



A study of the Housing Act 2004, Housing Health and Safety Rating System and Local Authority Interventions in England

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Are Private Sector Tenants Being Protected Adequately?

Introduction and Background

This is a brief report prepared by Stephen Battersby¹ for Alison Seabeck MP, Shadow Housing Minister and Karen Buck MP, Shadow Work and Pensions Minister. It is based on an analysis of Freedom of Information Requests sent to local housing authorities in the autumn 2010.

In these requests, information was sought on service requests for house inspections; the actual number of inspections undertaken; the frequency with which the most common hazards under the Housing Health and Safety Rating System (HHSRS) as identified by the government's English Housing Survey plus the hazard of Crowding and Space, were identified in practice; and subsequent action to remedy these hazards. The information sought covered a three-year period to 2009/2010.

Although the request sought information for all tenures the majority of respondents provided information only on inspections in the private rented sector, or the numbers of inspections in other sectors were so small by comparison, that it was considered appropriate for this report to focus only on the private rented sector (PRS).

Under the HHSRS, the prescribed method for assessing the hazards arising from deficiencies in dwellings, local housing authorities are required to rate those hazards that are obviously worse than average (except for the hazard of excess cold where average hazards can be rated)². For enforcement purposes it should not be necessary to review and assess every potential hazard in the dwelling. It is a common misunderstanding that the rating process takes account of the current occupiers and the risks to their health and safety. The rating should be produced taking account of the potential risks to the vulnerable age group (where this has been identified and included in guidance) regardless of the actual occupants so that an empty dwelling can be assessed. If a dwelling is judged as not posing unnecessary risks to the health and safety of the vulnerable age group then it will be assumed to be reasonably safe and healthy for anyone. Only for the hazard of Crowding and Space is there a second stage in the rating process where the actual occupants are taken into account, but even here the rating does not dictate the subsequent course of action (intervention).

The HHSRS Regulations³ say that inspectors should have regard to any guidance for the time being given under section 9 of the Act in relation to the inspection of residential premises and should "inspect any residential premises with a view to preparing an accurate record of their state and condition, and prepare and keep such a record in written or in electronic form". The Regulations further require that following an inspection when an HHSRS hazard has been found, and the Operating Guidance indicates that it should be rated, the seriousness of that hazard has to be calculated in accordance with the method set out in the Regulations.

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² ODPM, 2006, Housing Health and Safety Rating System Operating Guidance Housing Act 2004 Guidance about inspections and assessment of hazards given under Section 9

³ The Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No. 3208)

It is a general principle that any dwelling should provide adequate protection from all potential hazards prevailing in the local external environment. The hazard rating score does not dictate the course of action to be taken by the local housing authority (LHA) to secure remedial action. However where the hazard has been assessed as scoring more than 1000, then it is what the Act refers to as a Category 1 hazard and LHAs have a duty to take one of the courses of action in Part 1 of the Act. For hazards scoring 999 or less this is a Category 2 hazard and local authorities have discretion to take action. Such hazards may well pose a significant risk to health and safety, and if scored two things should be noted, deficiencies in the dwelling must exist, and the hazard arising must be obviously worse than the average for the age and type of dwelling. Many additional factors however can be taken into account by the local housing authority when it comes to taking the most appropriate course of action, for example whether the vulnerable age group are actually in occupation, the record of the landlord or wishes of the occupier⁴.

A study by the Chartered Institute of Environmental Health⁵ showed that regulatory action on housing conditions did not reduce with the changes introduced by the Housing Act 2004, but found that LHAs relied on “informal action” more than the provisions in the Act. This was also the case under the previous provisions of the 1985 Act which had more limited options for enforcement. It was not clear what constituted such “informal action” but appears to be anything from a telephone call to the landlord to a letter of intention to take legal action. It was also clear that the existence of housing renewal policy had relatively little bearing on the level of activity, which was largely “complaint led”.

Recent studies have indicated that scale of the impact of housing conditions on health and safety and in particular the potential costs (and savings) to the NHS. Using data from the English House Condition Survey a model based on the HHSRS allowed the total health cost of poor housing in England to be estimated as over £600 million per year. The total cost to society each year may be greater than £1.5 billion⁶. Further work⁷ has shown that the potential savings to the NHS of improving dwellings with the hazard of excess cold significantly could save the NHS an additional £700 million per year. The hazard score (reflecting the risks to health) does not necessarily reflect the costs of remedial action, as has been shown by a study at Warwick University and BRE⁸. This pilot study looked at the health impact and potential savings from housing interventions in the private sector. It was commissioned by the Regional Leaders Board for the North West of England, 4NW. It confirmed that the one-off cost of works to improve poor housing give an annual financial saving to the health sector. This supported by work carried out by the Audit Commission that concluded that ‘every £1 spend on providing housing support for vulnerable people can save nearly £2 in reduced costs of health services, tenancy failure, crime and residential care. It

⁴ ODPM, 2006, Housing Health and Safety Rating System Enforcement Guidance Housing Act 2004 Part 1: Housing Conditions

⁵ CIEH, 2008, The CIEH Survey of Local Authority Regulatory Activity under the Housing Act 2004 Results of a questionnaire survey

⁶ M Davidson, M Roys, S Nicol, D Ormandy and P Ambrose, 2010, The real cost of poor housing, BRE Trust

⁷ S. Nicol, M. Roys, M. Davidson, 2010, BRE IP 16/10 Quantifying the Cost of Poor Housing, BRE,

⁸ Warwick Law School and BRE, 2010, Linking Housing Conditions and Health A Report of a Pilot Study into the Health Benefits of Housing Interventions, Warwick University http://www2.warwick.ac.uk/fac/cross_fac/healthatwarwick/research/devgroups/whocc/linking_housing_conditions_and_health_2010-02-24.pdf

also showed that low cost interventions give particularly good value in terms of health and well-being benefits

Results

The tables of results are included at Annex 1. This report is based on returns as follows:

173 Districts including Unitary Authorities (out of 257) (67%)

24 London Boroughs (out of 34 including the City) (71%)

24 Metropolitan Districts (out of 36) (67%)

On this basis it can be assumed that the results provide an accurate reflection of the level of activity and information held.

It was clear from the responses that the information sought was not always readily available, if at all, and could only be found at disproportionate cost. It was also apparent that different interpretations and constructions were put on the information sought. There appeared to be no consistent way that records were kept.

The tables have included a median value where thought helpful to the interpretation. The median is the number where half the numbers (responses) have values that are greater than that value, and half have values that are less. This can give a truer reflection of the level of activity than arithmetic means or averages.

Many local authorities do not have basic information e.g. on referrals (service requests) (Table 1) or on the hazards arising from the deficiencies identified on inspection. The term “referrals” was used as the inspection may have been carried out as the result of complaints by tenants or their representatives, or as the result of a request for some form of renewal assistance. However the results indicated that that the private rented sector is where attention is focussed and results indicate that most interventions are “complaint led” when using the HHSRS, even if almost one third of local authorities did not have information on the number of inspections of that sector. Subsequent analysis was limited to the PRS as that was the sector on which most information was available, although Part 1 of the Housing Act 2004 makes no distinction on tenure. Where LHAs indicated that the figures provided were the total inspections for all tenures they were collated as PRS inspections as in most cases the respondents indicated that the great majority of inspections were of PRS dwellings.

Tables 3a to 3d reflect the information obtained on the hazards identified. Crowding and Space is potentially an increasing hazard, particularly in some parts of the country such as London. The English Housing Survey (EHS) (previously English House Condition Survey (EHCS)) has shown that hazards of Excess Cold and Falling hazards (covering four⁹ of the 29 HHSRS hazards) are the most common in the housing stock as a whole. There is no distinction made between these hazards as Category 1 and Category 2 hazards although some responses did make this distinction. Where this was the case the total for both categories has been included. There is also information on the hazard of dampness and mould. This was included because it was thought to be a common basis of complaint because it is the most apparent deficiency to occupiers and can cause distress (health is defined in the Act as including mental health) even where there are no other apparent health effects.

⁹ Falls associated with baths; Falling on Stairs etc; Falling on level surfaces; and Falling between levels.

To be clear the averages and medians take account only of those responses where the local authority was able to provide a figure, including 0, and are not based on the total number of returns.

In 2009 the EHS¹⁰ identified 1.465 million homes in the PRS as non-Decent. Of these, 971,000 dwellings failed the Decent Home Standard (DHS) because of the existence of at least one Category 1 hazard (the first criterion of the DHS is that there should be no Category 1 hazards). This compares with 3.1 million owner occupied homes that are non-Decent. According to the EHS in 2009 8% of the stock as a whole had dampness in one form or another, but almost 15.4% of the PRS stock was affected to some degree that amounts to 554,000 dwellings. However it is relatively rare for this to be a Category 1 hazard, partly reflecting the health outcomes being less serious than for excess cold or falling, with EHS estimating between 50,000 and 100,000. The results of this survey indicate that the hazard of Damp and Mould (which is both a hazard and a deficiency in the HHSRS) is identified more commonly than Excess Cold or Falling hazards, the most common Category 1 hazards according to the EHS.

On enforcement action the results indicate that the situation previously identified continues in that “informal” action is the most common route taken by local authorities. This is despite the existence of the Hazard Awareness Notice provision, which does not have any consequences for non-compliance unlike other actions under Part 1 and can be viewed as purely advisory. The provisions in Part 1 of the Act can be said to permit a proportionate response to the hazards identified and to that extent meet the principles of better regulation. Overall the level of enforcement activity, including informal action is at a relatively low level in the context of housing conditions as identified in the SEH.

Discussion

Part 1 of the Housing Act 2004 very much makes housing a health issue. Indeed it can be argued that it returns to the roots and origins of local government in the 19th Century, and the public health movement.

Section 3 of the Housing Act 2004 says that a local housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken including provision of renewal assistance as well as use of its enforcement powers under Part 1 and other provisions in the Act. In carrying out this duty the local housing authority (LHA) and their officers must comply with any directions that may be given by the appropriate national authority, and keep such records, and supply the appropriate national authority with such information, as that authority may specify. No such directions have ever been issued and this perhaps explains why LHAs keep records in such different ways, or indeed keep limited accessible records. It is a concern less as a matter of providing information to the national authority, but rather this information is important for developing effective housing and health strategies.

There were many reasons given as to why figures were not readily accessible including that it would be too expensive and time-consuming to extract them from records. This indicates again such figures are not used as a routine in monitoring performance against strategic or other objectives and appear not to be used in developing housing renewal strategies. When

¹⁰ Communities and Local Government, 2011, English Housing Survey Headline Report 2009–10

looking at the hazards, it is apparent that over the years more LHA.s are keeping this information. Yet for many this information is not readily accessible and it is again difficult to understand how local authorities can develop strategies, or demonstrate the effectiveness of their approach if they do not have accessible records on the hazards that have been identified and remedied. Even in 2009/10 45% of LHAs could not provide information on Excess Cold, the most common and most serious hazard for health in the housing stock. In view of proposed changes to responsibilities for public health, it is questionable how they will be able to demonstrate their contribution to health improvement. Michael Marmot has pointed out, housing is a key social determinant of health¹¹ and LHAs do not appear to be addressing inequity in health attributable to housing conditions. This can be considered as matter of social justice. Vulnerable private sector tenants should have reasonably expect a more consistent approach regardless of which council area in which they live.

On the figures from LHAs, Crowding and Space appears to be a less common hazard than the others, but this may be that it is more common in individual LHAs and certain areas than others. That said, it appears to be found increasingly by local authorities and this would accord with the pattern reported in the EHS Headline Report 2009/10 which showed 63,000 overcrowded private renting households in 1995/96 rising to 152,000 in 2009/10 (with a total of 630,000 households overcrowded in all tenures). So that one quarter of all overcrowded households are in the private rented sector. Housing does have an impact on mental health and the impact of housing conditions, particularly where there crowding and lack of space should not be forgotten and again the potential contribution of LHAs to improved public mental health is not being fulfilled. Yet we see "Damp and Mould" as an HHSRS hazard appears to be identified and dealt with by LHA.s more commonly than might be expected given the national statistics. Damp and mould is a more obvious hazard and is likely to be the reason why tenants complain to the LHA, even though it poses less of a risk to physical health. It is also true that the EHS shows that in 2009 damp was more prevalent in poor households, where 12% lived with damp problems compared with just 7% of households not living in poverty. Dampness and cold can often be a reflection of the inherently poor quality and age of the stock. It is also reported that dampness is more likely to occur in houses that are overcrowded and lack appropriate heating, ventilation and insulation and in any country the prevalence of indoor damp in low-income communities can be substantially higher than the national average¹².

The Localism Bill currently in Parliament will allow local authorities to fully discharge their duties to homeless people by using private rented accommodation without requiring the applicant's agreement. Local authorities will also have the power to offer flexible tenancies to new social tenants. A flexible tenancy is a secure tenancy of a fixed term (not less than two years). This again could mean people having to move from secure housing into the private rented sector.

Section 4 of the Act requires that an LHA which becomes aware as a result of meeting the section 3 duty or for any other reason, that it would be appropriate for any residential premises in their district to be inspected with a view to determining whether any category 1 or 2 hazard exists on those premises, then such an inspection to be carried out. Again it is somewhat surprising that so many local authorities did not have information readily available. The fact

¹¹ Michael Marmot, 2010, Fair Society Healthy Lives – The Marmot Review, Strategic Review of Health Inequalities post 2010 www.ucl.ac.uk/marmotreview.

¹² WHO, 2009, WHO Guidelines for Indoor Air Quality - Dampness and Mould,

that Damp and Mould is identified more frequently than other hazards that are more common and important so far as health and safety are concerned, indicates that in practice most local housing authorities intervene on the basis of complaint or service requests, rather than as the result of the any coherent strategic approach. Given the lack of security in the PRS and reluctance to complain, it is probable that those who feel most insecure and vulnerable (and at risk of retaliatory eviction) will not complain and so local housing authorities may not be dealing with the worst housing conditions, nor the most irresponsible or worst landlords. Reliance solely on complaint before intervening even increases the risk of retaliatory eviction when action is taken. That said the reduction in the private sector renewal budget for 2011/12 to zero, means that local housing authorities will be less able to use the carrot of renewal assistance to help and support more responsible private landlords.

Given the general level of security of tenure in the PRS it might be reasonable to assume that there must be obvious problems with the conditions in the dwellings that lead the occupier to make a complaint to the LHA. There is therefore a striking difference between the numbers of inspections, the numbers of hazards found and then the level of use of the powers in Part 1 of the 2004 Act. Indeed as a crude measure the EHS indicates an average of 2969 private rented dwellings with Category 1 hazards per local authority. The average number of dwellings dealt with under the Housing Act in 2009/10 was 274 per LHA (including informal action). This suggests that at best, less than 10% of the dwellings with Category 1 hazards are dealt with in any year. With so much informal action it is also difficult to know if these hazards are dealt with adequately if at all. Furthermore as the figure of 274 will include Category 2 hazards, then this is probably overstating the progress at which Category 1 hazards are dealt with in any year. Furthermore, without changes in approach the rate at which hazardous dwellings are dealt with is also unlikely to increase given the cuts happening in local government.

If there is a reluctance to take more rigorous courses of action such as Improvement Notices or Prohibition Orders (whether suspended or not) it is surprising that so little use is made of Hazard Awareness Notices, which unlike the other provisions has no potential for an offence to arise. The most common action by the LHA is “informal” – possibly as this is construed as “better regulation”. However, this makes it very difficult to hold LHAs to account for their activities, as it is unclear what form this “informal action” takes and probably varies from authority to authority. This further argues for a review of the Enforcement Guidance issued under s9 of the Housing Act 2004. This is further exemplified by a third of authorities either not being able to provide information or who made a zero response for the use of Improvement Notices. It should be noted that “informal” action is not a course of action available for meeting the duty in Part 1 of the Housing Act 2004.

The Regulators’ Compliance Code¹³ does not actually apply to the provision of Part 1 of the Housing Act 2004 and so any course of action other than one included in Part 1 to deal with a Category 1 hazard would be a breach of statutory duty. That said, Part 1 does comply with the Hampton Principles of Better Regulation and the courses of action available allow LHA.s to take action that is proportionate. Further should be some discussion with owners, tenants and other interested parties so that the most appropriate course of action can be taken, and that an adequate Statement of Reasons (under section 8) can be issued. The Statement explains why that action rather than another course has been taken.

¹³ <http://www.bis.gov.uk/files/file45019.pdf>

The figures obtained indicate a general reluctance to use the powers available under the Housing Act 2004. Moreover there have been few prosecutions with more than 80% of LHAs ever having taken a prosecution. The evidence of these returns is that rather than being heavy-handed regulators LHAs are quite the reverse, and indeed seem to be averse to effective regulation. It should be noted that if there is a desire to avoid creating the potential for offences they could make more use of HANs. LHAs also have the power to carry out work in default and recover the costs incurred. They can undertake this by agreement when an Improvement Notice is served, and no offence of non-compliance can be committed. This can be a means of helping an owner (whether landlord or owner-occupier who cannot afford the cost of the works at the time. However again this appears to be a rarely used provision of the 2004 Housing Act.

The evidence from this study does highlight how problematic it will be for local authorities to ensure that changes to Housing Benefit eligibility and reductions do not lead to adverse public health impacts. Housing Benefit changes will lead to some landlords moving out of this part of the market (reducing supply of reasonable quality housing) but will also lead to less responsible landlords crowding in more people into homes to maximize income. At the same time there will be less incentive to maintain properties or even improve homes leading to deterioration.

The question arises as to who will protect the most vulnerable tenants? It might be argued that more use could be made of the provisions in the Landlord and Tenant Act 1985, in particular the landlords repairing obligation. However this relates only to disrepair and HHSRS hazards can arise as the result of design or materials used or the absence of elements or amenities, such as heating or insulation. Furthermore, the government cuts are reducing the public funding from the Legal Services Commission for such litigation, and those on the lowest incomes living in the worst conditions and lacking in security, will not have access to redress via this route. The Landlord and Tenant Act 1985 does also imply terms in to then tenancies of dwellings let at low rent that the dwelling will be fit for human habitation. This is still the pre-1989 standard of fitness (and no reference is made to the HHSRS), and the rent limits are £80 p.a. in London and £52 elsewhere – so this does not offer much comfort to tenants either.

The notion of “reputational regulation”¹⁴ has been examined more recently, and landlord accreditation is being used increasingly. Such an approach is good for landlords who wish to be seen as responsible and should enable LHAs to focus efforts on the wilfully neglectful landlords. The effectiveness of such schemes (and attraction for landlords) also hinges on there being effective sanctions against those who are less responsible. It is not clear that LHAs are well equipped to do so when one considers the level of enforcement revealed here.

¹⁴ Claire McNulty, 2011, opening the door – Examining the potential for reputational regulation of private rented sector landlords, Consumer Focus

Conclusion

The PRS is of growing importance for housing provision for those in housing need. The costs of unhealthy and unsafe housing are borne by us all with poor housing conditions increasing demands on the NHS.

Local housing authorities need to find different ways of working and managing information to ensure so that they are better able to protect the health and safety of those who are tenants of more irresponsible landlords. Dealing only with complaints is not an adequate approach.

LHAs could certainly make better use of their powers and duties under Part 1 of the Housing Act 2004 to improve public health. They need also to consider how better to record data so that this contribution to improved public health can be assessed and the impact of housing renewal strategies better evaluated. Well-constructed and readily accessible data collection and recording systems will enable them to demonstrate the positive contribution housing interventions can make to individual householders and society as a whole. It will also enable them to better highlight their contribution to improved public health and that inequalities in health are being addressed.

The Government could assist by supporting a review and updating of the Enforcement Guidance and other advice, and indeed by providing some leadership by using the provisions in section 3 of the Act on recording information. That would help ensure greater consistency and therefore comparability of data from different LHAs – this would further assist public accountability.

Annex 1 Tables of Results

Table 1 Total number of referrals to LHAs

	2007/08	08/09	09/10
Total number of referrals to LHA.s	64558	85193	86227
Number of LHAs where information not readily available (%)	37 (17)	30(14)	21 (10)
Average per LHA	351	446	431

Table 2 Number of inspections of the Private Rented Sector Reported

	2007/08	08/09	08/09
Total number of PRS inspections	29618	63530	49760
Number of LHAs where information not available (%)	68(31)	57(26)	45(20)
Number of 0 returns	4	2	1
Average per LHA	195	390	284
Median	96	127.	130

Hazards identified in the PRS

Table 3a Number of premises where hazard of *Crowding and Space* identified in PRS

	2007/08	08/09	09/10
No LHA.s where information not available/given (%)	124(56)	111(50)	101(46)
No of LHA.s making "0" premises (%)	37(17)	49(22)	52(24)
Total number of premises	402	491	752
Average no. per LHA	4	5	6
Median	2	1	2

Table 3b Number of premises where hazard of *Excess Cold* identified

	2007/08	08/09	09/10
No LHA.s where information not available/given (%)	122(55)	111(50)	99 (45)
No of LHA.s making "0" response (%)	9 (4)	6 (3)	5 (2)
Total number of premises	2049	3263	4257
Average no. per LHA	21	30	35
Median	11	14	18

Table 3c Number of premises where hazard of *Damp and Mould* identified

	2007/08	08/09	09/10
No LHA.s where information not available/given	123(53)	111(47)	100(42)
No of LHAs making "0" response(%)	12 (5)	4 (2)	5 (2)
Total number of premises	2034	3194	5288
Average no. per LHA	21	29	44
Median	10	14	18

Table 3d Number of premises where "*Falling*" hazards identified

	2007/08	08/09	09/10
No LHA.s where information not available/given(%)	123(56)	111(50)	100(45)
No of LHAs making "0" response (%)	24 (11)	19(9)	15(7)
Total number of premises	1779	2835	4272
Average no. per LHA	21	27	38
Median	7	8	8

Interventions**Table 4 Prohibition Orders**

	2007/08	08/09	09/10
No LHA.s where information not available/given (%)	40(18)	32 (15)	22(10)
"0" responses	101(44)	87(37)	95(41)
Total number of Orders (all forms)	380	462	531
Mean number per LHA	2.1	2.5	2.7
Median	0	1	1

Table 5 Improvement Notices

	2007/08	08/09	09/10
No LHA.s where information not available/given (%)	34(15)	25(11)	16 (7)
"0" responses	52(24)	52(24)	42(18)
Total number of Notices (all forms)	3060	2808	3744
Average number per LHA	16	14	18
Median	3	4	4

Table 6 Hazard Awareness Notices

	2007/08	08/09	09/10
No LHA.s where information not available/given (%)	42(19)	39(18)	39 (18)
“0” responses	103(47)	104 (47)	88(40)
Total number of HANs	737	879	1069
Average number per LHA	4	5	6
Median	0	0	1

Table 7 Informal Action following inspection of premises

	2007/08	08/09	09/10
No LHA.s where information not available/given (%)	93(42)	87(39)	70(32)
“0” responses	13(6)	9(4)	8(4)
Total number of premises where informal action taken	17327	34123	35073
Average number per LHA	151	282	247
Median	71	97	95

Legal Action**Table 8 Prosecutions**

	2007/08	08/09	09/10
No LAs where information not available/given (%)	43(19)	37(17)	27(12)
No. LHAs with no prosecutions (0 return) (%)	158(71)	155(70)	156(71)
Total number of prosecutions	76	67	90

Table 9 Works in default of compliance

	2007/08	08/09	09/10
No LHA.s where information not available/given (%)	40(18)	37(17)	27(12)
“0” responses	127(57)	124(56)	129(58)
Total number of premises where work in default undertaken	983*	776*	766*
Average number per LHA	5	4	4

*Includes one large local authority reported work in default numbers as including under all legislation not just Housing Act 2004 these figures were 608 (07/08) 422(08/09) and 331(89/10). Removing these figures completely would give average number of cases per local authority of 2 cases for each of the years.