

Safer Renting

Licensing Private Rented Homes

Insights and Experiences from Five London Boroughs

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The respondents who contributed to the study were from the London Boroughs of Waltham Forest, Enfield, Camden, Ealing, and Westminster.

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About Safer Renting

Safer Renting is one of a diversity of services delivered by [Cambridge House](#), a social action charity established in 1889 to tackle poverty, social inequity, and social injustice across London.

Safer Renting's work is funded by both charitable foundations and through partnership working with local authorities, for whom we provide a Tenancy Relations service that includes protecting renters from harassment and illegal eviction, sustaining tenancies and preventing homelessness, and working with our clients to navigate the legal system to secure justice and redress.

The Safer Renting model is unique among frontline housing services in its partnership approach with local authorities. Working across so many areas allows us to monitor landlord and agent activities, help partner councils to improve their intelligence about criminal activity, and develop approaches that target and deal with the worst offenders.

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Foreword

Words (and names) matter. This report reflects the legal and popular language of the day in reference to the homes, the occupants, and the owners and controllers of those homes. The Renters Reform Bill, currently at committee stage, is replacing the feudal term ‘tenant’ with ‘renter’. Perhaps it is time for a wider refresh of language, in order to speak of ‘homes’ in place of ‘property’ and ‘private housing providers’ in place of ‘landlord’.

The private rented sector (PRS) is now larger than the social rented sector and houses more families with young children. Households renting privately are more likely to be living in homes that are non-compliant with the Decent Homes Standard. However, there is – as yet – no national system for licensing privately rented homes. Licensing has been studied extensively, and a raft of reports already draw attention to its value as an intervention, and also to the changes needed to make that intervention more effective. Yet the Renters Reform Bill proposes to make just one change: the introduction of a ‘Property Portal’, which will require all private housing providers and their properties to be publicly registered.

Paradoxically, the proposed introduction of ‘landlord registration’ constitutes a moment of peril for renters. PRS licensing is politically contentious. Housing providers invariably don’t like having to pay a licence fee which they regard as a tax. The argument is commonly proposed that a ‘Property Portal’, universal in its application, should replace other discretionary and partial schemes such as Selective, Additional and Mandatory licensing. At Safer Renting, we know such a move would be catastrophic. As providers of tenancy rights advice and advocacy to private renters in the ‘shadow’ private rented sector, we ask our clients: ‘Does your home need a licence?’ Then, ‘Does it have a property licence?’ All too often, clients do not know the answer to either question. Many renters come to us who live in homes that are, ostensibly, covered by a licensing scheme. In 73% of cases, the housing provider has failed to licence.

We know that this failure matters. Where a property is unlicensed, our experience tells us that the home fails not on one or two requirements: a whole string of contraventions is likely. This includes not just administrative etiquette but potentially life-threatening contraventions like a failure to secure gas safety inspections, or the lack of adequate fire prevention measures. Without adequate inspection measures, property licensing fails to deliver the improvement in property conditions we seek from the sector.

Property licensing carries one further advantage. Despite substantial evidence of non-contravention, renters’ rights and advocacy services have increasingly diminished in scale because the service is ‘non-statutory’. Councils are routinely leaving renters’ rights to the voluntary sector. Nationally, coverage can be poor. Safer Renting, operating across London, has been growing over the last eight years. It is no accident that we work with local authorities that have discretionary property licensing and have been able to use their powers under the Housing Act 2004 to fund our service¹.

Karin Woodley, CBE
Chief Executive, Cambridge House

¹ When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account –
(a) all costs incurred by the authority in carrying out their functions under this Part, and
(b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMOs (so far as they are not recoverable under or by virtue of any provision of that Chapter).

Executive Summary

Introduction

Since its establishment in 2004 and its earliest local adoption much later in 2013, Property licensing has become increasingly accepted as the 'go-to' tool for London local authorities to regulate the private rented sector (PRS). So too has it become politically contentious, private landlords generally deprecating it whilst local authority enforcement teams see it as the most important tool available to them.

A decade on, we consider some of the diverse experiences in delivering licensing schemes, and what lessons the local authorities who embraced it can offer us. We interviewed PRS licensing lead officers from five local authorities – Camden, Ealing, Enfield, Waltham Forest, and Westminster. In analysing how the boroughs went about their task, we look at themes including government scheme designation conditions; the measurement of improvement; the experience of scheme renewal, and financial viability and sustainability, and we considered what bearing the contexts - legal, political and local characteristics and demography of those boroughs – may have on the experience.

All public policy interventions must have a feedback loop for review and adjustment to ensure the purpose is met and value for money achieved; the government framework for property licensing is framed in project terms, suggesting a beginning, middle and an end; our study found licensing in practice not to fit this frame well. It has proven not to be a one-off, a task-and-finish intervention, but instead it was found to be a process that, unless designed-in as a fixed component in the private rental market system to introduce a control function, may see it return repeatedly to a baseline steady state of non-compliance.

That authorities are obliged to demonstrate that a proposed scheme will work, which requires the collation of necessary data encounters a feedback loop: without this PRS data, it is difficult to prove the need for and benefits of licensing, but without licensing schemes, data is difficult to secure. In light of this data gap, the obstacle to initiating licensing becomes more problematic.

Thus, at best, local authorities need time to accrue resources and expertise once a scheme has been introduced. We found these were in increasing short supply which added to the entry barriers for newcomers to licensing.

Rationale

This research adds to a body of literature and contributes additional quantitative and qualitative data from five case study London boroughs. Our themes augment what has already been said on 4 themes:

- difficulties relating to central government directives and local political attitudes to scheme implementation;
- strategies for making sense of the local PRS landscape in the context of a paucity of data;
- appraisals of the effectiveness of licensing scheme enforcement tools, especially with regard to discretionary and core requirements; and
- approaches to evaluating scheme success.

This research draws on in depth interviews with licensing and enforcement leaders in each of the five local authorities, looking at the dynamic process of mobilising discretionary licensing schemes, in particular the obstacles and challenges and how some reframing of the government regime might help it work with local authorities to deliver on its stated purpose, to raise standards in the PRS.

In examining the experience of local authorities in high housing stress areas and their challenges, the study shines a light on system change which is suggested, to create a robust regime that might work across the country.

Conclusions and Recommendations

The report makes recommendations for local authorities and government as follows which in summary include:

Local authorities should::

1. Consider pricing in, and setting capacity for, a compliance inspection regime that is risk-based, but that operates on an annual cycle, rather than the current, default 5-year cycle.
2. Allow for a full 10 years before expecting a comprehensive understanding of the local landlord population to implement the full range of enforcement measures appropriately, proportionately, and effectively.
3. Establish collaborative procurement clubs with other local authorities to acquire digital IT solutions tailored to support licensing and enforcement.

Government should:

4. Amend the Housing Act 2004 to establish property licensing, such that schemes are set up to continue unless and until there is evidence enforcement standards are no longer necessary
5. Lengthen the minimum initial term of licensing schemes to 10 years to allow for the process of scheme mobilisation, data and intelligence gathering to be reached, outcomes to start to be delivered and for set up costs to be recouped
6. Recognise the need for start-up or gap funding to support local authorities in establishing new licensing schemes during their initial term
7. Conduct wholesale reform of the Housing Health & Safety Rating System to make it easier to understand and administer and to give equal priority to addressing long term health risks alongside immediate health hazards
8. Make the minimum property standards for which enforcement powers and procedures in Part 1 of the Housing Act 2004 are provided, part of the core licence requirements of Parts 2 and 3, ending the need for Part 1 local authority Notices and enforcement procedures to be followed in the case of licensable property, whether or not it is so licensed.

9. Rationalise the definitions of property licence to make it easier in Section 257 (S.257) HMOs to determine who is the 'responsible person' in mixed ownership and control buildings and allow licence types to be inter-operable when there is a minor change in the use and occupation.
10. Remove high-risk properties (e.g., short-term lets and all types of temporary accommodation) from the exemption list for licensing.
11. Create a mandatory national database for all private rented housing and its owners/managers.
12. Develop a National Workforce Plan for the nationwide expansion of property licensing.
13. Publish property licensing good practice guidance to local authorities.

The Tribunal Procedure Committee should:

14. Amend First Tier Property Tribunal procedures to protect councils from landlords' frivolous and vexatious appeals to Financial Penalties

The Ministry of Justice Sentencing Council should:

15. Introduce sentencing guidelines for the prosecution of licensing offences

1. Introduction

Property licensing, introduced through the Housing Act 2004, has become a prominent tool for many London local authorities in their efforts to regulate the private rented sector (PRS). Starting with Newham in 2013, London's local authorities have gradually implemented property licensing schemes over the last decade. It is timely to consider local authority experiences in delivering licensing schemes, and what lessons can be learned from over ten years of implementation. This report draws on interviews conducted with licensing officers from five local authorities – Camden, Ealing, Enfield, Waltham Forest, and Westminster – chosen to represent a degree of diversity. These interviews reflected on a number of themes including Department for Levelling Up, Housing and Communities' (DLUHC) scheme designation conditions; the experience and measurement of improvement; the experience of scheme renewal, and financial viability and sustainability. The report contextualises this material through reference to the legal framework underpinning licensing schemes, the characteristics of the private rented sector in each of the five study areas, and a summary of the boroughs' enforcement activities.

This report represents the introduction of licensing schemes as a dynamic and reflexive process rather than an event. The introduction of any licensing scheme draws local authorities into proactive engagement with the private rented sector. Authorities are obliged to demonstrate that a proposed scheme will work, which requires the collation of necessary data. Once operational, a scheme generates considerably more data, and this may lead the local authority to shift priorities and reframe practices. Much of this report will demonstrate that a scheme's efficacy has to be judged in relation to its stage of development, and many schemes are still in their infancy. Local authorities need time to accrue resources and expertise once a scheme has been introduced. Higher levels of enforcement activity are associated with longer-standing schemes.

This introductory chapter reviews the literature relating to licensing schemes, summarises the rationale for the research, and describes the research methodology.

Existing literature and evidence

This research did not undertake a robust systematic review of literature and evidence on the subject of PRS licensing regimes. Rather, it has drawn on a small selection of the most recent reports that have given explicit consideration to the introduction and implementation of licensing schemes in England. The intention of this review has been to explore common themes that have in turn framed some of the issues explored with the case study local authorities. There is wide consensus that:

- scheme implementation poses interconnecting operational issues that require resolution, including the process of securing Secretary of State scheme consent and paucity of data on the PRS;
- landlord non-compliance might require a variety of approaches;
- enforcement action is subject to resource constraints;
- measuring effectiveness can be problematic; and
- the relationship between licensing and a possible national register of private landlords needs careful consideration.

Securing Secretary of State consent

Local authorities are permitted to introduce licensing schemes by the Housing Act 2004. Selective Licensing schemes (where they include more than 20% of the borough by area, or by amount of housing stock), require local authorities to apply to DLUHC² for Secretary of State (SoS) approval, which is granted providing certain criteria have been met (see Chapter 2).

Reports consistently highlight the onerous and resource-intensive requirements imposed by the DLUHC when local authorities apply for new schemes or renew existing ones. Lawrence (2019) found that 89 per cent of responding authorities considered that 'the process that has to be followed prior to designation of an area is too complex and requires the input of substantial resources'.³

The financial burden of meeting these criteria fall too heavily on local authorities, who lack the funds to invest in the PRS data collection required to make a case for Selective Licensing, or to resource the scheme through its early years of operation. A combined evaluation of Selective Licensing by the CIH and the CIEH concluded that 'the current approval process is expensive and unnecessarily bureaucratic and may be deterring some authorities from establishing schemes in their areas'.⁴

In its 2023 report, *Licence to Let*, the Centre for London suggested that central government should reinstate permission for local authorities to introduce schemes without Secretary of State approval, where the measure would cover 20% or more of private rented housing within a borough.⁵

Data challenges

Another significant challenge that emerges from the existing literature is the lack of comprehensive data on the PRS. The National Audit Office was of the view that, even at a general level, DLUHC lacked 'robust data on key issues where regulatory action may be required such as harassment, evictions and disrepair that is not being addressed', and there was a need to 'improve the quality and availability of data in the sector to support good decision-making at both national and local level'.⁶

At the local level, the lack of data impacts on licensing practice in a number of ways. For example, there is limited data even on the number of rental properties and landlords in a given location. Newham's Selective Licensing scheme licensed 50,000 properties owned by 27,000 landlords, after estimating that the borough contained 30,000 properties let by 5,000 landlords.⁷ There is evidence of local authorities both over- and under-estimating the size of their local PRS, which carries impacts in terms of the resources dedicated to operating the licensing scheme.

² Formerly the Ministry of Housing, Communities and Local Government.

³ Lawrence, S. (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing*, London: Ministry of Housing, Communities and Local Government. See also, for example, National Audit Office (2021) *Regulation of Private Renting: Department for Levelling Up, Housing and Communities*, Session 2021-22, HC863, 39.

⁴ Sandoul, T. & Pipe, D. (2019) *A Licence to Rent*, CIH & CIEH, 13.

⁵ Mahmud, Z. & Tabbush, J. (2023) *Licence to Let: How Property Licensing Could be Better for Private Renters*, London: Centre for London, 12.

⁶ National Audit Office, *Regulation of Private Renting*, 8, 12.

⁷ Leibowitz, G. & Powell-Smith, A. (2021) *A National Landlord Register for England: How to Make it Work*, London: CPD, 11.

Further, there is a lack of data on property conditions. Many local authorities rely heavily on tenant reports of poor conditions, and this is likely to under-estimate the scale of problems. The Centre for Public Data reported on findings from Rotherham Metropolitan Borough Council and Gedling Borough Council: in Rotherham, 91% of inspected properties required some improvement under the Housing Health and Safety Rating Standard; in Gedling, the figure was 86%.⁸

The scale of problems in the sector again carries consequences in terms of local authority resource dedicated to advising landlords and taking action to ensure that licensed properties meet the required standard.

Inspection actions and enforcement approaches

There are disparities in modes of enforcement activity across local authorities. Once permission has been granted for a licensing scheme, local authorities have discretion to decide on how the scheme will function, in terms of the inspection regimes and any specific standards that might be required over and above the legislated requirements (see Chapter 4). The frequency of inspection is a particular issue.⁹ Some local authority schemes progress with no immediate inspection of the licensed properties. Mahmud & Tabbush were of the view that landlords who paid their fee were dissatisfied with a failure to inspect since it then became unclear what exactly the fee was for. A failure to inspect undermined landlord confidence in the scheme.¹⁰

In 2021, Generation Rent reported data collected from a Freedom of Information request that had a response from 110 councils. The data indicated wide variation in the number of inspections taken out by the responding councils. Across the 81 local authorities sending a return on the number of inspections in 2019/20, individual authorities recorded figures as low as 37 (Trafford) and well in excess of 2,000 (Bristol, Camden, Leeds) with Liverpool conducting 14,367.¹¹

However, local authorities differ in their approach to taking enforcement action. Harris *et al.* developed a framework for categorising regulatory and enforcement strategies and styles in the PRS, identifying four different approaches:

- **Light-touch** – reactive, non-coercive initiatives with limited use of formal power and little compliance-focused activity;
- **Compliance-focused** – informal activity where the response is escalated when necessary, supporting landlords to comply with regulations, occupying a middle ground between light-touch and hard-line;
- **Hard-line** – focused on formal proactive and reactive activity, making more immediate use of prosecutions and civil penalties for non-compliant landlords; and
- **Creative** – alternative regulatory techniques, focusing on partnership working and local needs, developing new models off integrated service delivery.¹²

⁸ Liebowitz & Powell-Smith, *A National Landlord Register for England*, 10.

⁹ Lawrence, *Independent Review*, 57.

¹⁰ Mahmud & Tabbush, *Licence to Let*, 28.

¹¹ Statistics based on data provided in Generation Rent, 'Three-quarters of tenants in unsafe homes go unprotected', blog posted April 28, 2021, available at: <https://www.generationrent.org/2021/04/28/three-quarters-of-tenants-in-unsafe-homes-go-unprotected/>, [Accessed: 29/01/24].

¹² Harris, J., Cowan, D., & Marsh, A. (2020) *Improving Compliance with Private Rented Sector Legislation: Local Authority Regulation and Enforcement*, Glasgow: CaCHE, 12-14.

While certain study boroughs can be clearly defined as favouring one enforcement style over another, in actuality, strategies are not mutually exclusive; most councils adopted a blend of different approaches. Harris *et al.* concluded that a 'remedial' enforcement approach can sometimes be more effective than a 'punitive' approach, particularly where local authorities lack the resources to conduct a prosecution. The view that prosecution is not always a deterrent – due to lenient sentencing – is a further disincentive for local authorities to take a more punitive approach.¹³

Characterising landlord non-compliance

Variation in approaches to landlord enforcement action also reflects the fact that degrees of compliance tend to be mixed across all landlord types. The government's 2022 White Paper *A Fairer PRS* presented an analysis based on data from the English Private Landlord Survey. The White Paper categorised England's 2.3m private landlords into four groups:

- **Demonstrating good practice** (most likely to be compliant with both legislation and good practice indicators) – 30% of the private landlord population.
- **Mixed compliance** (likely to report mixed compliance with legislation, though many comply with good practice indicators) – 24% of the private landlord population.
- **Meeting legal requirement** (likely to be compliant with most legislation, though less likely to be compliant with good practice indicators) – 35% of the private landlord population.
- **Lower compliance and awareness** (least likely to be compliant with either legislation or good practice indicators) – 11% of the private landlord population.¹⁴

These figures are based on a survey of landlords who have lodged a deposit with one of the deposit protection schemes, and so represent individuals who carry at least some intention to operate within regulatory frameworks.¹⁵

A report by Safer Renting, "**Journeys in the Shadow Private Rented Sector**", was more tightly focused on non-compliant landlords in the market, and characterised five groupings of criminal landlord behaviour:

- **Wilfully ignorant** landlords who tended to have small portfolios and were letting with no intention of meeting their statutory obligations;
- **Corner cutters** had larger portfolios and maximised their rental income through non-compliance, factoring penalties and fines into their business model;
- **Scammers** remained hidden, and often used the internet to swindle tenants – and landlords – through securing and then stealing deposits, or renting property that was immediately sublet or let on the short-let market;
- **Prolific offenders** showed a blatant disregard for the law, often acting unpleasantly and with impunity, and were confident about their ability to challenge any attempt at prosecution; and
- **Letting linked to organised crime**, in which letting might be associated with labour and sex trafficking, and the use of rented properties as cannabis farms.¹⁶

¹³ Spencer, R., Reeve-Lewis, B., Rugg, J. and Barata, E. (2020) *Journeys in the Shadow Private Rented Sector*, London: Cambridge House, 7-8.

¹⁴ Department for Levelling Up, Housing, and Communities (2022), *A Fairer Private Rented Sector*, CP 693, London: DLUHC.

¹⁵ Ministry of Housing, Communities and Local Government (2018) *English Private Landlord Survey: Main Report*, London: MHCLG.

¹⁶ Spencer, *et al*, *Journeys in the Shadow Private Rented Sector*, 62-63.

Neither set of landlord characterisations suggest that local authorities can easily target modes of non-compliance. Further, the reasons for an individual landlord's non-compliance may only become evident to a local authority over the course of multiple interventions.

Resource constraints

Resource constraint is a common theme across all reports exploring the implementation of licensing regimes. The constraint relates to the ability of local authorities to fund enforcement activity at the level required, and the availability of officers with sufficient experience and skill to undertake that work.¹⁷ Even where local authorities were of the view that a universal inspection regime was desirable, resource constraints meant that this objective was not achievable.¹⁸

Local authorities generally expect a licence application to be accompanied by the relevant fee. The fee can be set for the relevant licensing function under the relevant Part of the Act. The aim of fee structures is to deliver a cost-neutral scheme. CPN income can be used to cover the cost of enforcement, bridging the gap between the licence fee income and overall cost of enforcing the scheme.

Measuring outcomes

The scale and mode of enforcement activity is not routinely reported by local authorities, and there remains a degree of ambivalence about what might be regarded as valid performance indicators. Generation Rent used a Freedom of Information (FOI) request to collate numeric data on enforcement activity and concluded that FOI responding local authorities were performing poorly in respect to the number of enforcement notices served against the number of hazards recorded.¹⁹

Sandoul & Pipe presented more positive numeric evidence on successful enforcement activity and listed example authorities that had identified and addressed hazards.²⁰ Their report nevertheless concluded that Selective Licensing is not a 'quick win', and it may take some years for 'tangible outcomes' to be achieved.²¹ Lawrence identified a range of less tangible but still positive outcomes from licensing regimes that extended beyond enumeration of enforcement actions. These were the ability to concentrate attention on the areas of highest concern; that non-licensing of a property comprised a relatively straightforward to prosecute; the regulation granted powers to enter a property of concern; licensing promoted a more proactive approach to enforcement; and the licensing regime created a mechanism for landlord engagement.²²

However, to apply to put in place a new Selective Licensing scheme beyond their initial five years, local authorities must present evidence evaluating the effectiveness. If schemes are successful, then there is a presumption that the scheme would then end on account of it no longer being necessary; if it is unsuccessful, the presumption is instead that licensing has been ineffective, and should for that reason be discontinued. This can present local authorities with a somewhat a paradoxical situation, whereby ongoing inspection and enforcement work should be discontinued after five years whether the scheme has been successful or unsuccessful.

¹⁷ For further reading, see Borisova, N. & Smith, D. (2022) *Houses of Multiple Occupation and Selective Licensing*, London: Routledge; Oatt, P. (2019) *Selective Licensing: The Basis for a Collaborative Approach to Addressing Health Inequalities*, London: Routledge.

¹⁸ Mahmud & Tabbush, 28.

¹⁹ Generation Rent, 'Three-quarters of tenants'.

²⁰ Sandoul & Pipe, *License to Rent*, 10.

²¹ Sandoul & Pipe, *License to Rent*, 5.

²² Lawrence, *Independent Review*, 37-39.

Proposal for a National Register

Discussion of licensing regimes has become associated with proposals to introduce a register, either of PRS properties or landlords in England. Registers are in operation in Wales, Scotland and the Republic of Ireland. Since the first drafting of this report, the introduction of a 'Property Portal' (aka 'landlord portal') has been proposed in the Renters Reform Bill, currently in committee stage in parliament.

A number of reports have recognised that a register of landlords and properties could constitute an essential data source to support decisions around whether to introduce selective licensing. However, questions remain on whether a register might then remove the need for a licensing regime.

The possible introduction of a national register tends to be reported positively. Mahmud & Tabbush and the Harris *et al.* comment on national registers that have been introduced in Scotland, Wales and the Republic of Ireland.²³ Harris *et al.* advocate for the inclusion of letting agents in registration schemes and, learning from Wales and Scotland, emphasised the importance of incorporating information-sharing agreements between local authorities and the controller of the registration data.²⁴ Liebowitz & Smith-Powell also propose that the landlord register incorporates a national register of PRS properties. Tracking properties would be facilitated by developing a Unique Property Reference Number for each rented address.²⁵ This move would substantially increase the granularity of local PRS data.

The reports were generally of the view that a register could not replace the existing enforcement regimes, since the register does not carry associated inspection powers:

Without the regulatory framework of licensing, or the information and resources it delivers, local authorities would be limited in their capacity to ascertain landlords' compliance and enforce housing standards through proactive inspections and investigations.²⁶

There was consensus that a universal register might usefully support the existing enforcement regime by enabling local authorities to target more easily the non-compliant landlords; by augmenting the data available to local authority on the PRS in their area; and by providing information that can be linked with other data on risks of non-compliance.²⁷

²³ Mahmud & Tabbush, *Licence to Let*; Harris, J., Cowan, D, & Marsh, A. (2020) *Improving Compliance with Private Rented Sector Legislation: Local Authority Regulation and Enforcement*, Glasgow: CaCHE.

²⁴ Harris *et al.*, *Improving compliance*, 17-18.

²⁵ Liebowitz & Powell-Smith, *National Landlord Register*, 12-15.

²⁶ Mahmud & Tabbush, *Licence to Let*, 36.

²⁷ Liebowitz & Powell-Smith, *National Landlord Register*, 18-19.

Rationale for Research

The existing literature on property licensing offers valuable insights into the introduction of licensing regimes by local authorities. This research contributes to that material through the addition of detailed quantitative and qualitative data from five case study London boroughs. This research addresses many of the themes highlighted in the existing literature:

- difficulties relating to central government directives;
- strategies for making sense of the local PRS landscape in the context of a paucity of data;
- appraisals of the effectiveness of licensing scheme enforcement tools, especially with regard to discretionary and core requirements; and
- approaches to evaluating scheme success.

This research approaches the introduction and implementation of licensing regimes as a dynamic process. There are points where particular obstacles present challenges but also a clear indication that, over time, increasing levels of skill and experience reframe modes of enforcement.

Methodology

Senior property licensing leaders from each of the five chosen study area boroughs were identified through Safer Renting's London-wide professional network and selected as interviewees for their expertise and involvement in property licensing. All participants were interviewed twice, with the majority of interviews taking place 'virtually' (two were in person) and lasting between one to one and a half hours.

A set of core questions guided the interviews, exploring respondents' experiences of property licensing, with a focus on any challenges encountered and lessons learned. In the second round of interviews, supplementary questions were asked based on the initial research. The findings of these interviews were synthesised and cross-referenced in this report to identify key commonalities and differences between boroughs. All local authority officers have been assured that their answers will be anonymised and have approved the quotations that feature throughout this report.

Prior to the interviews, a mapping exercise of the five chosen study area boroughs was conducted to understand their distinctive characteristics. The five boroughs were chosen to capture diversity in demographics, geography, infrastructure, PRS size, property licensing history and approach, local politics, and council wealth.

Additional research has been conducted to supplement these qualitative interviews, including the mapping and analysis of publicly available and local-authority-provided property licensing data, and documentary analysis of secondary source material.

The report's qualitative methodology reflected a paucity of reliable data on scheme implementation and the desire to arrive at a more nuanced understanding of the challenges faced by local authorities in London. The report's recommendations are informed by these insights.

Report Structure

Chapter 2 sets out the regulatory framework for property licensing, detailing national, London-specific, and local elements. This chapter touches on relevant legislation and addresses the various conditions that affect the establishment of licensing schemes.

Chapter 3 offers contextual information for enforcement activity in the five case study boroughs, including narrative summaries of how licensing regimes were introduced, and their current modes of operation.

Chapter 4 reports from qualitative interviews that reflect on the operation of licensing regimes. The chapter discusses different styles of enforcement action and some of the legislative obstacles that are embedded in the requirements of the Housing Act 2004. Chapter 5 continues with discussion of operational challenges.

The report concludes with actionable recommendations aimed at a range of policy audiences.

2. The licensing landscape

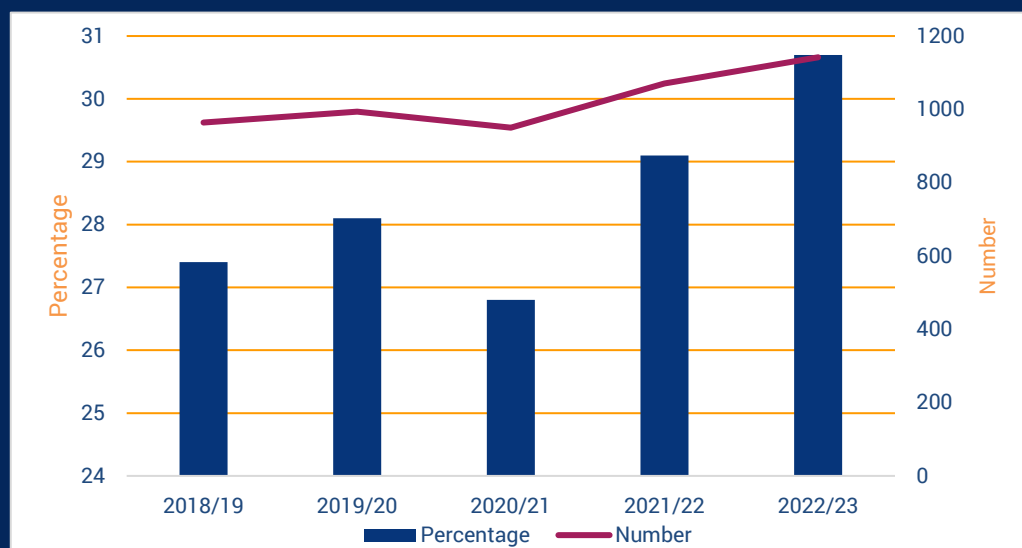
Introduction

This chapter gives an overview of the licensing landscape in London, including a summary of the relevant legislation and progress in borough implementation of mandatory, additional and Selective Licensing. The chapter begins with selected contextual data on the private rented sector in the capital.

The private rented sector in London

Across England, the size of the private rented sector has remained largely static. Indeed, comparing 2022-23 and 2018-19, the proportion of households in the sector has dropped slightly, from 19.3% to 18.8%. This trend is not replicated in London. As indicated in Chart 2.1, the proportion of privately renting households has – with the exception of the Covid year 2020-21 – grown year-on-year over the last four years and is now 30.7%.

Chart 2.1: Number and proportion of households by tenure, London



Source: English Household Survey Headline Report, Annex Tables 1.2

Across England, the number of renting households increased only slightly in the same time period, by 1.5%; in London, the increase was 15%. In 2022-23, the capital had 1,142,000 privately renting households.²⁸

Notwithstanding an increase in the number of renting households, there is evidence that the supply of properties to the sector is decreasing. Market analysis published in 2023 indicated that the number of rental listings for 1-, 2- and 3-bedroom properties has fallen by just over a third compared with the average for Q1, 2017-19, and there has been an increase in the proportion of properties currently for sale that have previously been advertised to let.

²⁸ English Housing Survey, *Headline Report Chapter 1*. Annex tables AT1.1 and AT 1.2.

This trend was particularly acute in Westminster, Kensington & Chelsea, Tower Hamlets and Camden. These data were available through analysis of rental listings and sales listing.²⁹

Little information is available on the current state of the shared housing market, where landlords are more likely to use social media and other specialist websites to advertise the availability of rooms with communal kitchen and bathroom facilities. ONS data indicates that, in London in 2022, 6.2% of Londoners lived in households with two or more unrelated adults; this compares with a national figure of 2.8%. The London proportion translates to 567,000 individuals living in shared households. This figure has not shown a long-term increase; rather, it has fluctuated quite widely since 2015.³⁰ Notwithstanding this data, evidence from the case study authorities suggests that formal data on the number of HMOs is incomplete and inaccurate.

Poor property quality is linked with tenure and housing type. One of the principal aims of licensing schemes is to improve property standards in the PRS, with a particular focus on standards within houses of multiple occupation (HMOs). The English Housing Survey indicates a general long-term improvement in the physical conditions of all the country's housing stock: the proportion of non-decent properties has fallen from 21.8% to 14.%, and all tenures have shown a similar scale of improvement. However, the incidence of non-decency remains comparatively high in the PRS: in 2022, 21.1% properties were non-decent, compared with 13.7 per cent in owner occupation and 10.4% in social housing.³¹ On the issue of damp specifically, in 2022, 9.0% of PRS properties were found to have a problem, compared with 2.3% in owner occupation and 5.4% in social housing.³²

In London, the situation is much the same, with the quality of properties across all tenures improving over the past 10 years: the proportion of non-decent PRS dwellings has fallen from 36.9% in 2010 to 22.8% in 2020. However, at 22.8%, the proportion of non-decent PRS dwellings again remains considerably higher than in social (11.3%) and owner-occupied dwellings (13.8%).

In part, this figure may reflect the higher proportion of converted properties within the mix of London rental properties, and new supply of modern build-to-rent rentals in good condition. In 2018, analysis of combined years of the English Housing Survey found that 52 per cent of dwellings in converted flats were non-decent.³³

National data on non-decency in HMOs specifically is not available, although this report evidences a high incidence of problematic shared property in the case study areas.

²⁹ Whitehead, C. et al. (2023) *Supply of Private Rented Sector Accommodation in London*, LSE Consulting & Savills, 5, 15.

³⁰ Office for National Statistics (ONS), released 18 May 2023, ONS website, dataset, *People in households by type of household and family, regions of England and GB constituent countries*, available at <
<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/datasets/peopleinhouseholdsbytypeofhouseholdandfamilyregionsofenglandandgbconstituentcountries> >.

³¹ Department for Levelling Up, Housing, and Communities (2022) *English Housing Survey 2021 to 2022: Headline Report*, London: DLUHC, Annex Table 4.3.

³² Department for Levelling Up, Housing and Communities (2022), *English Housing Survey*, Annex Table 4.6.

³³ Rugg, J. & Rhodes, D. (2018) *The Evolving Private Rented Sector: Its Contribution and Potential*, York: University of York, 95.

The Legal Context³⁴

This report is specifically concerned with ‘houses in multiple occupation’ (HMOs), which are variously defined in terms of property characteristics – number of storeys, and shared facilities – and the number of unrelated households living in the property.

There have always been problems in agreeing definitions of what constitutes a HMO, and wide variation in types of sharing arrangement.³⁵ For example, ‘house shares’ might include unrelated tenants who have chosen to live together and tend to control who lives in the property: this kind of arrangement can include some higher-rental properties.

This report is concerned with HMOs that serve the lower end of the market. Tenants are generally letting directly from the landlord and sharing facilities with strangers. HMOs tend to be relatively affordable and easy access, but this kind of property has, for many years, been regarded as carrying higher levels of risk to the tenant not least in terms of fire safety. HMOs have long been subject to enhanced levels of regulation. The Housing Act 1957, the Housing Act 1974 and Statutory Instrument 1981 Number 1576 all made specific reference to HMOs and introduced a licensing requirement. The Housing Act 2004 created an entirely new licensing system for HMO and PRS enforcement activity. This legislation was augmented by the Housing and Planning Act 2016, which introduced a new framework for penalties.

Note that reference is also made in this report to Section 257 (S.257) HMOs. This type of HMO is either contained within a building where subdivision into self-contained flats did not comply with 1991 building regulations at the time of conversion, and which still does not comply with the relevant standards. Alternatively, it may be a conversion in which one or more of the lettings is not fully self-contained. For the first type of S.257 properties, they must also be contained within buildings where less than two-thirds of the other buildings are owner occupied.

The Housing Act 2004

The legislative context for HMO regulation was altered substantially by the Housing Act 2004. The Act introduced both a new licensing regime which expanded the reach of existing regulations, and a new mode of assessing property quality, via the Housing Health and Safety Rating System (HHSRS).

Mandatory and Additional Licensing

Part 2 of the Housing Act 2004 introduced a mandatory requirement for the HMOs with five or more people – which were deemed to be the highest-risk privately rented properties – to be licensed. This regulation was amended in 2018, when the definition of a ‘large’ HMO was widened, excluding storey height as a relevant consideration, and expanding to include all HMOs housing five or more people in two or more households except for purpose-built flats in purpose-built blocks. Minimum room sizes, assessed by reference to occupancy, were also incorporated as a consideration. Mandatory licensing does not apply to S.257 HMOs.

³⁴ Further information is available in Harford, L. & Thompson, K. (2022) ‘Regulating houses in multiple occupation (HMOs)’, in J. Stewart & R. Moffatt (eds) *Regulating the Privately Rented Sector*, London: Routledge, 76-87.

³⁵ See, for example, Kirby, K. & Sopp, L. (1986) *Houses in Multiple Occupation in England and Wales: A Report of a Postal Survey of Local Authorities*, London: HMSO.

Section 56 of the 2004 Act also granted local authorities the power to introduce discretionary ‘Additional Licensing’ schemes, requiring smaller, and – should they wish – all HMOs to be licensed. The designation of areas for Additional Licensing schemes is subject to requirements, both for public consultation and, as defined in Section 58, the subsequent approval of the SoS (‘appropriate national authority’).³⁶

Selective Licensing

Part 3 of the Act, as it was introduced, empowered local authorities to propose ‘Selective Licensing’ schemes, covering all privately rented property in areas (or all) of the borough where there is evidence of poor-quality housing, low housing demand, and/or market failure. Designation criteria, included in S80 of the Act, were expanded by a General Approval 2015 to include an influx of migration, poor housing conditions, a high level of deprivation, or high levels of crime.³⁷ Current criteria are listed in Box 2.1.

London boroughs cannot demonstrate significantly low housing demand and so, for a scheme to be approved, it must be shown to coordinate with an authority’s wider housing strategy to tackle the above issues and promote regeneration.

As was the case with Additional Licensing, the Act required Selective Licensing schemes to be subject to extensive public consultation and subsequent approval by the SoS, who has the power to determine and publish criteria for approval. SoS approval for Selective Licensing is only required for a scheme covering more than 20% of a local authority, or more than 20% of properties in a designated area.

For larger-scale Selective Licensing schemes, SoS approval is contingent on local authorities consulting widely and producing a comprehensive, evidence-based proposal to justify introduction. If approved, selective schemes can run for up to five years, at the end of which time their success in tackling the stated problem(s) must be evaluated.

Box 2.1 Designation criteria for Selective Licensing

A selective licensing designation may be made if the area to which it relates satisfies one or more of the following conditions. The area is experiencing:

- low housing demand (or is likely to become such an area)
- a significant and persistent problem caused by anti-social behaviour
- poor housing conditions
- high levels of migration
- high level of deprivation
- high levels of crime

Should a local authority be considering designating an area on the following grounds:

- poor housing conditions and/or
- migration
- deprivation
- crime

then the local housing authority may only make a designation if the area has a high proportion of housing in the private rented sector³⁸.

³⁶ *Housing Act 2004 (c.34)*, Part 2, available at: <https://www.legislation.gov.uk/ukpga/2004/34/part/2>.

³⁷ Department for Levelling Up, Housing, and Communities (2023), ‘Selective Licensing in the private rented sector: a guide for local authorities’, 20 June. Available at: <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities>, [Accessed: 30/01/2024].

³⁸ <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities#what-is-selective-licensing>. Accessed 26 Feb 2024; *Housing Act 2004 (c.34)*, Part 3, available at: <https://www.legislation.gov.uk/ukpga/2004/34/part/3>

Housing, Health and Safety Rating System

Part 1 of the Act established the Housing Health and Safety Rating system (HHSRS), which made it a requirement of private landlords to assess and eliminate a range of risks in their properties, whilst giving local authorities new duties and powers to investigate complaints and enforce against landlords with non-compliant properties.

In addition to, and in line, with their statutory duty to ensure that the housing conditions in their area are regularly reviewed, Part 1 gave local authorities the power to inspect a property if it was considered appropriate to do so. Following an inspection, a range of enforcement options of varying degrees of severity are open to local authorities to deal with the most severe hazards – termed Category 1 or 2 – including:

- **Hazard Awareness Notices** – advisory action where the authority draws attention to the need for improvements, detailing specific hazards and necessary actions;
- **Improvement Notices** – to address Category 1 or 2 hazards; requires action from the landlord within 28 days (unless suspended); failure to comply is a criminal offence;
- **Prohibition Orders** – used in serious-threat scenarios to deal with Category 1 or 2 hazards where practical repairs are unfeasible; may restrict premises use to particularly vulnerable groups or limit the maximum number of occupants; and
- **Emergency Action** – used in cases where Category 1 hazards represent imminent risk of serious harm; allows authority to prohibit the use of the dwelling (or a part of) and/or carry out immediate remedial action.

In the most severe cases, local authorities also have the power to enact Demolition Orders and Clearances, though in such instances they must consider, *inter alia*, the ease of re-housing occupants; the impact on the local environment and neighbourhood; the possible future use of a cleared site; and the demand for housing in the area.³⁹

Licensing conditions generally

In the absence of discretionary licensing, a local authority's right of access to inspect property is confined to addresses where they have received a complaint. Where licensing has been put in place, local authorities retain the right to inspect any property to assess its compliance with the scheme. There are mandatory conditions which local authorities are required to include, and they have the prerogative to include additional discretionary conditions relating to amenity and property management standards.

For example, Waltham Forest, one of the report's five chosen study area boroughs, has requirements that a licence holder must make a minimum of six-monthly inspections of their property; arrange for the storage and disposal of waste; and change the locks to the property in between lettings, in addition to a number of other licensing conditions. Failure to comply with these requirements can result in the refusal, suspension, or revocation of licences.

³⁹ Department for Communities and Local Government (2006), *Housing Health and Safety Rating System: Guidance for Landlords and Property Related Professionals*, 5-18, *Housing Act 2004 (c.34)*, Part 1, Chapters 1 and 2, available at: <https://www.legislation.gov.uk/ukpga/2004/34/part/1>.

One of the most prominent mandatory conditions is the requirement that a licence holder must pass a 'Fit and Proper Person' test. There is, however, no statutory definition of the evidential standard of 'fit and proper', meaning that it is left to the discretion of the local authority to interpret guidance to apply these tests, subject to the oversight of the courts.

Enforcement and Penalties

The Housing Act 2004 did not originally include a civil penalty regime but subsequent amendments (e.g., Section 249a) made by later Acts have provided local authorities with alternatives to prosecution for certain housing offences. Both the Housing and Planning Act 2016 and the Deregulation Acts of 2015 and 2018 have introduced a range of criminal and civil penalties applicable to landlords, as well as offering avenues to civil redress for renters.

The Housing and Planning Act 2016 was a particularly important piece of legislation for local authorities, as it provided them with new powers to apply Banning Orders and civil penalty financial fines as an alternative to criminal prosecution. Financial penalties are repaid to the council and are used to fund further enforcement work and are included in a range of penalties that can prevent a landlord securing rent for their let property.

- **Rent Repayment Orders** allow renters who rented properties where there were licensing offences to claim up to 12 months' rent where an offence was committed or ongoing while they were living there.
- **Interim or Financial Management Orders (IMOs/FMOs)**, require local authorities to step in to replace a landlord who is absent or offending, or who fails the 'Fit and Proper Person' test. The local authority will take over the duties and benefits (including rent collection and management) of the property for a given period.
- **Civil Financial Penalties** for licensing offences. The income from these penalties can be used to finance licensing enforcement programmes.
- **Banning Orders** which can be used to prohibit serial offenders under the legislation from continuing to operate as a landlord in England.

The progress of Discretionary Licensing in London

In response to the unique size of, and challenges within, the PRS in London, 22 out of 33 London boroughs have implemented some form of discretionary licensing scheme. Four authorities operate extended schemes covering nearly the entirety of the borough, eight have borough-wide Additional HMO licensing in addition to some areas of Selective Licensing, and six (soon to be seven) have borough-wide Additional Licensing in place. The remaining three boroughs operate discretionary licensing. The designations are a variety of additional and selective covering limited areas.

Figure 2.1 illustrates the distribution and types of PRS licensing schemes implemented in London. Property licensing represented a relatively novel concept during the early years, contributing to a long delay in initial adoption. In the nine years after the introduction of property licensing in 2006, there were only a small number of 'early adopter' London authorities that implemented comprehensive, whole-borough schemes: Newham, Barking & Dagenham and Waltham Forest, the latter of which excluded a couple of wards from their scheme.

Notwithstanding these examples, cautious exploration was preferred to widespread implementation, influenced by factors like resource constraints, skills shortages, and knowledge gaps. Newham was the pioneer of borough-wide Selective Licensing, introducing their first scheme in January 2013; subsequent local authorities were influenced heavily by Newham's initiative and methods. For example, officers responsible for the development of schemes in Croydon drew inspiration from Newham's evidence base and employed their model for assessing the correlation between anti-social behaviour and poor private rental conditions to establish a case for their own scheme. Hillingdon studied the Newham scheme but did not proceed.⁴⁰

Knowledge-sharing appears to have been common practice as interest in licensing schemes increased among the boroughs. For example, Lewisham reviewed Newham, Brent, Redbridge, and Haringey's evidence bases when studying the evidence-base for discretionary Licensing in their borough.⁴¹ Similarly, Newham's model for analysing different combinations of risk factors and housing conditions to gauge the number and types of HMOs in a borough was cited in an Enfield licensing consultation report.⁴² The process was not without difficulties. In 2014, a private landlord challenged Enfield Council in the High Court to prevent the proposed introduction of a Selective Licensing scheme.⁴³

The Court ultimately ruled against Enfield's scheme, quashing it for failing to consult for the required statutory 10 weeks and not extending the consultation outside the boundaries of the borough. External challenges to local authorities' right to implement discretionary licensing has increased since this landmark case. In part, this reflects the guidance introduced in April 2015, which expanded the SoS criteria for scheme acceptability. It is now more difficult to secure borough-wide licensing. For example, Redbridge was one of the first local authorities to apply for borough-wide Selective Licensing since the legislative change. Their Cabinet voted in favour of borough-wide implementation, but their application was rejected by the SoS on the grounds that there was insufficient evidence for Selective Licensing in all wards; two more restricted schemes were later introduced.

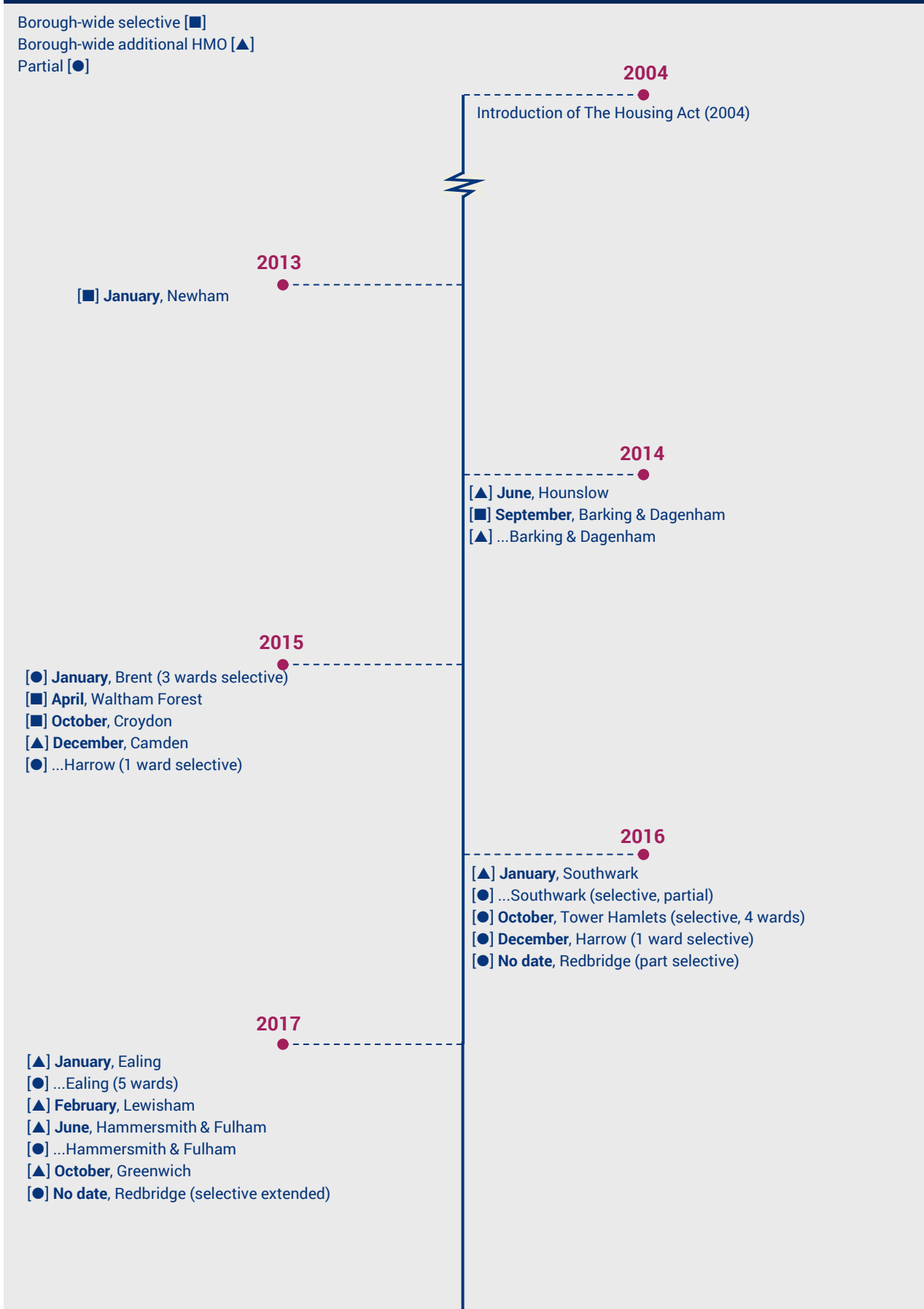
⁴⁰ Croydon Council (2015) 'Private Rented Property Selective Licensing: March 2015 Final Report, (March 2015). Available at: https://democracy.croydon.gov.uk/Data/Cabinet/20150316/Agenda/cab20150316_08_02_appendix_1acb9.pdf?cmte=CAB&meet=34&href=/akscroydon/images/att5183.pdf, [Accessed: 19/01/2024]. Hillingdon Council (2014) 'Selected Licensing in the Private Rented Sector: Decision Details', 29 Jan. Available at: <https://modgov.hillingdon.gov.uk/ieDecisionDetails.aspx?Id=388>, [Accessed: 19/01/2024];

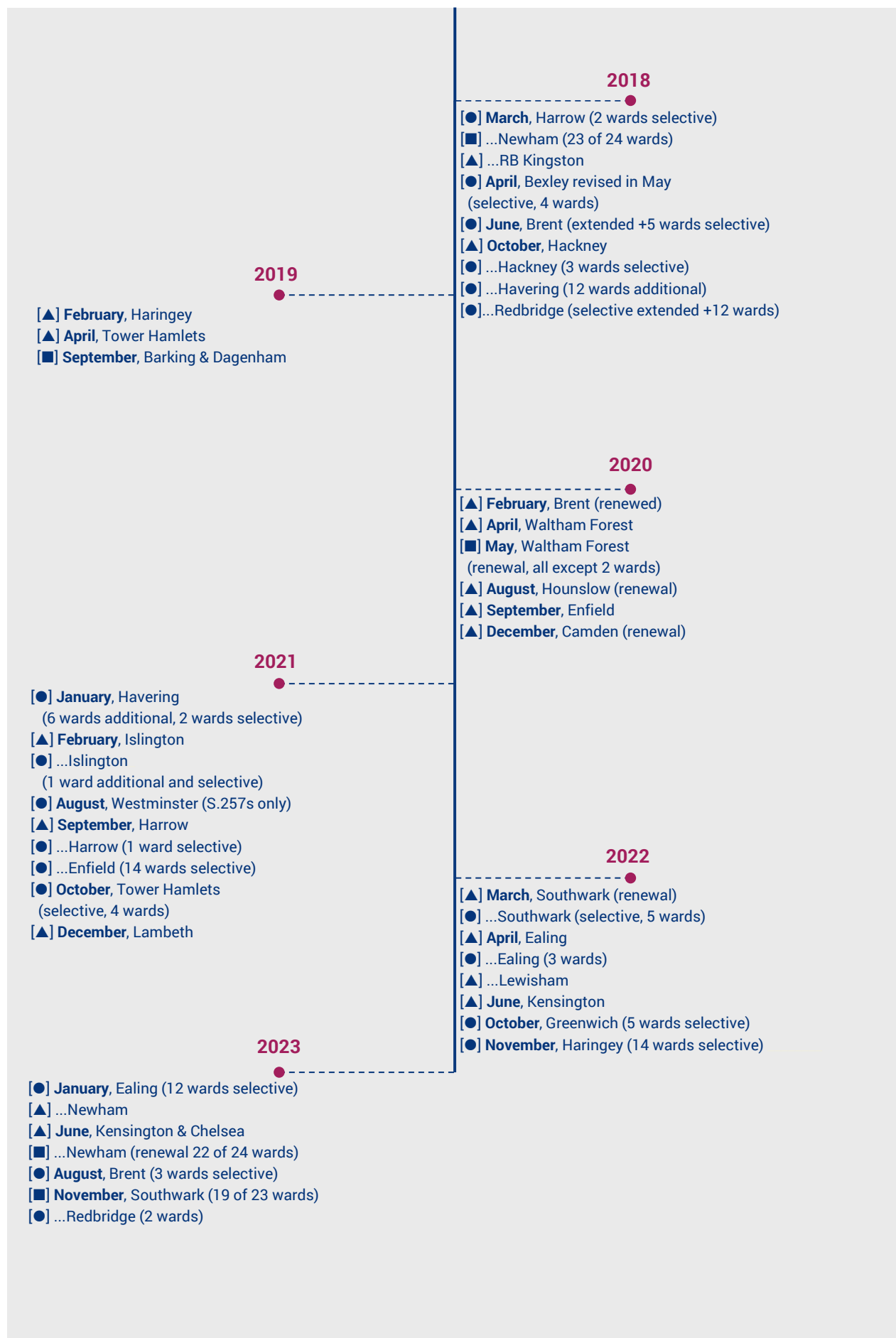
⁴¹ Lewisham Council Housing Select Committee (2018) 'Working in the Private Rented Sector', 18 September, 8. Available at: <https://councilmeetings.lewisham.gov.uk/documents/s59240/04%20licensing%20report%20180918.pdf>. [Accessed: 19/01/2024].

⁴² Enfield Council and Mayhew Harper Associates Ltd. (2013) 'Understanding the relationship between private rented properties and anti-social behaviour in Enfield', November, 3, available at: <https://governance.enfield.gov.uk/documents/s44797/>. [Accessed: 19/01/2024].

⁴³ See, e.g., Renshaw, R. (2014) 'Landlord says legal challenge to licensing scheme was "last resort"', *Property Industry Eye*, 28 July. Available at: <https://propertyindustryeye.com/landlord-said-legal-challenge-licensing-scheme-last-resort>. [Accessed 20/1/2024]

Figure 2.1: Timeline of London licensing schemes





Similarly, in Croydon, where a borough-wide Selective Licensing scheme had been in place from 2015 to 2020 (established prior to the amendment), their application for a new the scheme was rejected by the SoS due to its failure to demonstrate consistency with the council's overall housing strategy, and limited evidence that the designation would assist them to achieve their objectives of improving Croydon's PRS.⁴⁴ In spite of efforts to revise their approach to tackling problems in the borough's PRS since, Croydon is, as of January 2024, currently without any discretionary licensing scheme.⁴⁵

Despite these challenges, committed boroughs persist in applying for near-borough-wide Selective Licensing. In 2016, Redbridge successfully implemented a scheme, progressively expanding it to cover additional wards in both 2017 (two wards) and 2018 (12 wards). Newham (all but one ward in 2018; renewed 22 of 24 wards in 2023) and Waltham Forest (all but two wards in 2020) also extended their schemes to cover the majority of their respective wards. Southwark, as of November 2023, has also expanded its 2022 scheme, which covered five wards, to cover 20 of 23 wards.

Conclusion

London, as a region, contains the highest proportion of privately renting households. Property quality is poorer in the PRS compared with other tenures. Data on the shared housing market is not readily available but it is likely that, compared with other regions, a high proportion of Londoners will be living in houses in multiple occupation and where property standards are more likely to be non-decent. Concern about the higher risk to health and safety posed by HMOs has led to gradual refinement of licensing regimes. The Housing Act 2004 introduced a system of Mandatory, Additional and Selective licensing. Local authorities did not respond immediately to this opportunity, but since 2013 there has been a marked acceleration in scheme adoption. At this stage, multiple London boroughs are at various stages in their experience of scheme operation, and many have extended their initial schemes.

⁴⁴ Jenrick, R. (2021) 'Ministry of Housing, Communities, and Local Government: Secretary of State decision letter to Croydon Council', 7 June, 2-3, available at: <https://democracy.croydon.gov.uk/documents/s31761/Appendix%20A%20-%20MHCLG%20SoS%20decision%20letter%20to%20Croydon%20Council%2007%2006%2021.pdf>. [Accessed: 19/01/2024].

⁴⁵ Croydon Council (2021) 'Tackling problems in the borough's private rented sector and helping make Croydon the "Better Place to Rent"', 24 August, available at: <https://democracy.croydon.gov.uk/documents/s31768/Tackling%20problems%20in%20Croydons%20PRS.pdf>. [Accessed: 19/01/2024].

3. Local contexts for enforcement activity

Introduction

This chapter provides more detailed contextual information for the five case study areas: Camden, Ealing, Enfield, Waltham Forest, and Westminster. This information includes data on tenure mix and rents in comparison to LHA levels. The chapter also presents information about the licensing schemes in operation across the five boroughs, activity levels in terms of enforcement, and the licensing fees charged.

Selected comparative data for the case study boroughs

The five case-study areas were selected for their unique characteristics and relevance to the broader discussion on property licensing and housing standards in London. The selection process also was guided by such factors as the prevalence of PRS accommodation, housing demand, demographic composition, and historical trends in property licensing. The contrasting context and experience offer valuable insights into challenges faced by local authorities as schemes became operational.

Table 3.1 gives the tenure breakdown for the case study authorities. The boroughs differ substantially in terms of tenure mix.

Borough	Tenure Breakdown
Camden	<ul style="list-style-type: none">• 30.5% owner occupied or shared ownership• 35.6% private rented• 33.7% social rented• 0.3% lives rent free
Ealing	<ul style="list-style-type: none">• 48.2% owner occupied or shared ownership• 34% private rented• 17.5% social rented• 0.2% lives rent free
Enfield	<ul style="list-style-type: none">• 53.5% owner occupied or shared ownership• 29.3% private rented• 17% social rented• 0.2% lives rent free
Waltham Forest	<ul style="list-style-type: none">• 50.6% owner occupied or shared ownership• 27.8% private rented• 21.5% social rented• 0.1% lives rent free
Westminster	<ul style="list-style-type: none">• 28.1 owner occupied or shared ownership• 43.3% private rented• 28.3% social rented• 0.3% lives rent free

Camden and Westminster have a markedly low proportion of households in owner occupation or shared-ownership housing, although Camden has a higher percentage of its residents in social housing than Westminster. Ealing, Enfield and Waltham Forest all have a lower-than-average percentage of owner occupied or shared-ownership housing residents, and all have a higher proportion of tenants in the private rented sector.

Table 3.2 summarises the Local Housing Allowance (LHA) rates for two property types: shared rooms and two-bed dwellings. The LHA is established for a defined Broad Rental Market Area (BRMA), and these are not co-terminus with local authority boundaries. Enfield is the only borough covered by one BRMA. Camden, Waltham Forest and Westminster all contain two BRMAs, and Ealing, four. LHA rates are intended to cover the bottom 30th percentile rent in the BRMA.

The rental data, sourced from the London Rents Map, is included as an indication of pressures that exist at lower end of the PRS. Across London, poorer-quality property is still likely to find a tenant, particularly where the tenant may be reliant on welfare support to cover some or all of the rent.

Borough summaries

Camden

Covering an area of almost 22 square kilometres, Camden is a diverse borough that features prominent business centres like Holborn, Euston, and Tottenham Court Road, affluent residential districts in Hampstead, Highgate, and Belsize Park, as well as areas of relative deprivation. In 2022, Camden's resident population was approximately 218,000, ranking 9th in London for population density with 97 people per hectare, despite being the capital's 7th smallest borough. Notably, average house prices in Camden stand as the 4th highest in the country, following Kensington & Chelsea, Westminster, and Hammersmith & Fulham.⁴⁶

Unlike other study boroughs, Camden has a longstanding history of intervention in the PRS. Home to 11 higher education institutions, Camden has the 3rd largest student population in London, housing around 29,965 students, many of whom come from overseas and tend to have limited awareness of their rights.⁴⁷ Camden is also home to Arlington House, the largest hostel for homeless individuals in the country.

In response to this unique but longstanding position, Camden used powers in the Housing Act 1980 to introduce a Register of HMOs. Prior to it being superseded by the Mandatory Licensing scheme in 2006, post-Housing Act 2004, there had been some 300 HMOs registered under this legacy scheme.

⁴⁶ London Borough of Camden (2023) 'Camden Profile', December, 1-2. Available at: https://opendata.camden.gov.uk/People-Places/Camden-Profile-latest-9m7e-5qyt/about_data. [Accessed: 17/01/2024].

⁴⁷ *Ibid.*

Table 3.2: Local housing allowance rates in designated BRMAs and average borough rents: shared rooms and two-bed properties

	LHA shared room (Category A) ^a	London Rents Map: average borough room rent	LHA Two-bed rate (Category C) ^a	London Rents Map: average borough two-bed rent
Camden				
Central	£668.16	£850	£1,585.65	£2,383
Inner North	£638.26		£1,585.65	
Ealing				
Inner North	£638.26	£785	£1,585.65	£1,603
Inner West	£623.31		£1,471.34	
North West	£490.14		£1,207.57	
Outer West	£498.64		£1,171.78	
Enfield				
Outer North	£490.14	£633	£1,296.45	£1,400
Waltham Forest				
Outer East	£490.11	£559	£1,296.45	£1,500
Outer North East	£440.31		£1,146.86	
Westminster				
Central	£668.16	£917	£1,585.65	£3,002
Inner North	£638.26		£1,585.65	

^a The figures show a monthly calculated rate, based on the LHA rates x 52 and divided by 12.

^b <https://www.london.gov.uk/programmes-strategies/housing-and-land/improving-private-rented-sector/london-rents-map>. [Accessed 13/2/23]

Camden has continued to focus on HMOs in recent years, and though it is yet to implement a Selective Licensing scheme, the council's 2022 election manifesto included a pledge to explore this option. Although their local objectives for Selective Licensing are yet to be defined, Cabinet Members have directed officers to investigate the case for its adoption.

At present, Camden operates an Additional Licensing scheme, established in 2015 to run for an initial five years, and renewed for a further five years in December 2020. This scheme applies to all HMOs borough-wide, with a standard application fee of £1,300. As of June 2020, Camden had licensed 3,420 properties under the additional scheme, a fraction of the estimated 44,000 private rented homes in the borough, which includes an estimated 7,543 HMOs. If Camden's predictive modelling is accurate, then as many as 45% of additional HMOs have so far failed to apply for a licence, highlighting potential gaps in compliance.

The council acknowledges the importance of shared housing in meeting housing demand and renters' choices and does not have any Article 4 Direction in place to control the conversion of family housing to HMOs under 'permitted development' rules.

Ealing

Affectionately known as the ‘Queen of the Suburbs’, Ealing is a diverse outer London borough in the west of the city with a fast-growing population of 367,100 per the 2021 census; since 2011, population growth was higher in Ealing (8.5%) than in London (7.7%) and England (6.6%).⁴⁸ In that same period, the borough has witnessed a notable shift in its housing landscape, with the percentage of private renters rising from 27.5% to 34%. This upward trend in private renting, like Ealing’s population growth, outpaced the national average.⁴⁹

Notably, but perhaps unsurprisingly given the borough’s evolving make-up, Ealing has undertaken a number of changes in its licensing landscape. Originally, the borough implemented a borough-wide additional HMO licensing scheme, with Selective Licensing in five wards, from January 2017 until December 2021. Their Additional Licensing scheme was then renewed in April 2022 for five more years, and two designated Selective Licensing schemes have since been introduced. A continuation of the original three-ward scheme was launched in April 2022, and a separate 12-ward scheme started in January 2023.

Ealing Council, despite concern about the prevalence of property conversion to HMOs, does not have any Article 4 Direction in place to control the conversion of family housing.

Enfield

Enfield, the northernmost borough of London, spans 82.2 square kilometres and is known for its industrial heritage and expansive green spaces along the River Lea. With a population of 329,601 at the 2021 census, Enfield stands as the 6th largest London borough by population, while ranking 7th in population density.⁵⁰ Despite its size, indices of multiple deprivation data ranks Enfield in the 25% most deprived local authorities in the UK, while Trust for London research has found it to have the 7th highest poverty rate in London. At 33%, this is 6% higher than the London average.⁵¹

Like Ealing, the dynamics of Enfield’s housing market have undergone significant shifts in recent years, with the percentage of private renting households rising from 22.2% to 29.3% between 2011 and 2021.⁵² This increase in privately rented homes (+7.1%) has exceeded the growth rate observed in London (4.9%), whilst keeping pace with the Rest of England (7.1%). In tandem, between 2011 and 2021, data suggests that Enfield experienced a 32.4% surge in housing prices, as compared to 11.9% across England and Wales; the rate of home ownership in Enfield has also declined.⁵³

⁴⁸ Office for National Statistics (2023) ‘How life has changed in Ealing: Census 2021’, 19 January. Available at: <https://www.ons.gov.uk/visualisations/censusareachanges/E09000009/>. [Accessed: 18/01/2024].

⁴⁹ *Ibid.*

⁵⁰ Office for National Statistics (2023) ‘How life has changed in Enfield: Census 2021’, 19 January 2023. Available at: <https://www.ons.gov.uk/visualisations/censusareachanges/E09000010/>. [Accessed: 18/01/2024].

⁵¹ Consumer Data Research Centre, ‘CDRC Harmonised IMD 2019’, dataset available at <https://data.cdrc.ac.uk/dataset/index-multiple-deprivation-imd>. [Accessed: 18/01/2024]; Trust for London, ‘Poverty rates by London borough (2021/22)’, available at < <https://trustforlondon.org.uk/data/poverty-borough/> > [Accessed: 18/01/2024].

⁵² ONS, ‘How life has changed in Enfield: Census 2021’.

⁵³ Plumplot, ‘Enfield property prices’, available at: <https://www.plumplot.co.uk/Enfield-house-prices.html>. [Accessed: 18/01/2024].

In 2015, in response to their growing PRS, Enfield proposed and consulted on a borough-wide additional and Selective Licensing scheme. This was subject to judicial review. The scheme was subsequently rejected by the High Court on the grounds that Enfield had not consulted widely enough, or for the required 10-week period. Enfield had carried out a 13-week 'Listening and Engagement Phase', but this was deemed not to satisfy the criteria for consultation.

Enfield reviewed its position and gathered evidence by collaborating with Waltham Forest to use predictive modelling generated by a private consultancy firm. Eventually, by 2020, two new designations were consulted on and approved – a borough-wide additional HMO scheme in September 2020, and a partial selective scheme covering 14 of 25 wards in 2021.

These schemes, in addition to professional collaboration with Safer Renting, have helped Enfield to combat an ongoing problem with no-fault evictions, wherein the PRS eviction rate in the borough is higher than anywhere else in London. As part of the Rogue Landlord project that ran from 2016 to 2019, 4,259 properties were inspected; 173 HMOs were brought into licensing; 2,821 notices were served; and 39 prosecutions were executed.

Article 4 Direction has been in place across the borough since 2013, making Enfield the first of the two case study areas to introduce this measure.

Waltham Forest

According to the 2021 Census, Waltham Forest is home to an estimated 278,400 residents across 102,900 households and is recognised as one of the most diverse areas in the country – an estimated 53% of residents come from minority ethnic backgrounds, with sizeable Romanian, Hungarian, and Polish communities.⁵⁴ Spread across 38.8 square kilometres, its main population hubs are Chingford, Leyton, Leytonstone, and Walthamstow.

According to the 2019 Index of Multiple Deprivation, Waltham Forest is the 12th most deprived borough in London, ranking 82nd most deprived local authority nationally, which represents an improvement on 35th in 2015, and 15th in the 2010 data.⁵⁵ This progress has coincided with the emergence of an ongoing housing crisis in the borough. The borough recognises that 'housing is central to addressing issues of poverty and inequality', as "residents now spend a higher proportion of their income on rent compared with a decade ago (and official data is likely to underestimate the scale of the problem)".⁵⁶

⁵⁴ London Borough of Waltham Forest (2023) 'Statistics about the borough' 28 July, available at: <https://www.walthamforest.gov.uk/council-and-elections/about-us/statistics-about-borough>. [Accessed: 18/01/2024].

⁵⁵ *Ibid.*

⁵⁶ London Borough of Waltham Forest (2023) 'Waltham Forest Housing Commission Evidence', 25 January, 2, available at: <https://www.walthamforest.gov.uk/sites/default/files/2023-02/LBWF%20Housing%20Commission%20Evidence%20base%20Session%201%20Paper%202.pdf> [Accessed: 18/01/2024].

A 2023 Housing Commission conducted by the London Borough of Waltham Forest found that, despite the borough remaining cheaper than other areas, house prices were rising at a faster rate than anywhere in the capital, growing by 118% since 2011 compared to 65% in London. At the same time, they acknowledged that the ‘growth of the PRS is the biggest tenure change of the last decade’, with 28% of the borough’s households being accommodated in the PRS.⁵⁷ Waltham Forest is the 8th most crowded borough in the country, with 18% of households being overcrowded, above the Outer London average.⁵⁸

Waltham Forest has explicitly identified licensing as being integral to “alleviat[ing] pressure on the PRS”.⁵⁹ In April 2015, it became just the third borough in London (after Newham and Barking & Dagenham) to implement a borough-wide Selective Licensing scheme, which was then renewed (excepting two wards) in May 2020 to run until April 2025. In addition, a complementary additional scheme was also launched in April 2020, covering all HMOs in the borough. Article 4 direction has been in place across the borough since 2014, in an effort to arrest the spread of HMOs at the expense of family housing.

The borough has adopted a comprehensive approach to improving the PRS, using civil penalties and criminal prosecutions against landlords, and collaborating closely with Safer Renting to protect the rights and wellbeing of tenants. Uniquely, Waltham Forest proactively exercises its duty to impose Interim Management Orders where a licensable property is not licensed and there is no reasonable prospect of it being so in the near future.

Westminster

Bordering Camden and situated in the heart of Central London, Westminster covers an area of 21.5 square kilometres and is home to around 205,087 residents.⁶⁰ It stands out as one of the top 4% most densely populated local authorities in England, despite being one of just three London boroughs to experience a population decline (of 6.9%) between the last two censuses.⁶¹

Westminster can be described as a borough of contrasts, with the country’s highest average house prices and the highest poverty rate of all the London boroughs at 43%, 16% higher than the London average.⁶²

Westminster has the largest PRS in England, with an estimated 52,700 properties housing 43.3% of its residents (up from 39.7% in 2011).⁶³ Of these private rentals, 72% make up a ‘middle income submarket’ occupied by ‘professionals’ that may be flat sharing and some small families. The other 28% is equally divided across those with incomes of less than £20,000 per annum (including students, workers living in HMOs, and people and families receiving housing support within Universal Credit), and high-income workers earning £90,000 or more each year.⁶⁴

⁵⁷ *Ibid*, 10.

⁵⁸ *Ibid*, 2.

⁵⁹ *Ibid*, 35.

⁶⁰ Office for National Statistics (2023) ‘How life has changed in Westminster: Census 2021’ 19 January, available at: <https://www.ons.gov.uk/visualisations/censusareachanges/E09000033/>, [Accessed: 18/01/2024].

⁶¹ *Ibid*.

⁶² Trust for London, “Poverty rate by London borough (2021/22)”.

⁶³ Westminster City Council, “Private Rented Sector Strategy: 2021-25”, (22nd January 2021), p.4, available at: < <https://www.westminster.gov.uk/sites/default/files/media/documents/Private%20Rented%20Sector%20Strategy%202021-2025.pdf> >, [Accessed: 18/01/2024].

⁶⁴ Westminster City Council, “Private Rented Sector Strategy: 2021-25”, p.9.

The authority has a recent history of proactive intervention in the PRS to address these unique challenges, facilitated in part by external government funding, specifically the Controlling Migration Fund. This fund supported the establishment of a 'Housing Standards Taskforce', focusing on intelligence-led enforcement and collaborations with organisations including Safer Renting. Although Westminster had no licensing beyond mandatory HMO licensing until 2021, this Taskforce issued 200 notices on property owners, including 24 civil penalty notices (CPNs), and revealed the prevalence of the 'rent to rent' schemes dominating Westminster's HMO market.

In April 2021, a borough-wide Additional Licensing scheme was designated to cover all HMOs, but by September of the same year, owing to local political pressure, S.257 HMOs (poorly converted part-owner-occupied properties) were removed from the designation, meaning that the scheme now only applies to S.254 HMOs, as defined under the Housing Act 2004.

Enforcement activity levels

Table 3.3 outlines the types and frequency of interventions in each borough between 2021 and 2023. This analysis serves as a foundation for the findings and recommendations that are presented in the following chapters by highlighting the proactive measures being taken by local authorities to uphold property standards and housing regulations.

Table 3.3: Enforcement activity across the case study boroughs

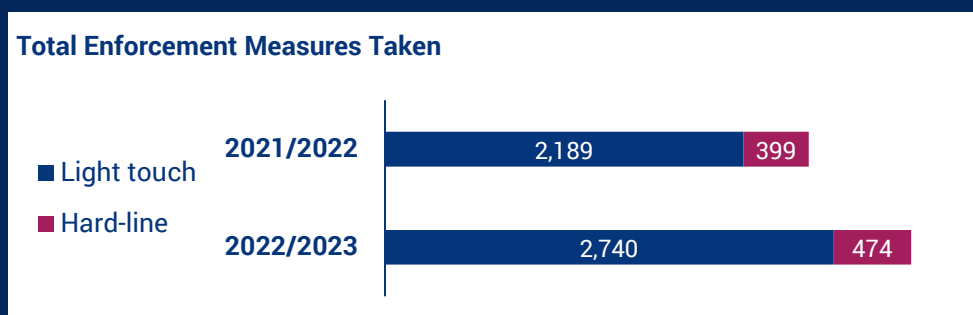
Type of intervention	Frequency of intervention									
	Camden		Ealing		Enfield		Waltham Forest		Westminster	
	21-22	22-23	21-22	22-23	21-22	22-23	21-22	22-23	21-22	22-23
Education/advice encouragement interventions (e.g., Landlord Forums, training events, newsletters etc)	1	2	4	8	1	1	8	8	5	5
Warning letters to landlords	285	305	0	4	565	1,108	1,121	842	38	53
Improvement Notices issued	42	41	29	31	16	14	9	14	26	29
Prohibition & Emergency Prohibition Notices	12	7	7	15	11	12	8	10	5	9
Civil /Financial penalties CPN (all offences) (this relates to when the final notice was issued and not the offence date)	99	82	24	0	28	51	37	69	5	30
Criminal prosecutions (all offences) (this relates to when the case was heard and not offence date)	1	2	0	0	3	6	15	11	0	5
Licence revocations	75	56	0	0	14	49	65	201	7	98
'Not Fit and Proper Person' declarations	-	-	0	0	0	3	-	-	0	0
Banning orders	6	0	0	0	0	0	0	0	0	0
Interim Management Orders or Financial Management Orders	0	0	0	0	0	0	7	7	0	0
Injunctions	1	0	0	0	0	0	0	0	0	0
Civil Claims	0	0	0	0	0	0	5	24	3	2

Each enforcement intervention type has been classified as either ‘light-touch’ or ‘hard-line’: Table 3.4 summarises how each intervention has been classified.

Table 3.4: Classification of Enforcement Intervention Actions	
Classification	Enforcement Intervention Type
Light touch	Education / Advice / Encouragement (e.g., landlord forums, training events, newsletters, etc.)
	Warning Letters to Landlords
	Licence Revocations
Hard-line	Improvement Notices Issued
	Prohibition & Emergency Prohibition Notices
	Civil / Financial Penalties CPN (all offences, relating to when the final notice was issued, not the offence date)
	Criminal Prosecutions (all offences, relating to when the case was heard, not the offence date)
	‘Not Fit and Proper Person’ Declarations
	Banning Orders
	IMO or FMO
	Injunctions
	Civil Claims

Analysis of raw enforcement data provided by the case study boroughs is summarised in Chart 3.1, which compares 2021-22 and 2022-23. The chart shows a 24.2% overall increase in enforcement activities implemented between 2021-2022 and 2022-2023, the majority of which fall into the ‘light-touch’ classification category (84.9%).

Chart 3.1: Total activity by type of enforcement activity and year across the case study boroughs



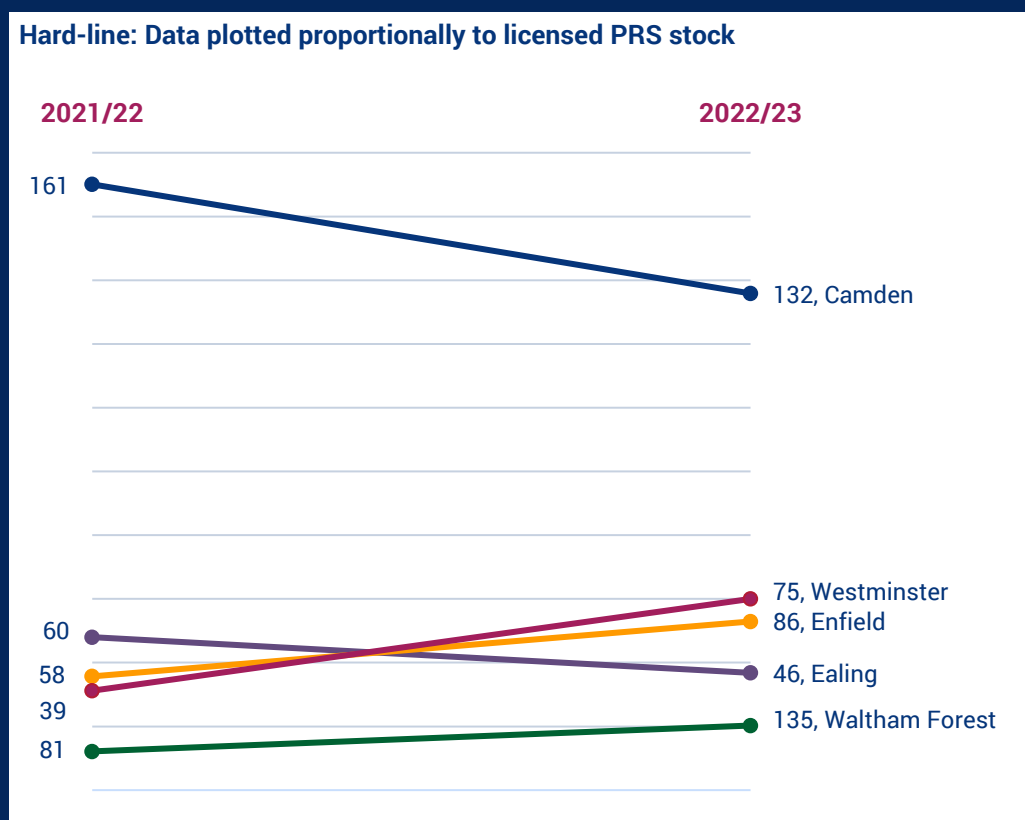
It is appropriate to consider this enforcement activity in the context of the size of the PRS. Table 3.5 summarises the composition of each of case study borough, including the total PRS properties, licensed PRS stock, and the percentage of PRS properties that are licensed.

Table 3.5: Percentage of PRS Properties Under all Licensing Schemes

Borough	Total PRS Properties	PRS Properties Licensed	Percentage Licensed
Camden	44,000	3,388	7.7%
Ealing	15,000	c. 5,000	c. 33.3%
Enfield	35,388	6,500	18.4%
Waltham Forest	39,000	26,643	68.3%
Westminster	52,700	c. 5,000	c. 9.5%

Chart 3.2 compares hard-line enforcement activity between case study boroughs as a proportion of the borough’s total licensed PRS stock.

Chart 3.2: Hard-line Enforcement Activity

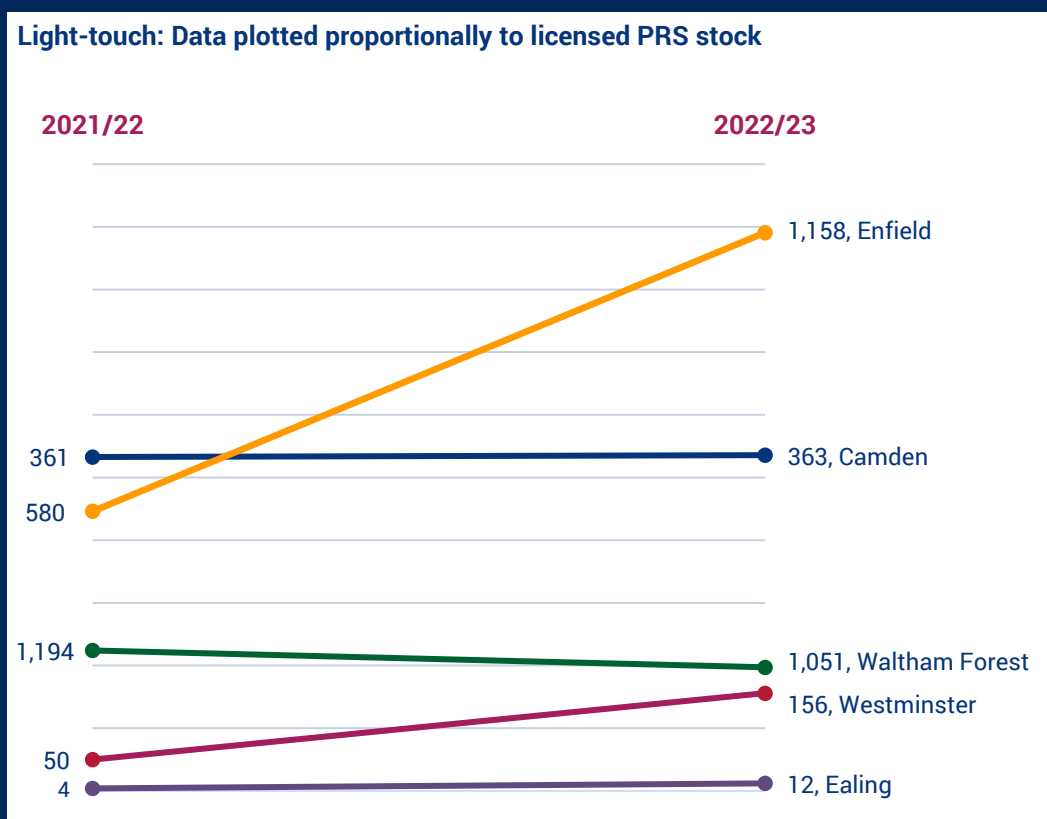


Taking Camden’s relatively small stock of licensed properties into consideration, Chart 3.2 illustrates that, proportionally, this borough is handing out far more ‘hard-line’ enforcement interventions compared to our other, larger, study borough PRS sectors. This includes having taken all six Banning Orders in the overall study.

As indicated above, Camden has a 40-year history of registration schemes, and so could be in a uniquely confident position in recognising landlord criminality and forwarding prosecutions where necessary. The smaller licenced stock could also mean that resources are better aligned to needs, and the borough has greater capacity for more targeted hard-line enforcement.

The two largest boroughs in terms of PRS size – Waltham Forest – make proportionately less use of ‘hard-line’ enforcement interventions. Both Enfield and Waltham Forest lead on the use of criminal prosecutions, whilst Camden and Westminster apply a higher volume of CPNs compared to the other study areas. Waltham Forest is now into its second boroughwide licensing scheme, and it may be that stretching resources across a whole-borough scheme reduces capacity for CPNs. Enfield’s scheme is only recently established, which may mean that the borough has not reached the critical mass to judge the relationship between the volume of their enforcement interventions in proportion to the stock licensed so far (as compared to the numbers of licences expected when the scheme is properly mobilised). Both these factors may explain the greater use by both boroughs of ‘light-touch’ enforcement approaches (Chart 3.3).

Chart 3.3: Light-touch Enforcement Approaches



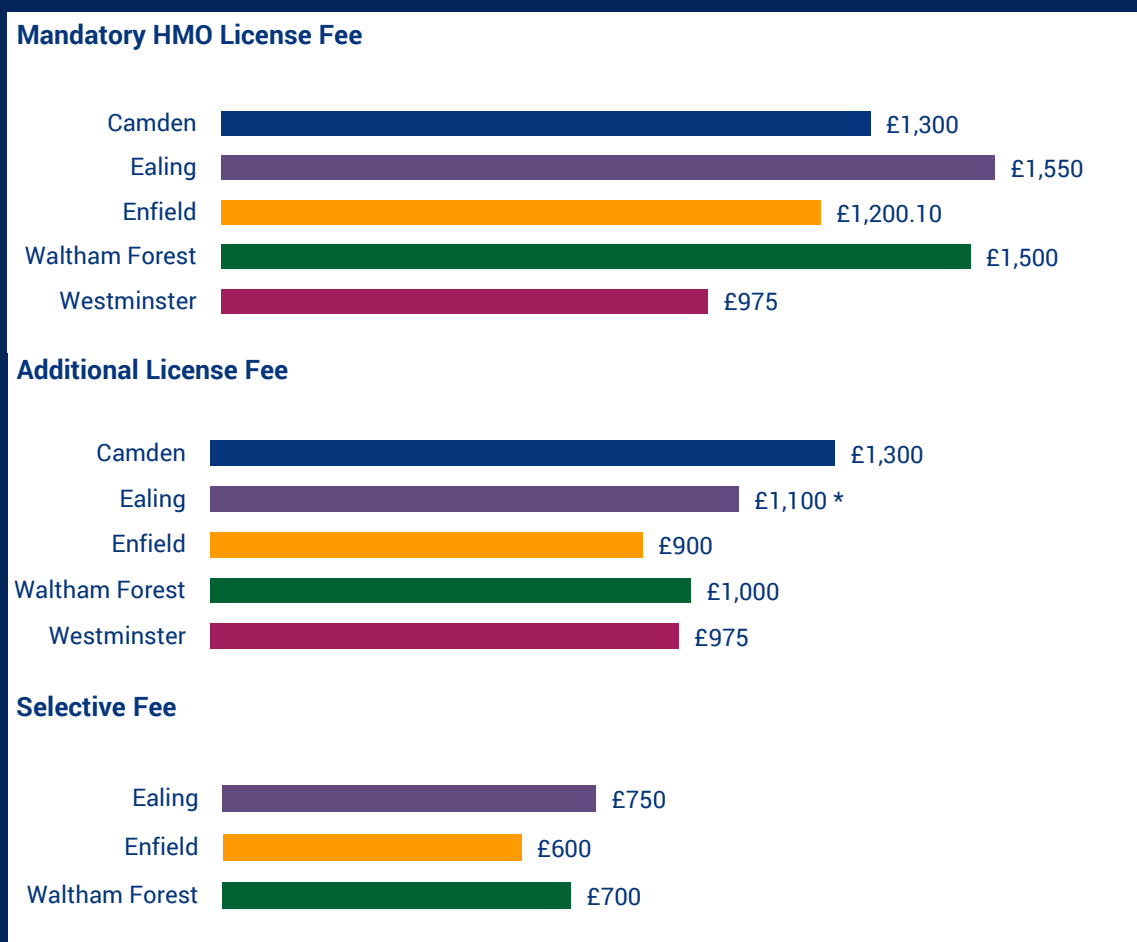
Licence Fees

Licensing allows local authorities to charge a fee for a scheme licence, and the regulations allow discretion on the level of that fee. Fees are typically paid for a five-year period and vary substantially across all London boroughs operating licensing schemes. Some authorities charge a standard rate irrespective of property size, but some will increase the fees for larger properties; charge a standard rate plus an additional fee for each let room; or set the fee on a per room or per letting household basis.

Across London in 2023, the Mandatory Licensing fees ranged from £840 to £1,884 as baseline property fees, with authorities that charged room fees setting rates of between £250 and £506.

Additional Licensing fees ranged from £600 to £1,698, and Selected Licensing fees ranged from £600 to £900 per property.⁶⁵ In some instances, discounts may apply for accredited landlords. Chart 3.4 indicates the fees charged for each type of licence by the case study authorities.

Chart 3.4: Licence Fees



*Per property, plus an additional £50 per habitable room.

⁶⁵ <https://www.londonpropertylicensing.co.uk/> maintains a regularly updated list of fees for each borough.

Conclusion

This study includes five quite different London boroughs, located in both Inner and Outer London. All the boroughs have a larger percentage of households in the PRS that is substantially larger than the English average, and many have distinctive pressures within their rental market: for example, high levels of mixed demand from students and tourists, or high levels of deprivation and a large migrant population – which can both increase demand for lower-value shared property and rising house prices. These pressures mean that landlords can more readily secure tenants for very low-quality property. All the boroughs have introduced licensing schemes, although some – Camden, and Waltham Forest, for example – are rather more advanced in this process. The boroughs vary in their enforcement strategy with regard to the mix of hard-line and soft-touch measures.

4. Practices, Protocols and Enforcement Approaches

Introduction

These case study boroughs are at various stages in the process of implementing a licensing regime. Some have initiated their first licensing scheme, while others are navigating or have navigated renewals and/or extensions. Each borough employs a range of enforcement measures tailored to their distinct contexts. Approaches have also adapted over time, as local authorities gain a greater understanding of their local rental market and the landlord population and engage in sharing best practice.

Engaging with landlords

The introduction of licensing schemes comprises an initial phase when local authorities seek to inform landlords of their responsibilities under a licensing regime, set up application processes and begin to establish levels of non-engagement. A lower level of active punitive enforcement is generally evident in this early period of scheme operation.

At the time of writing, Ealing is a year into its second Selective Licensing scheme, having expanded the designated area from 3 to 15 wards, and has yet to employ Civil Penalty Notices (CPNs) under the new designation. Instead, the current focus is on perfecting the licence application and processing administration with compliant landlords, before moving on to enforcement. Their compliance rate is 20% higher than anticipated pre-launch, suggesting that this focus is beneficial. The borough is planning to introduce CPNs in the third year, recognising their scheme's role in effective deterrence and enforcement. Ealing's experience highlights the importance of capacity-building in the initial years of a successful scheme, as implied by Camden.

All study areas reported challenges in communicating their schemes to landlords. Waltham Forest, for instance, experienced a lower-than-anticipated response from landlords during the 'early-bird' period of their scheme, meaning they had to 'spend more [money and time] in terms of going out and finding properties'. In addition to so-called 'action days', the borough sent out more than 9,000 warning letters in 2021 to previously licensed properties that were no longer licensed. Westminster has adopted a similar policy of sending targeted letters to suspected unlicensed HMOs, offering them support and advice from both the non-profit charity, Justice for Tenants, and the Council. Camden also noted problems with communicating with landlords. They found that using local print media was ineffective as a means of reaching their target audience. It was anticipated, however, that the government's proposed Property Portal would help targeted outreach, as Camden then would be in a better position to know how to target their communications. Similarly, Waltham Forest was also of the view that the Property Portal would be 'a big additional tool' supporting effective licensing.

Inspection Regimes and compliance rates

The Housing Act 2004 lays the groundwork for property licensing, although not as clearly as local authorities might like. For example, as discussed below, it is notably silent on the specifics of an inspection regime. All local authorities were committed to inspecting a high proportion of licensed properties at least once during its period under licence. However, their inspection experience indicated that a single inspection was unlikely to lead to higher levels of property compliance. For that reason, all the boroughs expressed a reticence to adopt a 'tick box' approach to assessing property conditions.

In the case of Mandatory and Additional HMOs, all authorities adopted a 100% inspection regime before issuing licences, emphasising a shared preference for thorough evaluations rather than procedural checklists.

This consistent approach to inspections is not applied to Selective Licensing. Here, it was more likely that the boroughs managed their inspection programmes using a targeted risk-based prioritisation system. For example, if the licence application did not contain all the required information or failed to include necessary certificates, these landlords would be chased to complete their application. If the landlord did not respond to this request, or other risk flags were identified – such as a history of enforcement action against this particular landlord, or the landlord having a large portfolio, or the property being a larger HMO – then a pre-inspection would be made to check for compliance. The reasons behind this strategy reflect resourcing and associated logistical constraints, which were a common theme among the study boroughs when discussing the broader challenges of managing their property licensing schemes.

In areas where compliance inspection programmes have been pursued, very high levels of property non-compliance were found to persist: 95% was an estimated figure provided for the frequency of partial non-compliance. This finding suggests that legislation should be amended to introduce a mandatory level of inspection to align statutory requirements with the practical realities of property conditions across licence types.

The Enfield respondent, discussing their additional HMO licence programme, said:

"I think what one of the key issues for us is, is that every inspection we're doing, we're having to deal with things... there is always something wrong with the property. There's always, you know, disrepair, but in some cases quite significant – that's really surprising me. You'd think, [because] we're doing a compliance inspection, that landlords would be round there, you know, giving it a lick of paint or two, but [they're not, and] it's impacting the level of inspections we're doing because we've got so much follow-up work... and I probably underestimated that."

This sentiment was echoed by the respondent from Waltham Forest:

"You know, [say] we get a complaint about living conditions, [...] We'll see, you know, is it licensed? 9 times out of 10, 19 times out of times out of 20, it is."

Camden's long-standing operation provided further insights into compliance at the point where landlords were renewing applications. Of the 150 compliance checks they reviewed, 99% still had outstanding work to be done. It is for this reason that, in some instances, the borough now issues one-year conditional licence, rather than the standard five-year one:

"I think so far, just in this financial year, we've issued 268 one-year licences, which demonstrates that [...] 99% of all licences issued require some sort of works to be done to meet our minimum standards. So, I think immediately, it just demonstrates that there is a real need for it."

It was clear that, in Camden's experience, property licensing is a crucial tool to managing and maintaining standards in the PRS:

"I don't think a property MOT will ever work, because, you know, that just needs an in-depth understanding and knowledge.

I would hate to think what it would be like if we didn't have a licensing scheme because as I said, I think that the key thing is that 99% of properties need something done to [them, and] there's normally something relatively serious."

The evidence that the vast majority of properties are, on inspection, non-compliant with licence conditions suggests that local authorities should consider pricing in and setting capacity for a compliance inspection regime that is risk-based, but that operates on an annual rather than the current default 5-year cycle.

As indicated, the case study authorities employed different enforcement strategies: some were rather more light-touch, some blended light-touch and hard-line approaches, and others more confidently pursued hard-line enforcement.

Enforcement regimes

Light-touch enforcement

Two of the case study authorities tended to employ a light-touch approach, aiming to promote and achieve compliance through persuasion, and/or providing landlords with information on their legal duties. One element of a 'light-touch approach' is holding landlord forums. Four of the five case study boroughs – Camden, Enfield, Waltham Forest and Westminster – organised landlord forums, covering topics such as legislative changes, damp and mould, cost-of-living challenges, and fire safety. The Enfield respondent thought that most non-compliant landlords were "non-compliant, not because they're bad landlords, but because they're just not compliant with the current legislation", hence their need to keep up to date. The Westminster representative expressed doubt that forums were indeed reaching the problematic landlords. In this respondent's view, the vast majority of landlords who "don't invest a lot of time in understanding what their legal obligations are", were hard to engage: around 10-15% of landlords were "wilfully non-compliant". The remaining borough who did not arrange forums was also less sure about their value.

All five study areas engaged in educational initiatives primarily directed at and engaging the most compliant within the landlord communities. This included a range of 'nudge' measures variously including 'early bird discounts' for various licensing fees, informative forums, newsletters and the promotion of targeted grants.

Ealing, who was not hosting a landlord forum, did still nevertheless employ other light-touch strategies including distributing newsletters to landlords, and offering them training at the launch of a licensing scheme. This gave landlords a chance to learn about their duties, whilst also providing them with an opportunity to ask the Council questions about how the scheme would operate.

Once contact had been established with landlords, Ealing actively sent information and regularly publicised website resources on hardship loans, energy grants, and other Council offers: “by getting people on our radar, we can help [landlords] with those things”. Camden used their contact with landlords to promote access to Minimum Energy Efficiency Standards (MEES) grants.

Blended hard-line and light-touch enforcement

Westminster represents a prime example of a blended approach, incorporating both compliance-focused and hard-line enforcement strategies: what Harris *et al.* would regard as an ‘insistent rather than persuasive strategy’.⁶⁶ While using targeted outreach and CPNs to promote/ensure compliance, Westminster reserved prosecutions for the most egregious offenders. Legal action is only pursued in cases of consistent poor behaviour by a landlord, irrespective of the severity of the circumstances at a specific property: it would be really exceptional cases of extreme non-compliance, continued persistent breaches of legislation that would be the subjects of prosecutions. This nuanced approach shows Westminster striking a balance between compliance-focused and hardline enforcement.

An ‘insistent’ approach was also in evidence in Enfield. As a borough, Enfield is a lower-value rental area than its neighbours and is increasingly dependent on the goodwill of private landlords to meet growing demand for temporary accommodation for priority homelessness. The emphasis, therefore, rested on keeping all landlords in business but insisting that those who were, were compliant:

“The authorities with the biggest schemes, the Newhams, the Waltham Forests, the Barkings, have gone very much down the enforcing, enforcing, enforcing route in their first schemes, what we found is that, obviously introducing it during lockdown, it changed the dynamics – the economic environment that we’re in now, we need to sustain these tenancies.”

Enfield’s response to these changing dynamics was to affect a different kind of relationship with their local landlords that mixed both hard and soft approaches:

“What we’re doing is, where possible, we are actually trying to work really closely with the landlords to improve conditions. And I think landlords are compliant in most cases when we have done quite a lot of enforcement.

We’ve done, I think, about 21 to 22 prosecutions, and we’ve been quite successful on large portfolio landlords and agents. So, we’re sending out the message that, you know, you need to improve conditions and license.”

A notable example involved Enfield successfully improving conditions in multiple properties managed by a single large portfolio landlord (operating both selective and HMO properties). Enfield accepted that “if we have a landlord who is willing to address the issues straight on”, then it is preferable to work with them than to seek prosecution and force them out of business.

⁶⁶ Harris *et al.*, *Improving Compliance*, 58.

Hard-line enforcement

There is a sense in which local authorities were more likely to employ hard-line enforcement measures as operation of the various licensing schemes started to identify worst offenders, and as practitioners accrued experience.

Authorities had a range of hard-line enforcement options to deploy, and it was evident that some legal duties were under-utilised. A common theme is that schemes need time to bed in before prosecution rates can start to accelerate.

Banning Orders

Banning Orders were barely being used across the case study areas, with Camden being a notable exception. Westminster expressed the view that this was likely a reflection of the emphasis in property licensing on the condition of buildings, rather than the quality of management. Here, legislation was less clear in defining standards:

"I actually think that possibly that's the area which local authorities have failed to grasp, we're very good at dealing with buildings and serving notices on buildings, but we're not very good at, I don't think, at dealing with the people that go with these properties. [...] We're very poor at things like Banning Orders, and things like that. Given the number of very, very poor properties, you know the number of Banning Orders that have been issued is pitifully small."

The case study interviews also intimate that a reluctance to use Banning Orders can be related to their unwillingness to accept the consequential duty to impose an Interim Management Order (see below).

Civil Penalty Notices (CPNs)

Boroughs made increasing use of CPNs as licensing schemes progressed. Table 3.3 indicates that Enfield, Waltham Forest and Westminster substantially increased use of CPNs between 2021-22 and 2022-23. By contrast, Ealing, in the process of mobilising a large new selective scheme, reported not having the capacity to use CPNs in that year, but looked forward to restarting in the next. Local authorities need time and experience to set up procedures.

The study areas had been able to access recently developed free training provided by the charity Justice for Tenants: the training focussed on operating procedures and understanding the legal framework for CPNs. Further, local authorities also needed to gather intelligence on the local landlord population, to identify the landlords for whom this kind of approach was justified and necessary.

Waltham Forest, evidencing the most robust soft touch enforcement regime of the five-borough sample, was strongly ahead of all the other boroughs on the volume of soft touch interventions such as warning letters and licence revocations. Borough recourse to CPNs stemmed from frustration with inconsistent outcomes from prosecutions in magistrates' courts, which can be attributed in part to the absence of sentencing guidelines for housing offences.

CPNs do generate financial benefits to local authorities since income can fund further enforcement action. Camden, experienced in using CPNs, was of the view that the process is not inherently difficult, as long as local authorities have captured the right information. However, data collation can be a problem in its own right, as local authority officers often lack the capacity to draw the necessary information together, create legal bundles, and handle appeals. Waltham Forest found that 20-30% of their CPNs were appealed, perhaps because the authority tended to press for the highest fines.

The appeal process put considerable strain on authority resources: local authorities were struggling to cover the costs of defence. Waltham Forest was of the view that the Tribunal was intended to serve as a “gatekeeper [...] in terms of dealing with frivolous and vexatious appeals”, but “they are providing no such service or function at the moment”.

Camden also actively employ CPNs, emphasising their effectiveness as a deterrent method, but raised similar concerns to Waltham Forest. Camden tackles this by engaging with landlords to minimise appeals and had a CPN recovery rate of circa 50%. From April 2023 to the time of writing, Camden has issued more than £1m in CPNs and collected £267,000. Their view on the underutilisation of CPNs across London was that, in addition to a lack of capacity and resources, hesitation from political and senior management was also a factor.

Enfield were keen to acknowledge the financial pressures of the current economic climate and the importance of sustaining tenancies in this context, a factor that has influenced the extent of their hard-line enforcement. This recognition has resulted in a combination of compliance-focused strategies, as already discussed, and the deployment of CPNs where landlords are unwilling to cooperate. This enforcement policy, embedded in their licensing scheme, has led to the issuance of 200 CPNs, a high recovery rate in fines, and over 20 prosecutions. Though their preference is to collaborate wherever possible, the consequences of non-compliance are made clear to landlords.

Interim (IMOs) and Financial Management Orders (FMOs)

Amongst the case study authorities, Waltham Forest was most proactive in pursuing hard-line enforcement, employing legal powers such as injunctions, FMOs, and IMOs to “take poorly managed unlicensed properties away from irresponsible landlords and [put] them into social ownership for a period of time”. The Waltham Forest respondent went on to explain the importance of the IMO duty compared to other powers:

“You’re probably aware of the case we were involved with recently, [...] where the landlord illegally evicted the two households and we did the IMO, we got the property back and the people back in there. [...] A lot of work needs to be done on all sides, but the outcome that can give you in terms of sustaining the tenancies and dealing with the rogue operator, there’s no other powers that are comparable.”

They did, however, acknowledge the complexities of this process, explaining that it took them a long time before they knew how to effectively utilise these powers, citing the absence of a prescribed form for IMOs and FMOs as a key obstacle. In this regard, they recognised that other councils dissuaded from using these powers due to their being “such a nightmare to use administratively, and in terms of [facing] legal challenges”. The respondent thought better support should be available:

“I think it would be really helpful if there was a kind of arms-length organisation, or body that could do that property management, letting, kind of role. Because I think the alternatives are – I mean, I’m sure authorities will look at things like if they’ve got a good local agent they can use, but I think there’s real conflict there in terms of enforcement because you just never know. Even though they’re good today, if you have some issue with them in the future and they’re managing your IMOs for you, I think it’s a really difficult one.”

Across all study areas, a lack of capacity to carry out the desired levels and types of enforcement was a common theme; resourcing difficulties presented a significant obstacle to implementing a robust hard-line strategy. Camden underscored this point, referencing the strain on capacity caused by a small number of landlords who require a huge amount of attention from Environmental Health Officers (EHOs) to improve the standards of their properties, preventing them from carrying out other follow-up enforcement activity in the borough: “EHOs have to hold their hand the whole way which means they can’t be released to do other work”. Dealing with this requires them to be prepared to use more punitive measures like banning orders.

While authorities like Waltham Forest continue to lead the way, both in London and on the national scale, with their commitment to using the full range of proactive measures available to them, the clear administrative and legal challenges, coupled with significant capacity constraints, that local authorities face present significant hurdles to implementing and sustaining effective hardline enforcement.

Creative Enforcement and Multi-Agency Collaboration

In pursuit of effective enforcement strategies, and confronted with the challenges discussed above, most local authorities have been forced into incorporating elements of what Harris *et al.* would call a creative approach, tailoring their efforts to the unique needs of their respective designations. The establishment of cross-department roles and the adoption of collaborative working practices have both been presented as prominent features of this approach, each contributing to diverse enforcement styles in the study areas.

Westminster employed a creative enforcement strategy that was developed to work in the unique context of their large PRS. Initially successful, this strategy did not end as planned. The authority used Companies House to identify ‘right to manage’ (RTM) companies in the borough, which have a very high likelihood of having S.257 HMOs in their portfolios. After emailing dozens of these companies, the scale and success of their identification of S.257s prompted many complaints from landlords to their councillors. Councillors responded to complaints by revoking the S.257 section of the licensing scheme, despite initially approving it before understanding the scale of its roll-out.

Another example is Ealing, which has created a connection between their Housing and Community Safety teams via a post that rolls anti-social behaviour and property licensing into one. This gives officers the power to act under a Community Protection Notice, rather than rely entirely on licensing powers to address problems associated with concentrations of HMOs in a neighbourhood.⁶⁷ These were problems that were not necessarily due to landlord action or inaction. The development of this role was triggered by a need to bridge the gap between the Housing and Community Safety team's reports of problematic properties and is a good example of a local authority identifying and addressing internal operational challenges in an unorthodox way.

A less interventionist but equally creative approach has been employed by Camden. Triggered by difficulties in the team's capacity to organise landlord forums, publish newsletters, and keep up with frontline enforcement, the borough created a new, multifaceted position – the Partnership and Development Officer:

"So [our Partnership and Development Officer] is responsible for doing our organising, our landlord and tenant forums, our landlord newsletter, organising our PRS partnership meetings – so that's all Camden services and the external voluntary sectors coming together, so that includes university accommodation services, to share intel and information about the PRS in Camden, as well as a whole load of other data, and also she's responsible for keeping our Camden private renters website, which is our new dedicated website for renters."

Uniquely, the range of stakeholders they were tasked with engaging included the council's housing stock managers, whose estates were facing issues connected with the private letting of former Right to Buy property. Though engagement with their professional peers in other borough departments was relatively straightforward given that Camden's council housing stock is managed in-house within the same directorate as the PRS, they acknowledged that, despite their efforts, engagement with the private tenants on these estates still presented a real challenge. For this reason, one particular piece of good practice that was emerging from Camden's creative approach:

"One of the key [groups] we're trying to get to is the caretakers, because the caretakers know everything that's going on in their estate, so if we can get access to them and enable them to report stuff to us, then we can pick it up a lot quicker."

Multi-agency partnership working was not exclusively internal. For example, Enfield's work with the National Crime Agency to tackle a Proceeds of Crime prosecution is a prime example of proactive collaboration as a means of overcoming resource limitations and skills shortages. Enfield explained the local circumstances that drove this partnership:

"Basically, there was more organised crime groups on an industrial scale operating during COVID. So, organised crime groups, that were obviously operating during the COVID period that the CPS, and our partners in DWP and the police, then had to then pick up."

⁶⁷ See Sidoli del Ceno (2012) 'Selective licensing and resident satisfaction in social housing; a UK case study', *International Journal of Law in the Built Environment*, 4:2 126-139 on local neighbourhood frustration with ASB related to HMOs.

They went on to express their frustration that, several years later, the investigation had not concluded, but that the partnership had brought some success:

“The operation is not dead. However, it’s now no longer the top priority for the [NCA] investigators. So, what we have done is, we have revisited those properties, and picked up any housing offences. [...] I would say that the majority of those who were suspects have turned [into] legitimate landlords, they have probably got legitimate businesses now. [...] There are no housing concerns at this present moment in time. One particular suspect has left the country, and that portfolio has been taken over by a myriad of other local agents, etcetera. So, you know, some success is that we’ve driven at least one or two of them out of the market... we’ve improved [PRS] conditions.”

Use of Rent Repayment Orders

External partnerships with specialist organisations like Safer Renting and Justice for Tenants are further examples of creativity in the enforcement landscape. By partnering with tenants’ rights organisations, local authorities can provide early outreach and advice to private tenants, refer them to relevant support services, and take action against non-compliant landlords, including the pursuit of Rent Repayment Orders. These relationships not only strengthen an authorities’ enforcement capabilities by increasing their capacity and expertise, but they also facilitate knowledge sharing across boroughs that use these services.

In addition to a local authority’s power to convict or fine an offender, the Housing Act 2004 (Part 2 s. 73 and Part 3 s.96) and Housing and Planning Act 2016 Part 2, Chapter 4 provides that where a landlord is

- found guilty of controlling or managing an HMO or a house that requires to be licensed and is not so licensed, or
- guilty of specified other housing offences such as harassment or illegal eviction, using violence to enter etc

the renter, or in case of Universal Credit or housing benefit payments, the local authority, may apply for a Rent Repayment Order, to recover up to 12 months of rent or benefit payment.

The Housing and Planning Act makes it clear the law requires the local authority to consider using its powers to act and enables them to assist a renter to claim this civil redress:

48 Duty to consider applying for Rent Repayment Orders

If a local housing authority becomes aware that a person has been convicted of an offence to which this Chapter applies in relation to housing in its area, the authority must consider applying for a rent repayment order.

49 Helping tenants apply for Rent Repayment Orders

(1) A local housing authority in England may help a tenant to apply for a rent repayment order.

(2) A local housing authority may, for example, help the tenant to apply by conducting proceedings or by giving advice to the tenant.

Respondents were aware of this potential for recovery of revenues. The five study areas all have some support in place to assist renters achieve civil redress where possible; in three areas support to claim Rent Repayment Orders is usually by referral to a 'no win no fee' style advocacy service and in the other two, the local authority has been supporting the advocacy service. Across the country, two renters' advocacy services have recorded over £4m in Tribunal awards and related 'out-of-court' settlements from 2018 onwards, the majority of which was secured by one organisation, Justice for Tenants, a not-for-profit organisation. RROs are available for offences other than a failure to license, but this contravention is much easier to prove than other offences in instances where wider offending is alleged.

Several anomalies sit within the RRO mechanism as it currently stands. The RRO formula for civil redress is based on the rent paid and is – consequently – less generous to the lower-paying renters. This means that the repayment is not proportionate to the harm suffered. Renters must also bear the costs of bringing a claim. In addition, criminal standard of evidence is required by the First Tier Property Tribunal, and many of the relevant housing offences for which RROs are available can be problematic to prove and attribute to an identified perpetrator.

The mechanism of First Tier Property Tribunal administration of RRO claims is still in its relative infancy; for instance, as recently as 2023, legal efforts to clarify who can and cannot be held liable for a RRO was heard by the Supreme Court in the final appeal in the *Rakusen vs Jepson* case. This resulted in its being held that only a direct landlord (that may not be the owner of the property, regardless of whether this latter was aware of or complicit in a housing offence) could be a legitimate Respondent in a RRO claim, meaning that many complex lettings arrangements designed to evade liability can continue to evade civil redress. Efforts are now being made through the Renters Reform Bill to close this loophole.

It is notable that none of the five authorities has yet used their power to claim a RRO in cases where the renter was either wholly or partially reliant on the housing element of Universal Credit. This anomaly in the regulations creates a considerable disincentive for renters in receipt of benefit payment to pursue non-compliant landlords, or to support local authority enforcement in this regard.

Tenant engagement

It is notable that two large and prominent third-sector private tenant organisations active in all five study areas (London Renters' Union and Acorn) were not mentioned as potential partners in tackling poor standards in the sector. This omission exists against the backdrop of study authorities expressing concern and frustration at the difficulty of engaging private tenants. The reasons for this lack of connection are not clear and call for further consideration.

Legislative Obstacles

The preceding sections have considered the enforcement activity in terms of local authority strategic responses and enforcement experience. This section turns attention to the relevant legislation, and commentary on the way that the law itself can hinder effective enforcement activity.

Housing Act 2004

The legislation governing PRS licensing has given rise to several concerns, resulting in significant costs for councils in terms of time, skills, and funds.

Evidence and securing approval for Selective Licensing schemes

Local authorities were particularly vociferous about the lack of clarity on how criteria are applied in the process of seeking SoS approval for licensing schemes. Securing DLUHC approval for licensing schemes requires extensive efforts to gather evidence demonstrating the local need for licensing and, crucially, that the scheme will help to achieve stated strategic objectives, for example, in a local authority's housing strategy. All the study areas mentioned the lack of reliable PRS data, and that PRS markets are dynamic and so subject to change. Indeed, authorities regarded licensing schemes themselves as a particularly useful method of collecting data. This highlights a problematic feedback loop in the incumbent systems – without this PRS data, it is difficult to prove the need for and benefits of licensing, but without licensing schemes, data is difficult to secure.

The process of seeking DLUHC approval was thought to be unduly complex. The criteria for approval, crucial to the designation of licensing schemes, are neither outlined in the Act nor codified in statutory instruments. This lack of clarity only increases the complexity of the process, leaving local authorities uncertain about the factors that will influence the decision-making process. This issue is compounded by the changing political landscape. Approval is granted by the SoS, a position that has changed names three times and hands nine times since Newham launched London's first scheme in January 2013. This inconsistency creates substantial uncertainty as to the outcome of an application.

For example, from 2015 the criteria for SoS approval underwent a significant change. A new requirement mandated that the requirement that the PRS account for 19% or more of the housing in the proposed designated area for the newly introduced criteria (including poor housing conditions). This specification gives rise to two broad concerns: first, that the Act does not define how local authorities should evidence that this requirement has been met. In all cases, the data used can only be an estimate. Second, there is a presumption that the case for licensing should be linked to the concentration of PRS lettings in an area. Again, no definition of 'concentration' has been provided. Further, the notion that licensing should target areas of concentration was questioned by the case study councils.

Waltham Forest was most explicit in their response, reflecting on changes in the way that the criteria have changed over time:

"I think on the back of Newham declaring, obviously, a borough-wide Selective Licensing scheme – I think they were the first – there were then several other authorities that followed suit, including Barking and Dagenham and ourselves, [...] and I think that the government clearly were not happy with that and that's obviously when they changed the general approval. [...]"

They added the four additional criteria, the poor property condition, the migration, the deprivation, and the crime, I think it was. Also, [the designation] has to have as a prerequisite more than the average levels of PRS nationally in them, the 19 or 20% or so.

I think it's been an issue about what that 19 or 20% PRS thing actually means in practical terms."

The evaluation of a council's public consultation efforts before gaining scheme approval poses another challenge. In a notable case, Enfield's Selected Licensing application failed due to perceived inadequacies in their consultation efforts. The fact that the consultation was limited in scope to Enfield only, and a failure to consult for the required 10-week period, were cited as factors contributing to the scheme being blocked by the High Court. Enfield had in fact conducted a 13-week "Listening and Engagement Phase", but – due to the lack of codified criteria – this was still judged as not meeting the (undefined) conditions of 'consultation'. This example highlights the inconsistencies in the judgement process, and the pressing need for clearly defined acceptance criteria to guide local authorities through the application process.

Prioritising standards

The inadequacies of the Housing, Health, and Safety Rating System (HHSS), as defined under the Housing Act 2004, are widely acknowledged. Recognised for its complexity, resultant high administrative costs, and the need for reform, the HHSS is currently under review.

Recent developments have also introduced the existence of the ways in which local authorities must choose how to prioritise the property standards it is mandated to apply. For example, the longer-term health impacts of poor housing (e.g., damp and mould leading to fatalities), must be considered in relation to more immediate safety risks (e.g., fire-related deaths).

This issue came to prominence with the death of two-year old Ishak Awaab Ishak in December 2020. The coroner judged that Ishak Awaab's death was the result of a severe respiratory condition caused by prolonged exposure to black mould in his home, which was deemed to be 'unfit for human habitation'.⁶⁸ Ishak's death prompted the addition of "Awaab's Law" to the Social Housing (Regulation) Act 2023, which placed additional new reporting requirements on social landlords in England. The law does not currently apply to the PRS, though there have been calls for its extension in that regard.⁶⁹ The five study areas all detailed their efforts to adapt their enforcement programmes to reflect this new demand: Waltham Forest is reported as having one of the highest levels of reported damp and mould and levels of enforcement activity against the problem, nationally.

The second concern is linked to the first. The introduction of the Fire Safety Act 2023 was triggered in part by the Grenfell Tower fire in 2017. In addition to historic concerns around the neglect of S.257 HMOs in the licensing framework, Enfield highlighted an emerging issue related to the new Fire Safety Act, which was applicable to high-rise private rented blocks. Though not a licensing issue itself, the resources required to address it are in direct competition with the already stretched professional resources dedicated to licensing and enforcement work, creating a situation where the authority must decide where best to deploy limited resources.

⁶⁸ Bancroft, H. (2022) 'Inquest finds toddler killed by mould exposure in 'defining moment for housing sector'', *Independent*, 15th November. Available at: < <https://www.independent.co.uk/news/uk/home-news/awaab-ishak-death-mould-housing-b2225448.html>. [Accessed: 24/01/2024].

⁶⁹ See e.g., Lawson, A. (2023) 'Charity calls for 'Awaab's law' to be extended to private rental sector', *Guardian*, 21 February. Available at: < <https://www.theguardian.com/society/2023/feb/21/charity-calls-for-awaabs-law-to-be-extended-to-private-rental-sector>. [Accessed: 24/01/2024].

Enforcement Inefficiencies – Housing Act Parts 1, 2 & 3

Concerns about the drafting of the Housing Act 2004 itself were raised by the study areas, as was the lack of streamlining between the Act and planning legislation (Article 4 Directions) relating to HMOs, both of which have proven to be obstacles to effective enforcement.

First, in relation to the Act itself, Part 1 establishes the HHSS, empowering local authorities to respond to complaints about poor standards. However, it was felt by the study areas that this Part gave insufficient authority: for example, outside of Discretionary Licensing areas it does not grant automatic entry rights to council enforcement teams to inspect properties for substandard conditions. Enforcement teams must have grounds for believing a property to be substandard – for example, because the tenant has made a complaint. In addition, an offence is not deemed to be committed by a landlord who is delivering substandard lettings unless and until a council enforcement team has served said landlord with a Notice (Improvement, Prohibition, etc.).

From a logistical perspective, Parts 2 and 3 of the Act outline the frameworks for mandatory HMO and Selective Licensing respectively, conferring the rights of access to inspect properties proactively without a complaint having been received. Neither part enables councils to declare deficiencies in property conditions as offences without first following the full procedures set out in Part 1. This was universally considered to be an unhelpful shortcoming, as it limits the powers of local authorities to improve physical property standards, despite this being the primary purpose of property licensing.

The consensus was that, if the Act were better drafted, licensing could be used to shift responsibility for maintaining property standards onto licence-holders; the fact that it does not do so in its current form means that licensable and non-licensable property are treated the same regarding conditions. The respondents unanimously advocated for the revising of the Act to allow licensing enforcement teams to bypass Part 1 procedures, properly establishing physical standards as a legal requirement for licence-holders.

HMO Definition

A further legislative obstacle was a degree of inconsistency around treatment of different kinds of HMO. The question of defining S.257 HMOs was regarded as problematic to define who was responsible for applying for a licence in some circumstances, especially in the two highest-value study areas (Camden and Westminster). In these boroughs, high rental values had led to an influx in the conversion of former family dwellings, including former family flats in mansion blocks where planning and building controls are sometimes evaded, which present significant fire risks for single sharers.

The issue was considered to be particularly problematic given the higher level of risk attached to this kind of property. Westminster regarded S.257 HMOs as a fire risk:

“If you have a fire in one of these places and, you know, you’ve got 30 to 40 people living in a property – and, I mean, they have been known to catch light – and if they’re poorly converted, the fire will just burn straight through.”

Camden, struggling with identifying S.257 HMOs despite being the only one of our study boroughs to specify them in their Additional Licensing scheme, had engaged extra resource into finding this property type:

“We’ve got somebody [...] trotting the streets finding them, and we’re trying to be smart about that, so we’re doing a bit of mapping using housing tenure data to help us focus on the addresses where we can see where they are.”

They then went on to explain to us why exactly their members, unlike in Westminster, got behind prioritising tackling these types of rentals:

“We had relatively robust information to show that, actually, S.257 [HMOs] are probably worse managed than some of our section 254 HMOs, so [...] I think that was a real clincher. [...] Just because there’s no sharing of amenities, actually, it’s all about getting means of escape. [...] There are a lot of substandard properties, because about 84% of properties in Camden are flats, you know, [that’s] a very high ratio, so [there are] a lot of conversions in there, really poor conversions as well. So, I think they really got behind that.”

In contrast, the well-established scheme in Waltham Forest and the newer scheme in Enfield both include the flats within S.257 HMOs under Selective Licensing rather than Additional, as both councils felt that S.257 HMOs was sufficiently problematic. This decision suggests that, on a national scale, the Housing Act 2004 may well be failing to address the needs of a significant portion of the country’s PRS – poorly converted shared accommodation – in places where Selective Licensing is not in place.

That said, Waltham Forest informed us that, in a government consultation on the extension of criteria for Mandatory Licensing, the borough had argued against the inclusion of S.257s in the mandatory definition, an argument the government appear to have accepted. Explaining this stance, Waltham Forest detailed the complexities of licensing in its current form:

“I think there’s a complexity about licensing, and I’ve got some sympathy with landlords here really, with the different types of licence [and] whether it’s helpful having mandatory HMO licensing, Additional HMO licensing, and Selective Licensing. [I wonder] whether you just merge them and have one form of licensing? That might be a way forward, with the particular conditions and so on that apply to a property depending on the occupation of the property.”

They went on to give an example of this perceived convoluted, and the difficulties it can lead to in terms of compliance and responsibility:

“One part of the market in Waltham Forest is the sort of two or three bed house or flats – we’re having particular issues at the moment with some sort of ‘build-to-rent’ properties – and the occupation of those can fluctuate between [a] professional couple with a child or whatever, and you know, maybe 3 professionals sharing that unit on a shared basis. At the moment, they need different types of licences, and you can’t go from one licence type to the other. You need to revoke the licence, and [then] someone needs to apply for a new licence, which obviously is [...] a continuing challenge in terms of regulation, in terms of the proper licence being in place, and it’s obviously grief and additional expense for the landlord’s property.

So, there are some buildings where it’s quite clear cut [...] – you’ve got a terraced house, it’s been converted into three flats [...] not in accordance with [the 1991] building [regulations], all owned and controlled by the same landlord and the same manager. Not a big issue really, but there are many out there where you’ve got different leasehold interests in the building, and [...] a property which is not licensed for one day might become licensed for the next day, because Flat 3 on the second floor suddenly starts to be let out.”

I think there [are] real issues here about who then is the person managing or person having control. Who'd be in the firing line? In terms of ensuring that [...] the requiring of HMO licence to be submitted, and [once] the licence for them was then granted, who would be responsible for complying with the conditions in respect of different parts of the house?"

These complexities informed their position that PRS licensing should have a unitary licence type with a core set of standards that all PRS property must meet.

Fragmented Legal Framework – Article 4

For respondents, controlling HMOs was seen not just as a matter of maintaining property standards, but also one of addressing concerns about the increased spread of HMO lettings in formerly family housing stock, a trend that was observed across all five study boroughs. Across London, and in two of the five study areas, one response has been local authority use of Article 4 Directions under the Town and Country Planning (General Permitted Development Order) 2015. These directions remove the conversion of small HMOs from the 'permitted development' exemption.

All the study areas recognised the valuable contribution that house-sharing/small HMOs make to the supply of affordable private housing for those who choose it, particularly in the expensive areas of Westminster and Camden where households are increasingly excluded from the PRS by price. However, controlling the spread of HMOs was proving to be difficult, even where Article 4 directives were in place.

Waltham Forest, which did have an Article 4 directive, found that a large minority of HMO licence applications were coming from landlords who had failed to secure planning permission:

"we've had about just under 2000 HMO applications [...] either that's mandatory HMOs or additional HMOs, and I think probably 30%, 35% of those have been given one year licences on the basis they have got no planning permission or there's evidence establishing that it is to be used as an HMO – and the message is, you use your year's licence to regularise the use of your property – you either get the requisite planning permission or you return the property back to a single family use and we made it clear to landlords in that situation that we will not give a second licence on that property, that we'll just prosecute if they carried on renting out an unlicensed HMO after that."

That said, concerns were expressed in Ealing, where no Article 4 Direction had been put in place, over a sudden increase in small HMOs in their area at the expense of family homes. Ealing hypothesised that the growth in small HMOs was a ripple effect from inner and neighbouring London boroughs where Article 4 Directions had been put in place.

Article 4 Directions are a separate and time-consuming procedure led by planning rather than licensing enforcement teams. Ealing suggested that they be integrated into PRS licensing, emphasising the benefits of a coherent approach. A parallel argument was made that S.257 HMOs highlight a cross-cutting problem between planning and licensing enforcement, suggesting the need for regulatory reform.

Licensing exemptions

The fact that some problematic properties were excluded from the licensing regime was mentioned by respondents. In the two highest-value study areas (Camden and Westminster), concerns were raised about the exemption of the increasing number of properties let on short-term agreements (e.g., Airbnb properties) from property licensing.

Similarly, lower-value study areas had relayed concerns about the exemption of some types of temporary accommodation in their area. Both types of property were considered to be high-risk, yet both were exempt from property licensing regulation, highlighting the need for a comprehensive review of regulatory frameworks to address these exemptions adequately and better protect tenants.

The relationship between landlord registration and licensing schemes

All five study areas were clear that their experiences proved that landlord registration, and its concomitant reliance on self-regulation to police the sector, was not enough to elevate standards in the PRS. A licensing regime which relied on landlords to record compliance offered little guarantee of property quality. Officer experience indicated, where properties were licensed, that some level of non-compliance with licence conditions was expected:

“And there’s still an issue about landlords not complying with conditions [...], you know, they get their licence and [...] they don’t read the details of [their] actual obligations, they just [get] the piece of paper and it goes up on the shelf.”

An associated commitment to inspection was regarded as essential:

“I think broadly, self-regulation doesn’t work. I don’t think it ever works really. I’ve decided that nothing can really deliver what you need other than licensing, and I feel incredibly strongly that there are no other powers out there that require landlords to proactively manage and maintain their homes.”

These insights highlight the reciprocal relationship between licensing and proactive enforcement, revealing the clear need for both to effect any meaningful change in the PRS. Universally, all five authorities were keen to emphasise that licensing cannot be seen as a standalone solution, but instead represents the cornerstone of a more comprehensive strategy that compels landlords toward more active responsibility.

In this context, the government proposed Property Portal was regarded as an auxiliary measure. The respondent from Waltham Forest was of the view that:

“The Property Portal, it would be a big additional tool that would support effective licensing, not a replacement to it. [...] The Property Portal does not even begin to touch what licensing does. It’s just it’s just an information repository, really.”

Conclusion

This chapter has outlined findings from case study authorities, discussing their experiences of enforcement activity within the PRS. The interviews indicated that a licensing regime with associated inspection was integral to the task of driving up property quality in the PRS, but also that the expectation of inspection was, in itself, insufficient as a lever to bring properties up to standard. The respondents were of the view that the legislation did not squarely define property quality as responsibility of the landlord. Rather, landlord obligations appeared to arise only when a local authority takes enforcement action. The case study authorities varied in their enforcement strategies, and in part this variation reflected local authorities adjusting enforcement to local conditions, and – over time – increasing the recourse to ‘hard-line’ measures in response as the reasons for landlord non-compliance became more evident. Local authorities were operating within a regulatory framework that was regarded as patchy: the existence of exemptions, outlier S.257 HMOs, and HMO applications being lodged with planning departments were regarded as diluting the ability to take a more coherent, strategic approach to securing property quality.

5. Operational Challenges

Introduction

This section addresses, in more detail, the operational challenges discussed by the case study boroughs. These were challenges that sat within the broader context of enforcement activity, and related to staffing, software support, financial barriers and data shortages.

Skills Shortages

The challenge of skills shortages was having an increasing impact on the capacity of local authorities to put new licensing schemes in place, and progressing existing schemes at the necessary pace and scale to match a borough's needs. This concern was pervasive across all the study areas, with Westminster explicitly arguing that staff skills shortages posed an even more significant constraint on capacity than financial limitations.

The problem of sourcing suitably skilled professionals was reported as becoming even more pronounced as the number of licensing schemes being designated surpassed the measures to increase the net supply of appropriately trained personnel. This scarcity is compounded by the heightened competition among local authorities who are all recruiting from the same limited pool of experienced staff, an issue which is further exacerbated by the allure of competitive private sector wages in the context of the ongoing cost-of-living crisis. The consequence is a London-wide struggle for recruitment and retention in an intensely competitive market.

This limited supply issue related to the time needed for officers to achieve competency. One respondent commented:

"You can do the training, but to have an officer that is really competent to serve a notice and be challenged at appeal, you know it's not, it's not quick. It's not a quick fix, you're looking at least 18 months training."

Furthermore, training opportunities were limited. At the time of writing there was one 'Private Sector Housing Interventions' diploma, delivered by the University of Greenwich in partnership with the Greater London Authority and with the backing of the Mayor of London and Chartered Institute of Environmental Health. Courses takes either one (online) or two (part-time) years to complete. With just one institution in the U.K. offering this course at present, and local authorities across London and the rest of the country implementing licensing schemes every few months, qualified staff are not being trained fast enough to meet demand. Camden, recognising the need to address this skills gap, has become more proactive, and has sponsored three graduates on this training course with a direct pathway to employment upon completion.

In further efforts to combat staff retention issues, some local authorities are introducing new roles that have career development opportunities at their core. Camden, for example, explained their plans to expand roles within its existing team to include pre-established career grade progression from an entry-level PRS trainee to a Housing and Licensing Enforcement Officer. This role will have the Middlesex University diploma integrated into it, enabling internal progression to more senior EHO roles to encourage junior staff to stay in post.

Local authorities are adapting new recruitment and development strategies to overcome the difficulties they are faced with, but external support is needed, through government support for more training courses to meet staff shortages and better resourcing to prevent staff leaving for the private sector.

IT and Digital Products

The five case study boroughs all faced similar issues in terms of the functionality of well-established IT products, and the procurement of suitable new ones. The transition to newer, more niche software was not without its own difficulties.

The study areas sought IT interfaces that were easy for landlords to use, and which supported 'backroom' efficiency. For example, Waltham emphasised the importance of positive feedback from landlords during their transition to a new product, highlighting landlords as key customers in this process:

"We've had very positive feedback from landlords in terms of the ease of using the system, at the end of the day, you know, landlords obviously are our key customers with that as well."

Despite the positive reception from landlords, it was noted that, given staff skill shortages, reliable and efficient software was even more important for accurate reporting and business efficiency. This was highlighted as an ongoing struggle, as new products still had their drawbacks. One authority had recently adopted new software and found that "there's still more work to do I think, in terms of the functionality and the [internal] reporting [...] which is still ongoing".

The demand from local authorities for software providers to upgrade their products was evident in the interviews with the study boroughs, but the reality is that the purchasing power of individual councils that rely on the large, more established software houses for their licensing functions is insufficient to secure necessary upgrades. One of the major software companies in the sector had been commissioned to upgrade its functionality, but delivery delays have hindered progress. These delays have brought criticism from four of our five study areas who have accused them of, as Camden put it, "holding the process back", which in turn has negatively impacted the efficiency of property licensing functions in each of the local authorities.

At the same time, developing new software from scratch that can integrate with various systems poses its own set of challenges for providers, especially those with ambitions to work nationally and meet the needs of different local authorities. Companies that want to enter the market with a new product need 'deep pockets' too, as research and development at that scale is costly, a reality that only exacerbates the scarcity of providers.

The issue was compounded by the absence of a mechanism that enabled local authorities to work together on the procurement of a new system to meet their shared IT needs, limiting the options for a single software solution. The consensus across the study areas was that better procurement practices and a more competitive marketplace were needed to deliver solutions at the required scale and pace to meet the demands of the sector.

One solution that was posited was multi-authority procurement clubs, which might provide the collective purchasing power needed to stimulate a competitive market response that results in the overcoming of the evident issues in this area of the sector. These software-related challenges significantly impacted the implementation and progression of licensing schemes in the study boroughs, a problem that will be familiar to local authorities nationwide, hindering the sector's ability to respond promptly and effectively to evolving needs. The established software providers have been too slow to respond to changing demand that their products develop in tune with need, whilst newer providers lack the ability to deliver the required product at scale.

Financial barriers and challenges

The financial landscape surrounding property licensing schemes, particularly their introduction, presents local authorities with significant challenges, reflecting the complex links between associated costs, funding sources, and risk. Meeting the specified criteria to justify the introduction of a licensing scheme draws local authorities into survey and consultation activity – costing hundreds of thousands of pounds – with no guarantee that an application will be successful.

Growth bid funding has been identified as making a significant contribution to overall costs in the initial schemes in four of our five study areas, all of whom had the benefit of funding from the Ministry of Communities, Housing, and Local Government's (MCHLG) Controlling Migration Fund (CMF): Waltham Forest (£1,169,748), Camden (£366,493), Enfield (£460,178), and Westminster (£400,746).⁷⁰ All four of these local authorities, including the two with the largest council tax bases (Camden and Westminster), informed us that they would have struggled to implement property licensing schemes without that MCHLG subsidy. This reliance on specific grants raises concerns about the potential suppression of local authority interest in PRS licensing across the country due to the high financial bar to entry.

Setting the Licence Fee

The study area respondents all expressed the hope that their licensing schemes would become self-financing, in bringing in sufficient money through licensing applications and CPNs to fund both the associated administrative costs, as well as education, encouragement, and enforcement activity. There was acceptance that reaching that level of financial sustainability would be challenging. As might be anticipated, particular attention was paid to the correlation between the fee level and the scheme breaking even. However, local authorities lack the ability to adjust the level once a scheme had been introduced, and this inflexibility adds a layer of financial risk.

Westminster expressed confidence that their budgeting and fee-setting practices had been financially sound, but the remaining study areas could not say with confidence that this was the case. The difficulties related to budgeting for multi-year schemes – including the unreliability of data gathered for scheme setup; a lack of in-depth awareness of the local PRS; and the unpredictable nature of scheme income and expenditure – meant that their initial assumptions were often subject to significant revisions as they gained more information about the realities of their PRS.

⁷⁰ Ministry of Housing, Communities, and Local Government (2016) 'Controlling Migration Fund Prospectus, Annex A: summary of projects already funded', 9 November, 5-9. Available at: https://assets.publishing.service.gov.uk/media/5b6d3dcd40f0b640a5370028/Annex_A_summary_of_projects_already_funded.pdf. [Accessed: 23/01/2024].

The difficulty of getting reliable financial modelling over a five-year period had directly affected Camden, where the licence fee had not been set at a sustainable level in their initial schemes; now, after working to gradually increase the fee over several years and schemes, 70% of Camden's licensing activity is self-funding. This proved to be the case in Enfield too, where there was a significant difference between the number of HMO applications they received and the number they had anticipated receiving based on survey data.

Uncertainty around revenue generation from licensing fees and CPNs, poses a dilemma for authorities. Enfield was of the view that "the licensing fee has got to be proportionate", and calculated their fees on the basis of a higher level of HMO applications coming forward. The actual rate of applications was much lower than predicted, which meant that the borough had to do more work to engage with landlords with a lower level of fee income. This highlights the risk that costs could exceed income, particularly if levels of compliance are low and due regard is given to inspection. Local authorities cannot recover additional necessary funding from existing, compliant, licence holders. Waltham Forest, the study area with the most experience of discretionary licensing, had to spend more than planned on identifying unlicensed properties in certain schemes, with inspection and compliance work being more time consuming than anticipated.

On the other hand, however, the opposite problem can exist, with Ealing's officer highlighting the possibility of schemes ending up in credit and having to refund money as schemes should not be profit-making. Camden's officer furthered this point by raising a specific concern regarding the misalignment between local authority budgets, which are set annually, and the five-year duration of licensing schemes. This can mean that if a scheme receives a larger amount of licensing income in a given year (for example, student accommodation applications in the context of Camden's PRS), any surplus at year-end may not be treated as 'prepayments' in the accounts which could be used to offset the scheme's future costs.

CPN Income

The specifics of the process of issuing CPNs were discussed in Chapter 3, and their importance to local authorities as a means of income generation, as well as the associated difficulties, were brought up by all study areas. In Camden, the pursuit of CPNs was deemed to be an efficient part of the operation as the team has accrued experience in the legislative process and works closely with the council's finance team to recover the fines. That said, Camden still do not feel that their scheme is self-sufficient, and have also raised staff capacity as a limit on the use of CPNs:

"Now [we're] enforcing, [we're] finding so many unlicensed properties that there are easy CPNs that [we] have to reinvest into the service to keep going. [The problem is that] we'll end up getting full at one point, and [staff] won't be able to take any more [CPN cases] on".

Westminster asserted that their scheme did not rely on CPN income for sustainability, emphasising that they 'don't factor them into [their licence] fee, [as] they're not part of the work you're delivering to assess, validate, and authorise applications and then issue licences'. It is worth noting that Westminster did mention that CPN income was still necessary to fund enforcement activity, as 'the state of local authority funding is such that you have to claw back money where you can'.

Considerable concerns were raised by all boroughs about the difficulties in recovering CPN awards and the consequent impact on the financial sustainability of schemes, with Ealing suggesting that CPN income ‘never washes its face’, since full recovery of the award granted is rare. Boroughs expressed frustrations with the court process and its permitting frivolous and vexatious appeals. Waltham Forest noted that, despite consuming significant council resources, appeals were too easy a process for landlords, as the First-Tier Property Tribunal was a ‘no costs’ jurisdiction.

Camden, despite their familiarity with and pro-CPN stance, described the impact of convoluted claim bureaucracy on enforcement teams, who get:

“bogged down doing all the appeal bundles. So, you’re virtually having to do it in fits and spurts because you can only take so much before the paperwork mountain builds up to get it to the next stage and then you’re waiting there for months...which is so frustrating at the moment.”

Similarly, Waltham Forest commented that CPNs can be more resource-intensive than prosecutions, informing us that ‘the bundles [they] have to produce for CPNs are bigger than the bundles [they] have to produce when [they] go to court’. They provided the example of a case which took four and a half years to put together and cost £130,000 to take through the First-tier Tribunal. These costs were recovered in this case as a criminal prosecution was also brought, but costs at the first-tier tribunal generally are not. In another case, an appeal which never made it to a hearing cost the council £8,300 in irrecoverable costs just to prepare its defence. Waltham Forest suggested that landlords making claims with no prospects could, under existing Tribunal Procedures, have their claims struck out by the Tribunal, saving council’s valuable time and resources, but seldom if ever were.

Where CPNs had been successful, the process of actually recovering awards also presents a challenge. Westminster indicated that, the current year, only £20,000 of the £120,000 has been awarded had been recovered, a recovery rate of just 16.6%. Camden put their recovery rate at somewhere between 40-50%, achieved through a good working relationship with their finance team and maintaining communications with affected landlords.

Councils recognised that recovering CPNs required a strong relationship between licensing teams and finance teams within the council, a point that was summed up by the Camden respondent: “if you haven’t got that, you’re not going to be doing anything.”

PRS Data Shortages

Data shortage was impacting on local authority enforcement in two interconnected ways. In establishing the case for a scheme, authorities were obliged to rely on predictive modelling. Where these estimates were inaccurate, there were implications for scheme operation.

There is no reliable, comprehensive source of data on the PRS, yet the task of establishing a scheme requires that such data be available. In fact, one of the early benefits of licensing, once implemented, is that local authorities can gather data on PRS properties and their landlords. The Westminster respondent commented:

“20 years ago, we used to do house condition surveys, and nobody does house condition surveys anymore. So, we don't get sort of granular information by people going out and doing random surveys of 1000-1200 properties, because that was costing, 15 years ago, that was £50,000 a hit to do that.”

In order to gather this data, local authorities were hiring external companies to do what Westminster referred to as “quasi surveys of data, [...] kind of data-scraping” to come up with an evidence base for a scheme. They realised, however, that the information gathered was not totally reliable, with the potential for significant overestimations that could have significant financial impacts down the line should they launch a scheme based on this data.

“[We] didn't entirely believe some of the information that we got; we think it overestimated perhaps the number of HMOs that we have in Westminster. I think looking back it probably did. [...] Certainly, it overestimated, for example, at one point it calculated [that] there was more rented property than [there actually] was in the borough by about 5,000.”

Local authorities that are new to licensing are disproportionately impacted by this challenge, as they need to spend a significant portion of their first scheme understanding their PRS. Enfield's respondent indicated that “your first scheme is just getting to grips with that. [...] The next two or three schemes [are when you] start making a difference”. They continued by describing the importance of using the first scheme to gather data and knowledge about the make-up of the PRS:

“The first scheme is when you get to find out how big your PRS sector really is and where the issues are. I have plans for how to use licensing to raise standards here, but there is a lot of groundwork involved. You've gotta walk first.”

Enfield compared its experience with a pioneering borough like Newham, which had developed a better level of engagement with landlords and tenants and in a position to experiment:

“I can't do that yet, because I don't have the capacity to do it at the moment, but once we've got onto that roll of licensing, we can make some real [...] engagement, start working more with [...] our letting agents, work [...] with tenants, make them more aware of their rights. So that you know they take control of some of these decisions.”

The study areas viewed the proposed introduction of a national property registration scheme as a welcome and vital tool to support licensing to achieve its objectives of improving standards in the PRS.

Some councils were facing an unexpected challenge, post-licence approval, whereby the balance of small HMOs and family dwellings did not match up with their pre-scheme projections for additional and selective licence applications. Ealing and Westminster all observed significant discrepancies, with higher numbers of Selective Licence applications and fewer small HMOs than projected.

Data limitations and the changing timeframe meant that these councils were unable to pinpoint whether their estimations were incorrect at the time, or whether the introduction of property licensing had prompted landlords to ‘flip’ shared properties into single-family lettings to avoid the costs associated with bringing small HMOs up to the required health and safety standards in the licence conditions.

Enfield discussed its applications for additional HMOs at the end of the second of the five years of their additional scheme:

“What we’re finding is that a lot of the smaller HMOs are actually one family, you know extended family, because of the high rent levels and therefore landlords [...] are flipping properties back to selectives because [...] they are probably getting as much rent off a single family, albeit an extended family, than that of an HMO, without having to pay for all the additional fire safety measures that need to be fitted.”

This insight is particularly useful from a policy perspective, as it highlights the (unexpected and unintended) impact of property licensing without adequate information, and the related need to track both intended and unintended consequences to inform proposals and planning and share learnings and best practices between authorities.

Evidencing outcomes

Respondents expressed their discomfort in assessing impact solely through simple numeric output measures. All five authorities had relied on predictive modelling to gather evidence to support their proposals for introducing licensing schemes. Performance, particularly in terms of inspection, could be impacted by multiple factors outlined in this report including skills and resource shortages. Simply counting the number of licences applied for, issues reported, or enforcement interventions that have taken place does not reflect impact, as these are outputs rather than evidence of achieving the broader objective of improving the sector.

Legislative criteria in the Housing Act 2004 are inherently difficult to measure and do not prove cause-and-effect; if data relating to outcomes are not set in accordance with the right criteria, or are simply unavailable there is a risk, in one respondent’s view of “hitting the target but missing the point”. These challenges were acknowledged by Harris *et al.*:

“A sense emerged in this study that many PRS teams struggle to evidence how their activities contribute to improved standards. The impact of different enforcement strategies and approaches is rarely monitored or assessed, so exploring the causal impact of informal or deterrence-focused activities is challenging at best.

This is a common challenge associated with local authority regulation across sectors; a recent review found that they are generally poor at demonstrating the impact of these services. In this process they face various challenges including lack of data, lack of evaluation and analysis capacity, and difficulties in attributing impacts to specific activities. [...]

The wider sector similarly tends to confuse the output of local authority activity with its outcome or impact. For example, a lack of formal enforcement activities has been interpreted by landlord groups as demonstrating the ineffectiveness of discretionary Licensing schemes in England. However, the number of prosecutions, civil penalties, notices, or inspections are not appropriate measures of success since the goal of regulation is not to secure prosecutions, but to improve standards by achieving compliance.”⁷¹

Despite these challenges, one unanimous conclusion was reached by leaders in each of the five study areas: inspection regimes tied to licence issuance and compliance checks were able to prove a prevalent level of non-compliance. Camden, with the longest history of PRS registration and discretionary licensing in the five study boroughs, cited an estimated 95% prevalence of non-compliance. Additionally, and contrary to assumed logic, none of the leaders supported the idea that compliant, so-called “good” landlords were more likely to apply proactively for a licence.

When asked about the effectiveness of property licensing, each of the study areas conveyed confidence in its impact, based primarily on the widespread detection and resolution of issues by their respective enforcement teams and the subsequent improvements within those specific properties in their PRS. Westminster, for instance, report the elimination of approximately 500 Category 1 hazards through their scheme.

Despite uncertainty on how to measure improvement, all case study boroughs viewed the need for enforcement as imperative. The experience of the study areas indicated that registration alone fell short of addressing poor conditions in most cases. This point of view reinforces enforcement’s essential role, but also highlights the need for a robust assessment framework beyond mere output measures, and which accounts for the many operational challenges that undermine enforcement activity.

Conclusion

This chapter has highlighted a number of obstacles that undermine local authorities’ ability to deliver effective enforcement. The respondents were clear that ‘infrastructure’ issues such as skills shortages and inadequate IT were barriers to delivering an efficient service. Financial uncertainty around scheme operation was also proving problematic. A shortage of PRS data added to that uncertainty since it was not always easy to produce a robust business model for scheme operation. Nevertheless, the responding authorities agreed that the licensing was an essential enforcement tool. Authorities regarded numeric measures of success as a less than useful indicator of scheme value since property improvement could only be regarded as an ongoing process. Licensing was best regarded, not as a measure of effective enforcement, but as method of evidencing and understanding non-compliance.

⁷¹ Harris et al., *Improving Compliance*, 71.

6. Recommendations

The following recommendations, informed by the findings of this report, are aimed at a range of relevant stakeholders, including local authorities and, most notably, the government, particularly those departments responsible for housing and local government, and the Tribunal Procedure Committee.

Local authorities operating licensing schemes should:

- 1. Consider pricing in, and setting capacity for, a compliance inspection regime that operates on an annual cycle, rather than the current, default 5-year cycle.**

Inspections should be carried out annually by trained and experienced enforcement personnel, prioritising high-risk landlords and properties (as identified through local experience) for inspection, and with a frequency proportionate to protect private tenants' health and well-being from predictable harms.

- 2. Allow for a full 10 years before expecting a comprehensive understanding of the local landlord population to implement the full range of enforcement measures appropriately, proportionately, and effectively.**

Workforce planning for licensing is complex, requiring a diverse skill set to manage various stages of the process, from application administration to intelligence-led property identification, compliance inspections, and enforcement measures. The pace and success of a licensing scheme depend on factors like application rates and the availability of qualified staff. Adequate planning is crucial to ensure efficient delivery.

- 3. Establish collaborative procurement clubs with other local authorities to acquire digital IT solutions tailored to support licensing and enforcement.**

At the time of writing, the software market has not fully met the expectations of local authorities operating licensing schemes. This shortcoming can significantly impact the administrative efficiency of schemes, placing additional strain on already limited staff resources. Collaborative procurement clubs have the potential to increase 'consumer power', addressing this pressing need.

The Government should:

- 4. Amend the Housing Act 2004 so that schemes are set up to continue unless and until there is evidence that regulation is no longer necessary.**

Accepting the sector requires ongoing systemic intervention rather than a one-off project-style intervention is needed for local authorities to safeguard renters' well-being and safety throughout the PRS. Making property licensing the default also simplifies the process by reducing complexity, costs, and unpredictability, which in turn allows local authorities to commit more resources to their enforcement and management efforts.

- 5. Lengthen the minimum initial term of licensing schemes to 10 years to allow for the process of scheme mobilisation, data and intelligence gathering to be reached to allow time for the delivery of outcomes, and for set-up costs to be recouped.**

The current 5-year term has been shown to be sufficient only to begin to understand the PRS in an area, not to achieve the aims of the legislation; a minimum 10 years is thought necessary, to allow for the extensive mobilisation phase all schemes have been demonstrated to need to be completed before it can begin to deliver outcomes.

- 6. Recognise the need for start-up or gap funding to support local authorities in establishing new licensing schemes during their initial term.**

With some notable early exceptions, few local authorities have set up property licensing schemes without the benefit of dedicated pump-prime funding. An application for discretionary licensing requires high levels of expenditure but an uncertain outcome. Other recommendations may streamline and de-risk this process and may reduce these costs over time, but upfront investment in recruitment, training, and mobilisation of the workforce before licence fee income is established requires financial support; few authorities are likely to be able to fund this without grant or hypothecated borrowing.

- 7. Conduct wholesale reform of the Housing Health & Safety Rating System to make it easier to understand and administer and to give equal priority to addressing long-term health risks alongside immediate health hazards.**

Comprehensive reform should introduce clear and unequivocal minimum standards for property conditions, ensuring landlords might be held accountable uniformly. Reform should equalise the importance of tackling both long-term health risks associated with substandard housing and short-term health hazards. Standardised minimum standards with the force of law might increase landlord compliance rates across the board.

- 8. Make the minimum property standards for which enforcement powers and procedures in Part 1 of the Housing Act 2004 are provided, part of the core licence requirements of Parts 2 and 3, ending the need for Part 1 local authority Notices and enforcement procedures to be followed in the case of licensable property, whether or not it is so licensed.**

Improving the Housing Act 2004 by making the application of Part 2 and Part 3 licence conditions to stand in for and remove the necessity for Part 1 enforcement procedures to be undertaken, would streamline the process and ensure compliance with minimum health and safety standards.

At present, local authorities bear the burden of identifying non-compliance and then conducting time-consuming enforcement administration. Embedding Part 1 powers into Parts 2 and 3 would deliver on the principal purpose of licensing as the regulatory framework, to improve property conditions to the minimum standard. This would render the powers available to local authorities coherent and integrated.

- 9. Rationalise the definitions of property licence to make it easier in S.257 HMOs to determine who is the 'responsible person' in mixed ownership and control buildings and allow licence types to be interoperable when there is a minor change in the use and occupation.**

The need for simplification within licensing frameworks for local authorities, landlords, and stakeholders emerged as a key finding in this report. Simplifying licence-type definitions would address this, ensuring that all relevant properties and occupants are appropriately covered by licensing regulations.

- 10. Remove high-risk properties (e.g., short-term lets and all types of temporary accommodation) from the exemption list for licensing.**

Certain high-risk properties are currently exempt from licensing requirements because of landlord type, rather than the inherent risks associated with the property type or occupancy patterns. This lack of consistency in regulatory regimes undermines the goal of ensuring a level playing field for similar risk profiles. It is recommended that temporary accommodation for all homeless individuals, be brought within the scope of property licensing, regardless of landlord type or rental contract format. This measure will increase safety and oversight across the PRS, providing equitable protection for all occupants.

- 11. Create a mandatory national database for all private rented housing and its owners/managers.**

The lack of accessible and reliable data on the PRS emerged as a significant obstacle in all five study boroughs. Establishing a centralised, standardised, and comprehensive database is essential to address this issue. Such a database would provide local authorities with accurate and up-to-date information, facilitating more effective enforcement of licensing and regulation, and promoting efficient PRS management by reducing administrative burdens on local authorities and private landlords. The database would also allow for trends analysis and impact assessment, leading to more evidence-based policy- and decision-making across the sector. At the time of writing, proposals to establish a national register (the 'Property Portal') are under discussion as part of the Renters Reform Bill.

- 12. Develop a National Workforce Plan for the nationwide expansion of property licensing.**

A National Workforce Plan is essential to anticipate and address the increased demand for personnel in the field of property licensing if it is to be able to expand. This includes administrators, licensing officers, compliance inspectors, and enforcement officers and legal personnel. The plan needs to ensure there is a national apprenticeship scheme and training providers are resourced to deliver on the scale that is needed.

To address the identified skills shortage in the sector, and in line with the recommended National Workforce Plan, a national apprenticeship programme should be rolled out. The programme should build on the initiatives in the National Apprenticeship Framework and take inspiration from Middlesex University's Diploma in Private Sector Housing Interventions, which was valued by the study boroughs. Offering the programme at various levels (entry; junior; supervisory) will support career progression and help to tackle the staff retention issue in the sector.

13. Publish property licensing good practice guidance to local authorities.

Knowledge sharing between local authorities was already commonplace; the government should facilitate and systematise this sharing of best practices on a regional or national scale to establish an informed framework, developed in collaboration with experienced local authorities, for effective and consistent regulation.

Allowing local authorities to learn from the mistakes of other local authorities that have already established property licensing schemes will allow for a more seamless implementation process, as well as the development of solutions to identified problems, such as those related to procurement and non-compliance.

The Tribunal Procedure Committee should

14. Amend First Tier Property Tribunal procedures to protect councils from landlords' frivolous and vexatious appeals against civil penalties.

This protection for local authorities bringing claims against offending landlords in the 'no costs jurisdiction' of the First Tier Property Tribunal should be provided by the FTPT denying appeals to the Upper Tribunal which "have no reasonable chance of success". Equally, the Upper Tribunal jurisdiction could be liberalised when it comes to costs awards against frivolous and vexatious appeals. In practice there is little evidence this power to deny appeals is being used, resulting in local authorities being disincentivised to bring claims against some of the worst offenders.

The Ministry of Justice Sentencing Council should

15. Introduce sentencing guidelines for the prosecution of licensing offences.

For the same reasons that vexatious or frivolous appeals in the First Tier Property and Upper Tribunals need to be disincentivised (see recommendation 12 above), sentencing guidelines are needed for the prosecution of the worst offending landlords whose ability to finance appeal processes discourages cash-strapped authorities from risking exorbitant legal costs associated with defending their decision to apply a penalty.

7. References

- Bancroft, H. (2022) 'Inquest finds toddler killed by mould exposure in 'defining moment for housing sector'', *Independent*, 15th November. Available at: <https://www.independent.co.uk/news/uk/home-news/awaab-ishak-death-mould-housing-b2225448.html>. [Accessed: 24/01/2024].
- Borisova, N. & Smith, D. (2022) *Houses of Multiple Occupation and Selective Licensing*, London: Routledge.
- Croydon Council (2015) 'Private Rented Property Selective Licensing: March 2015 Final Report, (March 2015). Available at: https://democracy.croydon.gov.uk/Data/Cabinet/20150316/Agenda/cab20150316_08_02_appendix_1acb9.pdf?cmte=CAB&meet=34&href=/akscroydon/images/att5183.pdf
- Croydon Council (2021) 'Tackling problems in the borough's private rented sector and helping make Croydon the "Better Place to Rent"', 24 August, available at: <https://democracy.croydon.gov.uk/documents/s31768/Tackling%20problems%20in%20Croydons%20PRS.pdf>.
- Department for Communities and Local Government (2006) *Housing Health and Safety Rating System: Guidance for Landlords and Property Related Professionals*, London: DCLG.
- Department for Levelling Up, Housing, and Communities (2022) *English Housing Survey 2021 to 2022: Headline Report*, London: DLUHC.
- Department for Levelling Up, Housing and Communities (2022) *A Fairer Private Rented Sector*, CP 693, London: DLUHC.
- Department for Levelling Up, Housing, and Communities (2023), 'Selective licensing in the private rented sector: a guide for local authorities', 20 June. Available at: <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities>
- Enfield Council and Mayhew Harper Associates Ltd. (2013) 'Understanding the relationship between private rented properties and anti-social behaviour in Enfield', November, 3, available at: <https://governance.enfield.gov.uk/documents/s44797/>.
- Generation Rent, 'Three-quarters of tenants in unsafe homes go unprotected', blog posted April 28, 2021, available at: https://www.generationrent.org/2021/04/28/three-quarters_of_tenants_in_unsafe_homes_go_unprotected/, [Accessed: 29/01/24].
- Harford, L. & Thompson, K. (2022) 'Regulating houses in multiple occupation (HMOs)', in J. Stewart & R. Moffatt (eds) *Regulating the Privately Rented Sector*, London: Routledge, 76-87.
- Harris, J., Cowan, D, & Marsh, A. (2020) *Improving Compliance with Private Rented Sector Legislation: Local Authority Regulation and Enforcement*, Glasgow: CaCHE.
- Hillingdon Council (2014) 'Selected Licensing in the Private Rented Sector: Decision Details', 29 Jan. Available at: <https://modgov.hillingdon.gov.uk/ieDecisionDetails.aspx?Id=388>
- Jenrick, R. (2021) 'Ministry of Housing, Communities, and Local Government: Secretary of State decision letter to Croydon Council', 7 June, 2-3, available at: <https://democracy.croydon.gov.uk/documents/s31761/Appendix%20A%20-%20MHCLG%20SoS%20decision%20letter%20to%20Croydon%20Council%2007%2006%2021.pdf>.
- Kirby, K. & Sopp, L. (1986) *Houses in Multiple Occupation in England and Wales: A Report of a Postal Survey of Local Authorities*, London: HMSO.
- Lawrence, S. (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing*, London: Ministry of Housing, Communities and Local Government.
- Lawson, A. (2023) 'Charity calls for 'Awaab's law' to be extended to private rental sector', *Guardian*, 21 February. Available at: <https://www.theguardian.com/society/2023/feb/21/charity-calls-for-awaabs-law-to-be-extended-to-private-rental-sector>.
- Leibowitz, G. & Powell-Smith, A. (2021) *A National Landlord Register for England: How to Make it Work*, London: Centre for Public Data.

- London Borough of Camden (2023) 'Camden Profile', December, 1. Available at: https://opendata.camden.gov.uk/People-Places/Camden-Profile-latest-/9m7e-5qyt/about_data
- London Borough of Waltham Forest (2023) 'Statistics about the borough' 28 July, available at: <https://www.walthamforest.gov.uk/council-and-elections/about-us/statistics-about-borough>
- London Borough of Waltham Forest (2023) 'Waltham Forest Housing Commission Evidence', 25 January, 2, available at: <https://www.walthamforest.gov.uk/sites/default/files/2023-02/LBWF%20Housing%20Commission%20Evidence%20base%20Session%201%20Paper%202.pdf>
- Lewisham Council Housing Select Committee (2018) 'Working in the Private Rented Sector', 18 September, 8. Available at: <https://councilmeetings.lewisham.gov.uk/documents/s59240/04%20licensing%20report%20180918.pdf>.
- Mahmud, Z. & Tabbush, J. (2023) *Licence to Let: How Property Licensing Could be Better for Private Renters*, London: Centre for London.
- Ministry of Housing, Communities, and Local Government (2016) 'Controlling Migration Fund Prospectus, Annex A: summary of projects already funded', 9 November, 5-9. Available at: https://assets.publishing.service.gov.uk/media/5b6d3dcd40f0b640a5370028/Annex_A_summary_of_projects_already_funded.pdf
- Ministry of Housing, Communities and Local Government (2018) *English Private Landlord Survey: Main Report*, London: MHCLG.
- National Audit Office (2021) *Regulation of Private Renting: Department of Levelling Up, Housing and Communities*, Session 2021-22, HC863.
- Oatt, P. (2022) 'Advanced regulatory skills and practical evidence gathering', in J. Stewart & R. Moffatt (eds) *Regulating the Privately Rented Sector*, London: Routledge, 97-105.
- Oatt, P. (2019) *Selective Licensing: The Basis for a Collaborative Approach to Addressing Health Inequalities*, London: Routledge.
- Office for National Statistics (2023) 'How life has changed in Ealing: Census 2021', (19 January. Available at: <https://www.ons.gov.uk/visualisations/censusareachanges/E09000009/>.
- Office for National Statistics (2023) 'How life has changed in Enfield: Census 2021', 19 January 2023. Available at: <https://www.ons.gov.uk/visualisations/censusareachanges/E09000010/>.
- Office for National Statistics (2023) 'How life has changed in Westminster: Census 2021' 19 January, available at: <https://www.ons.gov.uk/visualisations/censusareachanges/E09000033/>
- Renshaw, R. (2014) 'Landlord says legal challenge to licensing scheme was "last resort"', *Property Industry Eye*, 28 July. Available at: <https://propertyindustryeye.com/landlord-said-legal-challenge-licensing-scheme-last-resort>
- Rugg, J. & Rhodes, D. (2018) *The Evolving Private Rented Sector: Its Contribution and Potential*, York: University of York.
- Sandoul, T. & Pipe, D. (2019) *A Licence to Rent*, CIH & CIEH.
- Sidoli del Ceno (2012) 'Selective licensing and resident satisfaction in social housing; a UK case study', *International Journal of Law in the Built Environment*, 4:2 126-139
- Spencer, R., Reeve-Lewis, B., Rugg, J. and Barata, E. (2020) *Journeys in the Shadow Private Rented Sector*, London: Cambridge House.
- Whitehead, C., Scanlon, K., Benton, E., Davies, A., Daly, J., Holford, W. & Brown, L. (2023) *Supply of Private Rented Accommodation in London*, London: Savills & LSE Consulting.