year, with some authorities averse to effective regulation.
50. A 2011⁶ CIEH survey of enforcement activity of Councils found a disparity in HHSRS data systems used by Councils and collection of enforcement data.
51. A 2012 survey of local authorities⁷ found that 40% of EHP's believe that public sector cuts have impacted on their ability to prosecute landlords with 80% of respondents reporting staff cuts since 2010. Yet, additional and discretionary licensing schemes recently adopted by local authorities such as Brighton, Oxford, and London Borough of Newham have the potential to generate significant revenue for local authorities. In 2012, Newham introduced additional compulsory licensing for all PRS properties. The scheme will charge all private landlords a fee

³ DTZ (2011) Evaluation of the Impact and Operation of the Landlord Registration Scheme in Scotland. www.scotland.gov.uk/Publications/2011/07/13111732/0

⁴ CIEH (2008) The CIEH Survey of Local Authority Regulatory Activity under the Housing Act 2004 Results of a questionnaire survey. Online. Available. http://www.cieh.org/policy/survey_LA_regulatory.html (Accessed 16 January 2013)

⁵ Battersby, S. (2011) Are Private Sector Tenants Being Protected Adequately? A study of the Housing Act 2004, Housing Health and Safety Rating System and Local Authority Interventions in England. Online. Available. http://www.cieh.org/policy/housing_HS_rating.html. (Accessed 16 January 2013)

⁶ CIEH (2011) Housing (Enforcement) Survey: Results and Commentary. Online. Available <http://www.cieh.org/WorkArea/showcontent.aspx?id=41702> (Accessed 6 January 2013)

⁷ EHN (2012) 'Council cuts hit housing enforcement'. Environmental Health News Magazine of the CIEH. 9 May 2012. Online. Available. <http://www.ehn-online.com/news/article.aspx?id=6806> (accessed 12 December 2012)

of £500 per property for the borough's 35,000 private rented properties, generating fees in excess of £17.5 million⁸.

52. HouseLet Direct believes that a rapid and robust improvement of enforcement activity could be achieved by ring fencing such fees solely for the purpose of inspection, improvement, and education of the PRS. HouseLet Direct believes that without ring fencing these monies; Councils will struggle to enforce and improve the PRS and effectively tackle issues of rogue landlords.

6.0 Regulation of letting agents

53. Under the current system letting agents are able to operate without any requirement for registration, licencing, or indeed without the benefit of any professional qualifications. There are a number of trade bodies and organisations that letting agents can choose to be members of.

54. Yet HouseLet Direct's experience of letting agents is that many smaller agents are averse to voluntary membership of trade bodies, primarily because of fees involved. Many small letting agents are not aware of statutory legal minimum requirements for safe housing and consider letting to be distinctly different from property management and therefore do not recognise the need for qualifications or training in housing defects, hazard identification, or statutory requirements for PRS properties.

55. HouseLet Direct does not believe that registration or licensing of letting agents alone can improve conditions or the quality of the PRS. The Scottish Government³ review of PRS found, that compulsory registration is no guarantee that management of property among private sector landlords reaches a specified standard.

56. HouseLet Direct believes that rather than registration or licensing of letting agents it is the property, which should be the subject of the focus along with education and awareness for agents and empowerment of tenants.

57. To this extent we consider there should be a legal requirement for letting agents to only let properties where landlords have provided the following documentation:

- ID checks and proof of property ownership
- Gas Safety Certificate
- Electrical Installation Condition Report (EICR) where appropriate
- HMO licence (where appropriate)
- EPC
- HHSRS Certificate

⁸ Kayani (Forthcoming 2013) HHSRS: an effective toolkit for reducing Hazards to Mental health and improving Wellbeing? Section 3 – Effective Working for Health Improvement. Effective Strategies and Interventions: Environmental health and the private housing sector. Compiled by Dr Jill Stewart for the ClEH as part as the Private Sector Housing Evidence Base January 2013

58. By creating a cultural shift where the informed consumer (tenant) simply no longer chooses to accept poor quality housing, letting agents will in turn refuse to accept substandard properties from landlords who do not properly maintain and repair properties⁹.
59. To reduce the burden of lengthy and complex enforcement regimes a fixed penalty fine system could allow non-compliant letting agents to be targeted for letting non-compliant properties.

7.0 Regulation of HMOs and discretionary licensing schemes

60. HMO's are rightly considered high risk properties yet the approach even amongst health professionals and local authorities in respect of their regulation is diverse and varied.
61. Whilst some local authorities, such as Brighton, favour discretionary licensing schemes, where all HMO's in certain geographical areas are subject to compulsory licensing; other authorities, such as Oxford, consider that all HMO's regardless of size or location should be subject to discretionary licensing.
62. Authorities such as London Borough of Islington do not have any discretionary licensing schemes for HMO's. Whilst, the London Borough of Tower Hamlets failed to renew its Additional Licensing Scheme, after 31 March 2009.
63. Clearly, discretionary licensing is subject to a number of factors which include localism, place shaping, and political motivators.
64. For the reasons outlined already, HouseLet Direct believes that the single most effective measure to proactively raise standards and place responsibility for compliance with legal standards on the person in control of a HMO is through a requirement for all HMO's to be annually inspected; and PRS landlords to provide all prospective tenants with a valid HHSRS certificate.
65. The HHSRS HMO certificate again creates a cultural shift and moves the burden for compliance with legal requirements to the PRS. The public sector benefits by reducing staff time and enforcement costs, with a decrease in the overall cost to the public purse; by allowing authorities to concentrate resources on the highest risk properties.

8.0 Tenancy agreements and security of tenure

66. HouseLet Direct believes that the current system of Assured Shorthold Tenancy (AST) agreements although not ideal allows sufficient flexibility for both tenants and landlords.

⁹ Kayani N (2009) 'Issue tenants with a certificate' – Licensing of private sector landlords. http://www.cieh.org/ehp/issue_tenants_with_certificates.html
Environmental Health Practitioner, p7. 10 July 2009

67. Where compulsory licensing has been introduced by authorities to tackle ASB and nuisance properties, it is imperative that a landlord should be able to swiftly instigate possession proceedings to deal with ASB and problem tenants.

68. In other cases, HouseLet Direct's experience is that particularly in London and the South East many tenants prefer not to be contractually bound by lengthy tenancy agreements and prefer shorter periodic tenancies, which allow flexibility in a fluctuating economic and job market.

9.0 Local authorities' use of PRS to discharge their homelessness duty

69. Many local authorities rely increasingly on the PRS to discharge their homelessness duty with considerable staff time and resources devoted to sourcing private sector leased properties from landlords; often based on guaranteed rent schemes. There is however a significant difference in the criteria applied by authorities when procuring properties. Some authorities inspect properties for compliance with HHSRS and Decent Homes standards before accepting them for rental; whereas others require only the most cursory of checks.

70. When homeless and vulnerable individuals subsequently complain of conditions at a property, HouseLet Direct often finds that Environmental Health Departments are reluctant to take any action against the owner or the person in control of the property (the Council) due to the legal leasing agreement between the parties. This leaves already vulnerable tenants in an invidious position.

71. All local authorities should require PRS properties used to discharge their homelessness duty to be provided with HHSRS certificates; subject to annual inspection by an independent competent person.

10.0 Recommendations for action

- **The introduction of a mandatory requirement for PRS landlords and agents to provide tenants with a HHSRS certificate at the commencement of a tenancy.**
- **A National Register to allow tenants to verify that a property is safe and does not contain any HHSRS Category 1 Hazards and or multiple Category 2 Hazards before entering into legally binding tenancy agreements.**
- **A programme of advertising and education to empower tenants; raising awareness of their rights and obligations for the PRS to comply with statutory minimum standards for housing.**