Tackling “rogue landlords”?

A number of new or amended regulations in relation to the Private Rented Sector have come into force on April 6th.

1) Rent Repayment Orders

Rent Repayment Orders (RROs) were introduced by the 2004 Housing Act in response to situations where the landlord of a property had failed to obtain a license for Houses in Multiple Occupation (HMOs) which were subject to a **mandatory** license; and offences in relation to conditions of the license. The 2016 Housing and Planning Act has **extended RROs to cover a wider range of offences**. These are

- Failure to comply with an Improvement Notice (to rectify a health or safety hazard);
- Failure to comply with a Prohibition Order (prohibiting use of the premises or part of it);
- Breach of a banning order (where a landlord is banned from letting housing, engaging in letting agency work, or any property management work);
- Using violence to gain entry to the property;
- Illegal eviction or harassment of the occupants.

The government guidance says that “Ministers made clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.” Both local authorities and tenants can apply to a **First Tier (Property) Tribunal** (FTT) for a rent repayment order. If the rent has been paid by the tenant then the rent repayment will go to them, if paid to the local authority by way of housing benefit or the housing component of Universal Credit it will go to them. The amount of rent which can be recovered will depend on the time-scale during which the offence is committed. The maximum amount of rent that can be recovered is 12 months. The guidance say that the FTT “must be satisfied beyond reasonable doubt” that the landlord has committed the offence or else has been convicted of the offence in court, for which the repayment order application is being made.

Local authorities “are expected to develop and document their own policy on when to prosecute and when to apply for a repayment order”.

In the case where a landlord has been successfully prosecuted in court the FTT **must** impose the maximum amount of rent repayment. Where no prosecution has taken place then the local authority has to make an assessment of how much rent it is seeking to recover, taking into account

a) “Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.”
b) “The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence.”
c) Orders are imposed by the FTT, in the public domain, so it is “likely to help ensure

others comply with their responsibilities."
d) "Remove any financial benefit that the offender may have made as a result of committing the offence."

If a local authority becomes aware of a landlord being convicted of any of the above offences, and the offence was committed in their area, "it must consider applying for a rent repayment order".

2) Civil Penalties

The government is enabling councils to issue civil penalties against against private landlords of up to £30,000, as an alternative to prosecution. It was declared to be a means of them "clamping down on rogue landlords". These penalties can be applied in cases of

- A failure to comply with an Improvement Notice;
- Offences in relation to licensing of Houses in Multiple Occupation;
- Offences in relation to licensing of houses under Part 3 of the 2004 Act;
- Offences of contravention of an overcrowding notice;
- Failure to comply with management regulations in respect of HMOs.

The issuing of civil penalties will be easier than prosecuting a landlord. However, the offender will have the right to appeal against the penalty to an FTT. The ability to use these penalties will be generally welcomed by local authority staff as an alternative to a long-winded prosecution process. Moreover, each failure to comply with regulations constitutes a separate offence for which a civil penalty can be imposed.

Once again, as with rent repayment orders, the FTT will have to be convinced "beyond reasonable doubt" that the offence has been committed.

In determining the level of the civil penalty the local authority will have to consider

- The severity of the offence;
- The culpability and track record of the offender;
- The harm caused to the tenant;
- Punishment of the offender – a civil penalty "should not be regarded as an easy or lesser option compared to prosecution". It should be set at a level "to help ensure that it has a real economic impact on the offender".

The ultimate gaol is said to be to deter the offender from repeating the offence and deter others from committing similar offences. "It should not be cheaper to offend than to ensure a property is well maintained and managed."

The FTT has the power to confirm, vary (reduce or increase) the size of the civil penalty, or to cancel it.

If a landlord refuses to pay a civil penalty, the local authority will be able to refer the case to the county court for an Order of Court. If necessary the local authority can use court

bailiffs to enforce the order and recover the debt.

Where a landlord receives two or more civil penalties over a 12 month period, local authorities can include the person's details in the database of rogue landlords and property agents (see below).

If a landlord receives a civil penalty it can be taken into account if considering whether s/he is a fit person to be the licence holder of an HMO or any other property subject to licensing.

The purpose of the database of 'rogue landlords' is to enable a local authority to obtain information about, and target enforcement action against any landlord who has

- Received a banning order;
- Been convicted of a banning order offence or
- Received two or more civil penalties over a 12 month period.

The income received by local authorities from civil penalties can be retained by them "provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector".

3) Obtaining and using Tenancy Deposit Information

The Housing and Planning Act 2016 enables the sharing of some data held by the three Tenancy Deposit Protection Schemes which apply to the PRS. The schemes hold information relating to nearly 3 million PRS properties and address data for around 2 million PRS landlords. The guidance says that

"Having access to this information will increase the tools that authorities can use to help identify privately rented housing and to crack down on rogue landlords in their area through targeted enforcement and prevention work."

Local authorities will be able to match the TDP data with other information they they already collect such as council tax data and housing benefit data, to help identify rogue landlords in their area.

The TDP information available to local authorities is restricted to:

- PRS property addresses;
- Addresses of the landlords letting these properties;
- Addresses of letting agents managing PRS properties;
- Number of deposits registered at the PRS property address.

Bizarrely local authorities will not be able to have the landlords' names from the TDPs, giving them the unnecessary task of matching their information to the addresses they can have access to.

Data can be requested from April 6th 2017.

Summary

A Department of Communities and Local Government Policy Fact sheet says

“Legislation is needed to give local authorities the ability to tackle criminal landlords and ensure there are strong and effective sanctions for those who refuse to comply with the law. Currently, local authorities can prosecute landlords for breaches of housing legislation. But prosecution is time consuming, expensive and frequently results in just a fine of about £1,500 which is not acting as a sufficient deterrent.”

“The legislation will enable local authorities to:

- Access a database of rogue landlords and property agents convicted of certain offences, enabling them to target enforcement where it is most needed;
- Seek banning orders for the most prolific and serious offenders;
- Apply a more stringent 'fit and proper' person test for landlords letting out licensed properties, such as Houses in Multiple Occupation, to help ensure that they have the appropriate skills to manage such properties and do not pose a risk to the health and safety of their tenants;
- Issue civil penalty notices of up to £30,000 for certain breaches of housing legislation, with local authorities able to retain the money for housing purposes;
- Extend Rent Repayment Orders to cover situations where a tenant has been illegally evicted, the landlord has failed to rectify a serious health and safety hazard in the property or has breached a banning order, and allowing local authorities to retain the money for housing purposes where the rent was paid through Housing Benefit or Universal Credit.”

As an example of the weakness of the prosecution route, the DCLG fact sheet points to a conviction of a 'criminal landlord' for failure to comply with a notice requiring the landlord to carry out essential repairs to a property, including multiple hazards, electrical faults, lack of hot water or heating facilities and an infestation of vermin. The landlord was fined a ludicrous sum of £350.

“With the new powers, local authorities would be able to impose a civil penalty of up to £30,000. If the landlord continued to fail comply, enforcement action could be escalated through an application for a Rent Repayment Order, blacklisting of the landlord and in vary serious cases the local authority could apply to have the landlord banned from renting out property.”

What is a “rogue landlord”?

The government implies that there are decent landlords on the one hand and criminal or “rogue” landlords on the other. However, as the **Local Government Information Unit** says there are “an unquantified number whose practices are at best dubious”.

"They may exploit the relatively powerless position of their tenants by being slow to deal with repairs or improvements, even threatening eviction if the tenants complain. This could possibly be classed as harassment, but this is unlikely, given the termination of a fixed term assured short-hold tenancy needs only the correct serving of the notice of termination, not any fault by the tenant, for a court to grant possession."[1]

The **Chartered Institute of Environmental Health** expressed a similar view, that "a substantial number of their properties (that is private landlords) are in poor condition and many lack effective management competencies and many landlords lack a good awareness of their responsibilities. The problem therefore is not just a rogue and criminal minority".

Unfortunately the government has refused to carry out a measure which would make the work of local authorities much easier – a mandatory national register of landlords – which would mean that they would not struggle to find them, whilst the failure to register would be an offence.

The thorny question of resources

Whilst these regulation are welcome, even if more limited than we would wish, the government's injunction to local authorities to "crack down on rogue landlords in their areas" is not matched by any consideration as to whether they have sufficient resources to do the extra work resulting from the changes. There is no extra money available. As we know from our investigations in Swindon the department responsible for policing the PRS has insufficient resources[2] to cover a growing private rented sector. So much so that they have to concentrate their efforts on HMOs, which constitute less than 10% of the sector. In the context of the ongoing reductions in local authority funding it will be difficult to get extra resources for the departments that are responsible for the PRS. However, without them these new regulations will not be used "robustly". Tenants and housing campaigners need to press their local authorities on

- How they are going to use these new regulations to tackle landlords who are failing to carry out their legal duties and
- What they are going to do to inform tenants of these changes.

Independently of what local authorities do campaigners need to inform tenants of the new regulations and discuss how they can be taken advantage of by them.

Future regulations

1) Local authorities will have even more work to do in relation to the PRS when changes are made in relation to HMOs. From October any HMO with 5 people in two or more families will face mandatory licensing as well as certain flats above or

1 Such harassment is now illegal though the legislation has some weaknesses which I will deal with separately.

2 See this letter to Swindon Council from **Swindon Housing Action Campaign** calling on them to provide additional resources for the department policing the PRS: **http://keepourcouncilhomes.files.wordpress.com/2016/02/renardfaramarzi.pdf**

below business premises.

2) From April 2018 all owners will be barred from granting new tenancies or renewing existing ones in properties that fall into the bottom two categories of Energy Performance Certificates, F and G unless an exemption applies. For residential landlords all their tenancies will need to comply by 2020.
3) The government has just issued a consultation on the banning of letting agencies charging tenants fees. You can download the consultation document here[3]

Martin Wicks
April 10th 2017

3 **http://www.gov.uk/government/consultations/banning-letting-agent-fees-paid-by-tenants**