

Local housing authority action on conditions in rented housing



Report following a Freedom of Information request to local housing authorities prepared for Karen Buck MP

by Stephen Battersby

The home is the main setting for our health throughout our lives – it is fundamental to our health

Housing is a social determinant of health - the “conditions in which people are born, grow, live, work and age, including the health system” (Michael Marmot)

Executive Summary

This report has been prepared following a Freedom of Information Request to all local housing authorities in England.

The aim was to identify the frequency with which authorities identified Category 1 hazards in dwellings under the Housing Act 2004. These are those hazards that pose the most serious and wholly unacceptable risks to health and safety to the occupiers of the properties. There can be unacceptable risks posed by Category 2 hazards (where local housing authorities have discretion to act), but it is Category 1 hazards where authorities have a statutory duty to take one of the courses of action in the Act. The information requested also sought an insight into staffing levels and how improvements secured under Part 1 of the 2004 Act compared with improvements via the licensing regimes in the same Act.

It was found that staffing levels have maintained similar levels across all three years in the survey with a slight increase according to the responses. That said, more than 11% of local authorities do not use qualified EHOs to inspect properties.

Inspection and identification of hazards is patchy with some respondents suggesting they have not found a single property with the most common of hazards in the housing stock as a whole. The focus of local housing authorities is on the private rented sector although overall there appears to have been a slight drop in the number of Category 1 hazards identified over the years. The level of enforcement activity using the 2004 Act does also seem to be continuing at a relatively low level by comparison with the scale of the problems in the PRS. The overall picture on enforcement is patchy in the extreme and while some authorities use their powers extensively some hardly use the powers at all. That variation is between authorities of similar type and so it is not a question of all the activity being in urban areas, as some unitary authorities use the powers less than more rural districts, and the same variation was identified between London Boroughs.

The argument put forward by some officers is that they achieve a great deal by “informal” means or other legislation. Given that Part 1 of the Housing Act 2004 is specifically about protecting the health and safety of occupiers, this raises two points. First, how can the effectiveness of this work be assessed when it comes to the health and safety of occupiers (and also raises issues of accountability). Secondly if the landlords are so amenable that they do what the officers advise, it could indicate that they are not targeting the bad landlords in the PRS.

Many local authorities are unable to say what improvements have been achieved via licensing, that is, they are not assessing outcomes even though some argue that licensing is a better regime. That said some have clearly used licensing extensively to achieve improvements.

From the evidence of this exercise it is apparent that for too many tenants the local housing authority is not providing the help and support they might reasonably expect to improve the conditions in which they live.

Introduction

This report is the third report following Freedom of Information requests by Karen Buck MP to local housing authorities (LHAs), the previous two reports were published in 2011 and 2015¹² and this report refers to some of the results from the previous exercises. This report has been compiled to provide supporting evidence for the Homes (Fitness for Human Habitation) Bill, scheduled for its Second Reading on 19 January 2018 and to demonstrate that for all their efforts, LHAs alone cannot deal with recalcitrant landlords.

The previous reports noted the low level of activity utilising the provisions in Part 1 of the Housing Act 2004 which are intended to protect the health and safety of occupiers (most usually tenants). Although the provisions in Part 1 of the Act are tenure neutral, they are generally thought to be rarely used against owner-occupiers and indeed it is not possible for LHAs to take action where they are also the owner and landlord³.

In discussions on enforcement prompted by previous reports local housing authority officers have maintained that they use a wide range of provisions to secure improvements to housing conditions and regulation of the PRS, not just the 2004 Act. Examples of these provisions include statutory nuisance in Part III of the Environmental Protection Act 1990, the Building Act 1984, the licensing regime(s) in the 2004 Act and financial support (under The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002). This study however is primarily concerned with the legal provision that is focused unequivocally on safeguarding the health and safety of occupiers – Part 1 of the Housing Act 2004. However because for some authorities licensing is seen as the best and most effective means of regulating the PRS, this survey considers the role of licensing in securing improvements in conditions.

The emphasis on Part 1 of the 2004 Act is also seen as appropriate because since publication of the previous reports, there have been changes to the legislation primarily the Deregulation Act 2015 to seek the prevention of retaliatory eviction, and also changes brought in by the Housing and Planning Act 2016, such as civil penalties for certain offences and wider application of Rent Repayment Orders. However all these changes, intended to address problems of “rogue landlords” (better termed bad or criminal landlords) depend to a large extent upon authorities using the provisions of Part 1 effectively, and being more prepared to use the provisions in the legislation fully. That is to use more “formal” action than the “informal” approach that appears favoured by many officers in local housing authorities. The years covered by this survey pre-date the coming into effect of provisions such as civil penalties and so it is not possible to assess the impact of most of these legal changes, but as civil penalties are an alternative to prosecution and will require the same level of preparation, the results provide a pointer as to how the provisions will be used, and also to better assess their impact in the future.

¹ http://www.sabattersby.co.uk/documents/HHSRS_Are%20tenants%20protected.pdf

² <http://www.sabattersby.co.uk/documents/KBReport2.pdf>

³ As the result of the decision in *R v Cardiff City Council ex p Cross* (1982) 6 H.L.R.

Method

A letter and questionnaire (see Annex 1) was distributed to LHAs in September from the office of Karen Buck MP and the staff of her office with a view to returns being made by the end of October.

The questionnaire was designed in the light of comments and experience from the previous surveys, so as to simplify completion and therefore make it more likely to achieve an increased response rate. Unlike previous surveys it did not cover numbers of inspections, but given that staffing levels were said to be reducing introduced a question on staff involved on inspecting dwellings. The question about Category 1 hazards was increased from previous versions. Two criteria were used to decide the questions, firstly the number of Category 1 hazards in the English Stock as identified by the EHS and secondly those hazards considered as indicative of poorer conditions and less responsible or more exploitative landlords. Carbon Monoxide and products of combustion was included because of the second criterion as was Crowding and Space, although this had been included in previous surveys as it was seen as an increasing problem in the PRS. "Other" hazards was included to provide a more accurate picture of the total number of Category 1 hazards found by officers and to compare with the level of action under Part 1 of the 2004 Act. It was not considered practicable to include all hazards individually (all 29 possible hazards are listed at Annex 2).

Given that for some LHAs licensing is seen as the better way to regulate the private rented sector a question was included to assess the impact of licensing as a way of improving conditions.

Findings and Results

Further tables can be found at Annex 2, this section includes some of the key findings.

All 326 LHAs were contacted and there were 263 responses with information although not all respondents were able to provide numbers on all the questions, either because it was not known or was not readily available.

Staffing

According to the responses received the total number of staff engaged (directly or indirectly) by the authority to inspect properties appears actually to have increased over the three years covered by the survey. This seemed to be contrary to general understanding of the situation.

Table 1: Staffing by EHOs and others

	2014/15			2015/16			2016/17		
	All	EHOs	Other	All	EHOs	Other	All	EHOs	Other
Total	1563.5	703.8	725.0	1608.9	728.3	733.1	1611.0	726.7	767.8
Average	5.9	2.7	2.8	6.1	2.7	2.8	6.1	2.8	3.0
Median	4.0	2.0	1.5	4.0	2.0	1.5	4.0	2.0	1.5

What is hidden in these figures is that for the years in question, around 36 of the respondents said that none of their staff carrying out inspections were qualified

environmental health officers (for 2016/17 the figure was 38). The number of authorities responding that they did not employ other staff to carry out inspections showed a small decline from 67 to 63 over these three years.

Hazards

The main thrust of action by local housing authorities is necessarily on private rented sector housing, but Part 1 of the 2004 Act applies equally to housing association properties. Part 1 refers to Category 1 and Category 2 hazards. The Housing Health and Safety Rating System (HHSRS) lists 29 possible hazards (Annex 2), and is the prescribed means of assessing the severity of risks arising from deficiencies in dwellings and thence whether Category 1 or Category 2 hazards are present. Table A1 sets out the information on the Category 1 hazards (the most serious and which would mean the dwelling does not meet the Decent Home Standard) that LHAs found in housing association dwellings.

Table 2: Category 1 Hazards in the Private Rented Sector Identified

		Fire	Excess Cold	Damp & Mould	All Falling hazards	CO etc	Crowding & Space	Other	Total All Cat 1 Hazards
2014/15 n=129	No. LHA responses	129	129	129	128	128	129	129	10,110
	No. of "0" responses	39	28	49	44	104	86	47	
	Total no. hazards	1847	2600	1445	1290	53	440	2435	
	Average*	14	20	11	10	<1	3	19	
	Median	3	7	2	1	0	0	2	
2015/16 n=134	No. LHA responses	134	134	134	133	133	134	134	11,132
	No. of "0" responses	40	30	45	51	97	81	45	
	Total no. hazards	2115	2872	1318	1523	149	478	2677	
	Average*	16	21	10	12	1	4	20	
	Median	3	7	2	2	0	0	3	
2016/17 n=137	No. LHA responses	137	137	137	137	136	136	137	10,003
	No. of "0" responses	36	28	46	44	105	87	42	
	Total no. hazards	2002	2561	1093	1347	103	374	2523	
	Average*	15	19	8	10	<1	3	18	
	Median	3	6	1	2	0	0	3	

* Rounded to nearest whole number

Figure 1: 2014-2017

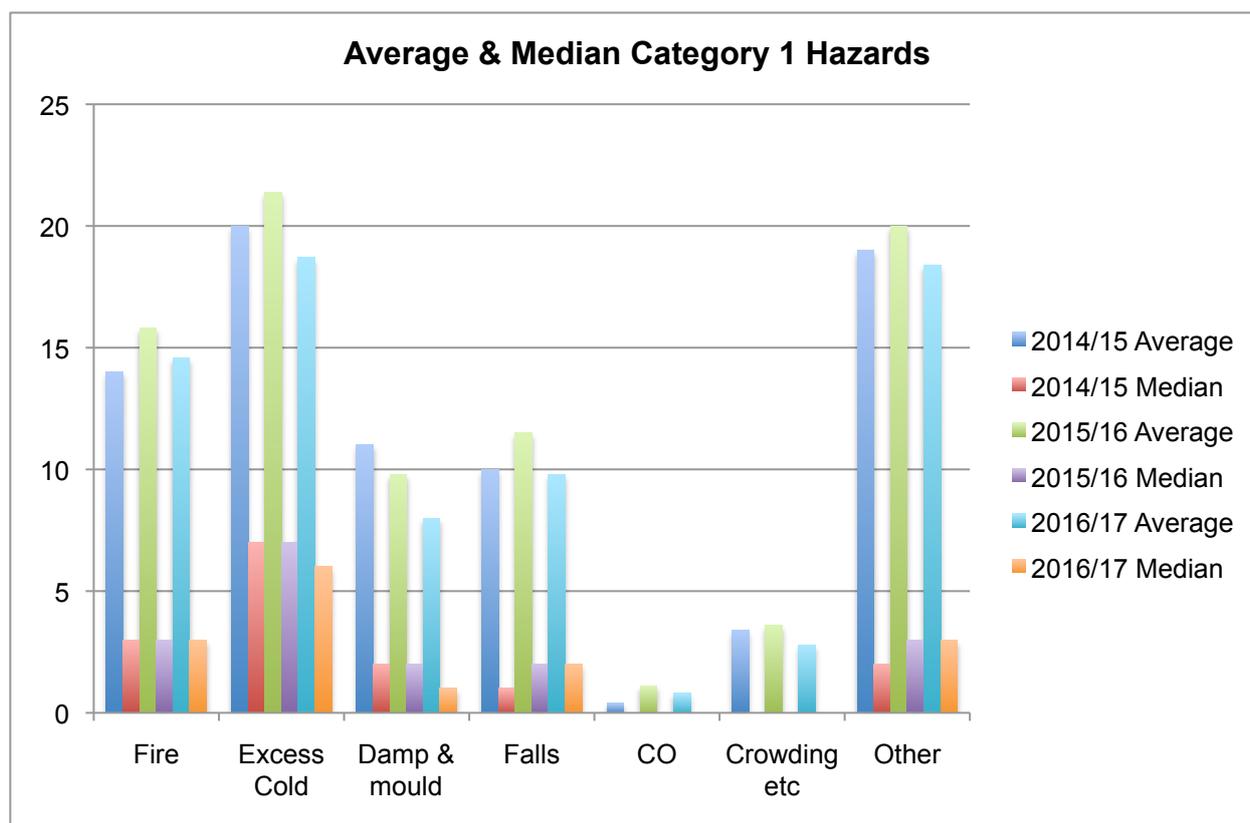


Figure A1 in Annex 3 indicates the changes over time of the Category 1 hazards identified by local housing authorities.

Enforcement Action

Some 255 responses were received when asked about Improvement Notices, Table 3 provide the basic information. It should be noted that this question asked for notices whether for Category 1 or Category 2 hazards (that is regardless of whether served under s.11 or s.12)

Table 3 Improvement Notices served

	2014/15	2015/16	2016/17
“0” notices	54	49	49
Total	3181	3570	3366
Max served by any LHA	312	411	292
Average*	12	14	13
Median	3	4	5

* rounded to nearest whole number

Between 58 and 59 left at least one year blank and between 9 and 12 could not provide the information either with N/K (not kept) or N/A (not readily available)

The maximum number of Improvement Notices served by any single authority was 411 in 2015/16. In 2016/17 the maximum served by a single authority was 292

Table 4 Prohibition Orders

	2014/15	2015/16	2016/17
“0” Orders	124	111	108
Total	856	967	766
Max made by any LHA	112	98	34
Average*	3	4	3
Median	1	1	1

*rounded to nearest whole number

Between 61 and 63 respondents left at least one year blank and between 4 and 11 respondents could not provide the information for at least one year by responding N/K or N/A.

Table 5 Emergency Action

		2014/15	2015/16	2016/17
Emergency Prohibition Order	0 made	172	172	174
	Total	248	292	302
	Max made by any LHA	25	40	27
	Average	<1	1	1
	Median	0	0	0
Emergency Remedial Action	0 used	184	187	194
	Total	202	206	146
	Max by any LHA	20	19	12
	Average	<18	<1	<1
	Median	0	0	0

* rounded to nearest whole number

There were 63-64 blank responses & 4-8 responded with N/K or N/As

Table 6 Hazard Awareness Notices

	2014/15	2015/16	2016/17
LHAs where 0 served	126	115	122
Total	1749	2007	1702
Max served by any LHA	188	254	234
Average*	7	8	7
Median	1	1	1

* rounded to nearest whole number

Some 63-64 respondents left blanks and between 4 and 6 respondents responded N/K or N/A

The question was asked about other action to remove Category 1 or Category 2 hazards. In the Act there are no other actions other than those in the Act, and Category 1 and Category 2 hazards are not referred to in any other legislation. However this was included because in the previous exercises authorities have said they have used “informal” action.

Table 7 Other action

	2014/15	2015/16	2016/17
“0” responses	188	183	178
Total	3810	4241	3769
Max response for any LHA	713	756	580
Average	16	17	15
Median	0	0	0

* rounded to nearest whole number

There were 8 N/K or N/A for 2014/15 and 7 such responses for two subsequent years

There were 65 blanks for every year

Table 8 Action on single household dwellings

	2014/15	2015/16	2016/17
Responses	188	193	194
Total	3588	3945	4156
Average*	19	20	21
Median	3	5	4

* rounded to nearest whole number

Improvements via licensing

Looking at additional and selective licensing, respondents indicated they had additional or selective licensing schemes operating in their areas as follows:

2014/15 36 LHAs (14% of those responding)

2015/16 41 LHAs (16% of those responding)

206/17 50 LHAs (19.5% of those responding)

Some 62 authorities did not respond to this question and around 5 did not know or the information was not available.

Table 9 Improved number of bed spaces secured via all licensing regimes

	2014/15 (n=154)	2015/16 (n=155)	2016/17 (n=159)
Total bed spaces improved (no.)	6238	6817	10875
Response as “0”	92	87	80
Max for single LA	845	929	2349
Average*	41	44	68
Median	0	0	0
N/K or N/A	104	103	99

* rounded to nearest whole number

There were 63 non-responses to the question

Table 10 Prosecutions for failure to comply with notice under Part 1

	2014/15	2015/16	2016/17
Total prosecutions (No.)	145	174	283
LHAs with 0 prosecutions in year No. (%)	202 (80)	187 (73)	182 (71)
Average*	<1	<1	1
Median	0	0	0

* rounded to nearest whole number

Between 8 and 12 respondents entered N/K or N/A

There were 60 non-responses to the question

Table 11 Work in Default where failure to comply with notice under Part 1

	2014/15	2105/16	2016/17
Never	197	195	187
Total	175	171	215
Maximum in any year by LHA	43	34	58
Average	<1	<1	<1

n=244

There were 63 non-responses and between 16 and 18 responded N/K and N/A

Discussion

On the question of staffing the results indicate that there has not been a significant reduction in the number of staff involved in inspecting housing. On the contrary there has been a slight increase. It might be that the “cuts” in staff that have been reported may have occurred in the years between 2010 and the years covered by this survey, and the question was not asked in previous Fol exercises. This increase is to be welcomed given the increased size of the PRS, although much of the increase is in other staff rather than qualified environmental health officers (EHOs) and this raises questions of training and competence. While all EHOs will have received training in the HHSRS as a matter of course, it is not known what training or competence the “other” staff will have. What is perhaps an even greater concern is that in 38 responding LHAs (14.5%) no qualified EHOs were involved in inspecting dwellings. This raises further questions on competency of officers and effective use of Part 1 of the 2004 Act.

There is an argument as put forward in the recent report by the Law Schools of Bristol and Kent⁴ commissioned by Shelter, that that there should be increased training opportunities on the HHSRS and regular training and updating opportunities for all those involved in the 2004 Act should be made a CPD requirement. As CPD is only a requirement for members of the CIEH, perhaps this ought to be made mandatory for all officers involved. It should be noted that when the new system came into force all authorities were provided with free training for their officers. Even if these officers are still involved with this area of work, there is a need for regular updating including on health and housing research (as the Operating Guidance itself makes clear).

There is also a concern that the argument sometimes put forward; that improvements can be achieved other ways than through enforcement (though outcomes seem not to be well measured) reflects a lack of confidence either by managers or officers themselves involvement in a legal process. That is, a process that might entail either appearance in court (should they choose to enforce a Notice or Order) or in the First-tier Tribunal (or Residential Property Tribunal in Wales) that will necessarily require them to substantiate their judgement.

Table 2 and Figure 1 show a reasonably consistent picture on the number of hazards identified. That “other hazards” have been identified with a similar frequency to Excess Cold is interesting and more than the falling hazards. English Housing Survey results show that falling hazards are the most numerous in the housing stock, but that is not reflected in these findings. There are 20 other hazards not covered specifically in this Fol request (there are four individual falling hazards but these have been grouped together as they are in EHO reports) and so it would be interesting to ascertain which specific hazards that authorities have identified. Taking Figure A1 into account it does seem that over time fewer Category 1 hazards have been identified. The question again arises whether this is a reflection of staffing issues considered above and whether the

⁴ Carr H, Cowan D, Kirton-Darling E & Burtonshaw-Gunn E. (2017) *Closing the Gaps: Health and Safety at Home*, University of Bristol and University of Kent – available at [http://www.bristol.ac.uk/media-library/sites/law/Closing%20the%20gaps%20-%20Health%20and%20Safety%20at%20Home%20\(amended\).pdf](http://www.bristol.ac.uk/media-library/sites/law/Closing%20the%20gaps%20-%20Health%20and%20Safety%20at%20Home%20(amended).pdf)

HHSRS is being used properly to reflect housing conditions. This question arises because the number of Category 1 hazards in the PRS has remained relatively static.

The English Housing Survey 2015-16 (Housing Stock Annex Table 2.1⁵) indicated that the PRS contains about 4.74 million dwellings and the EHS has estimated from the sample survey that 17% have a Category 1 hazard. The Private Rented sector report suggests that 795,000 PRS dwellings have a Category 1 hazard. Given that 17% of 4.74 million is a greater figure it can be estimated that of the order of 800,000 PRS dwellings have a Category 1 hazard. For the three years using the averages from these returns (dividing the total number of Category 1 hazards reported by the number of returns) it would seem that all authorities identify between 24,000 and 27,000 Category 1 hazards a year. By comparison with the total number of such hazards that is a small figure, and in the private rented sector alone it would take 28 years to identify all the Category 1 hazards existing in the PRS at the present time.

Tables A1 and A2 illustrate that LHAs focus their attentions on the Private Rented Sector even if the figures of hazards identified are small by comparison with the number of Category 1 hazards in the stock as a whole. Numerically the owner-occupied sector has more Category 1 hazards – around 1.874million, about two and half times the number in the PRS.

The distribution of Category 1 hazards identified does not reflect the distribution of hazards in the housing stock. The EHS indicates that all falling Category 1 hazards combined would be numerically the greatest (it is estimated that there are more Falling on Stairs Category 1 hazards alone) followed by Excess Cold. In the stock as a whole there are numerically fewer Damp and Mould Category 1 hazards (around 53,000) than other hazards such as Radon, Flames and Hot Surfaces. The numbers revealed by this survey indicate, probably understandably that Excess Cold is the most frequently identified Category 1 hazard. That said, while Fire is about the fifth most common hazard (more than 128,000) LHAs report finding many more Category 1 hazards for Fire than all falling hazards. This might be because of the nature of the dwellings being inspected, possibly those in multi-occupation but also the distribution of hazards in the EHS is for the whole stock not just the private rented sector. Figures in Table 8 do seem to indicate that while the majority of actions under Part 1 relate to single household dwellings, the provisions are used in HMOs, certainly by some authorities in a good number of occasions, although as ever the picture is variable. The EHS does report that dampness is more likely to be found in the PRS (9%) than other sectors. That said, although some form of dampness will affect more than 400,000 homes in the PRS, the number of Category 1 damp hazards is far fewer.

The Fol request does not identify how authorities came to inspect the dwellings, but it does seem likely that the most likely reason is complaint from an occupier. This would also perhaps explain why Damp and Mould is found more frequently than would be the case if the results here more closely matched the distribution in the stock as a whole. Where Part 1 is used in HMOs, LHAs will also inspect as the result of the relevant licensing regime, even if it is a separate provision and absence of a Category 1 hazard

⁵ <https://www.gov.uk/government/statistics/english-housing-survey-2015-to-2016-headline-report> (Section 2 Housing Stock Tables)

is not a requirement for licensing, many authorities will inspect during the period of the licence if not before the licence is granted.

Also the range of number of hazards identified points to a wide variation in activity even allowing for different numbers of private rented housing in different authorities. For example in 2014/15 one London Borough identified 95 Category 1 Excess Cold hazards, another inner London Borough reported finding only 9 and in 2016/17 the same boroughs reported identifying 60 and 24 such hazards. While it is clear that 50% of LHAs reported finding fewer than six Category 1 hazards for Excess Cold in 2016/17, one LHA reported it had identified 168. There is clearly some variation across LHAs on how they identify hazards, as well as whether they are able to readily access information on which hazards have been found and remedied (one presumes).

Given that public health has returned to local government it is surprising that so many local housing authorities still cannot easily access the number of hazards identified. Identifying hazards and remedying them is a practical way for local housing authorities to demonstrate their contribution to improved public health.

However what is marked is the number of actions under Part 1 of the 2004 Act are fewer in number than the number of Category 1 hazards that have been identified even though the Part 1 actions could include those where there are Category 2 hazards. That said in the worst properties there could be several Category 1 hazards that could appear on a single notice. The variation in activities by authorities is again demonstrated by the information provided. While in one year a LHA could report serving 411 Improvement Notices, many served none, and the median of four for that year and an average of 14, per LHA is indicative of the widely differing approaches to dealing with Category 1 hazards, and it can be inferred that some LHAs will be in breach of their statutory duty to take one of the courses of action in Part 1 of the 2004 Act when a Category 1 hazard has been identified. Looking at the figures for 2016/17 this variation is highlighted and also that action does not seem to reflect hazards identified, an average of 13 Improvement Notices were served (maximum 292) but a median of 5. In the same year one LHA reported making 34 Prohibition Orders, but the average was 3 and median of 1 so around half the LHAs did not make a Prohibition Order. It should be remembered that this question asked about all such actions, and these can be used where there is a Category 2 hazard and the LHA has used its discretion to act to remedy the hazards.

Where there is a Category 1 hazard and imminent risk of serious harm the LHA can take emergency action. The majority of LHAs did not use this provision although one LHA used the Emergency Remedial Action provision 12 times, and similarly with Emergency Prohibition Orders, where there was an average of 1 but the vast majority of LHAs did not use the provision although one LHA reported using it in 27 instances.

It is apparent that despite there being a wide range of options available under Part 1 of the 2004 Act that allows local authorities to take action proportionate to the risks, "other" action is used with considerable frequency by some local authorities. Experience indicates that for many officers they still use "informal" action e.g. a letter to notify a landlord of deficiencies and it is only when this does not elicit a positive response is consideration given to any formal action. That leaves tenants vulnerable to retaliatory eviction or at best living in hazardous conditions longer than is necessary.

If there is a reluctance to use the provisions that could involve appeals to the First-tier Tribunal it might be expected that Hazard Awareness Notices might be used more frequently and also in situations where the landlord is cooperative when contacted by the LHA. Such a notice cannot be appealed, but it does not create the potential for an offence if there is non-compliance. However this provision is used rarely if at all, by most authorities, although some clearly make great use of the provision. In 2016/17 one LHA served 580 Hazard Awareness Notices, and yet the average was 15 and the median was 0.

In very few cases was the landlord a registered provider and looking at all respondent the total number of occasions in any year was around 200 with an average of 1. For most LHAs they would never appear to use the provisions of Part 1 against housing associations, although again some authorities are more willing to use the law against registered providers; with one LHA using the provisions of Part 1 on 58 occasions in 2016/17. It might be that there is a particularly poor performing social landlord in the area, as another LHA in the same region used the provisions on 16 occasions. This is perhaps another argument for LHAs collecting and sharing intelligence as this information is unlikely to be collected (or used) by the Homes and Communities Agency.

It is apparent that after 10 years of the legal provisions being in force and in the light of experience and legal changes the statutory Enforcement Guidance needs reviewing and updating. It is also clear that the need to use the legislation as Parliament intended (and still intends given the changes in the 2016 Act) has to be underscored. If DCLG does undertake this review exercise it will also need to demonstrate a clear reconciliation between the legal requirements in the 2004 Act with the notion of “better regulation” and the Regulators’ Code⁶ from BRDO which seems to provide LHAs with a reason to take a “softly softly” approach when it is not appropriate. Given that Part 1 is a risk based and proportionate approach that should not be difficult.

Although this exercise did ask about action in the owner-occupied sector, and indeed Part 1 can and has been used where there are owner-occupiers, the responses indicate that this a rare

An argument put forward by officers is often that counting outputs such as notices is no reflection of outcomes and the number of homes that are improved by other means. This might be so, but this study is focussing on the use of Part 1 and is not examining all LHA actions on housing. However it seems that the arguments put forward by officers of authorities fail on a number of counts. From the evidence of the FoI surveys information is often incomplete and or unavailable even for action under the law and where there are clear statutory duties, so it is hard to see how other action to secure improvements can be substantiated. While there might be a desire to avoid becoming (or returning to) the “sanitary police” role, conditions in much of the PRS necessitate a more intelligent and firmer approach starting with identification of the criminal landlords. It does also seem that there is a failure to understand the role of the law and the need for accountability. It also seems that officers are failing to consider the needs of tenants,

⁶ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

with the transaction merely between the officer and landlord, with the tenant whose home it is being ignored. Officers of LHAs do need to be accountable and to be able to demonstrate their contribution to improving the health of local communities and why some legal or other tools are better and more effective than others. Finally it can waste time and leave tenants exposed to a hazard while discussions continue in their absence. As the report from Bristol and Kent Law Schools has also concluded “ultimately, though, the HHSRS can only be an effective tool in delivering better housing standards if it is properly resourced and there is a cultural shift which means that all local housing authorities take the duties and the powers available to them under the Act seriously. The author here draws the same conclusion based on more than the results of this survey.

Prosecution levels do not provide the full picture of LHA activity to deal with unhealthy or unsafe housing conditions, however they are a pointer to whether or not the worst and possibly criminal landlords are being found and dealt with. In addition given that the same amount of work and evidence gathering will be required to make use of the civil penalty provisions, these figures do present a “base” from which to assess the impact of civil penalties. As has been the case in previous surveys, Table 10 shows there are relatively few prosecutions, with the vast majority of authorities never taking a single prosecution in any year, although that number does appear to have fallen slightly (to 71% in 2016/17 from 80% in 2014/15). It is perhaps indicative of the reluctance by most LHAs to prosecute that two London Boroughs took 94 (33%) of the reported total of 283 prosecutions in 2016/17. If, as has been argued, all the landlords comply with the Notices or Orders, then could it be that the worst landlords and worst conditions are being missed? It is highly possible that if authorities rely only on complaint then tenants of these landlords will not complain and will be left in unsafe housing.

The wide variation in the use of the powers available under the 2004 Act are also demonstrated by the use of “work in default” which LHAs can use as well as prosecution (or indeed rather than prosecute). This provision can be used where there is non-compliance with an Improvement Notice. Again the vast majority of LHA do not use this (and if no Notice has been served they cannot use it although the works can be carried out “by agreement”). In 2016/17 this power was used on only 215 occasions and one LHA reported using it on 58 occasions. While the costs of doing this to remedy the hazards might be considered prohibitive coupled with the efforts to recover those costs from landlords, in truth the cost of remedying many Category 1 hazards should not be daunting. High risk does not equate to high costs. For example BRE has estimated that the average cost per dwelling of remedying Category 1 Excess Cold is £4,574, and for Falling on Stairs £857, for Fire the average cost would be £3,632⁷.

In order to provide some comparison with the use of Part 1 and licensing regimes the question was asked about the number of bed spaces improved as the result of licensing. The use of this term is because every local housing authority should have dealt with HMOs covered by the national licensing regime (currently three storeys and five occupiers). This could mean for example that in one house, there are five individual households and so improving one property could improve the conditions for five

⁷ Nicol S, Roys M, Garrett H. (2015) *The cost of poor housing to the NHS – briefing paper*, BRE Trust, Watford

households. Although as has already been indicated because licensing (under Parts 2 and/or 3) and Part 1 are supposed to be kept as two separate regimes, a licensed property is not necessarily free of all Category 1 hazards. It so happens that conditions attached to a licence could coincidentally reduce or remedy a hazard. This has always seemed a bizarre and unexplained provision⁸. At first sight it seems a substantial number of bed spaces have been improved via all licensing, with an average number of 68 bed spaces per authority in 2016/17 a considerable increase on the previous two years. This does however hide other issues, the median is 0, so half reported no improved bed spaces as the result of licensing but the maximum reported by an authority is 2349. So one authority reported more than 20% of the total number and a further 99 of responding LHAs (62%) could not say how many bed spaces had been improved as the information was either not known or not readily available. The lack of such information rather undermines the argument by some officers that surveys such as this should focus on outcomes – the improved living conditions that have been achieved.

Conclusion

This exercise provides an insight into the work of LHAs so far as identifying the risks to health and safety in rented homes. The picture that the results paint is one of great variation and this cannot be explained wholly by the differences between authorities as there are clear variations between authorities of similar types and geography, for example some London Boroughs use the powers under the 2004 Act extensively while others do not, and it is the same picture so far a metropolitan and unitary authorities are concerned.

If the powers that have been brought in and will be brought in by the Housing and Planning Act 2016 are to be used effectively and protect tenants in the PRS (and be fair to responsible landlords) then LHAs will need to review their approaches to the PRS and this must include a cultural change. There is a real need for a paradigm shift.

From the evidence of this exercise it is apparent that, while some authorities are using the powers, but for too many tenants, and perhaps those most vulnerable to exploitative landlords, their local housing authority is not providing the help they might reasonably expect. This is a matter of health inequity that has to be addressed.

Local housing authorities and their officers will argue that it is a matter of resources or lack of them, but the picture on enforcement has been similar from before the changes brought in by the 2004 Act. Yet since that time the private rented sector has grown substantially so that it is now larger than the social rented sector. The information in this study indicates that if there has been a decline in the staff dealing with house inspections has reduced since 2004 then that decline has stopped and may have even reversed, but what is needed is for those staff to have the confidence and competence to deal effectively with housing conditions.

It is sometimes argued that the HHSRS is too complicated, too subjective and the Operating Guidance out of date. What is meant it seems is that the statistics in the hazard profiles (used to demonstrate the evidence to support the development of the

⁸ Housing Act 2004 s.67(4)

system), refer to data from the end of the 1990s. That may be true, but the system would or should work without those figures, as demonstrated in the USA⁹, and indeed there was some debate during the drafting of the Guidance whether they should be included at all, but they do provide “context” and a reference point. The Operating Guidance does also say that officers need to keep up-to-date with housing and health research whether they do or not is a moot point but there are means for doing so¹⁰ and this is perhaps a role for the Chartered Institute of Environmental Health too. As for the complexities and whether it is subjective, research has shown that under the previous regime whether or not a dwelling was unfit hinged on a decision on if it was “reasonably suitable for occupation” which was an even more subjective test and led to great variations on “unfitness”¹¹. The HHSRS provides more guidance than ever existed for unfitness, but the HHSRS does rely on rational “professional judgement” – it is not a “tick box” system – and this requires the officers to be well-informed and knowledgeable, and this perhaps requires some regular training perhaps as part of a Continuing Professional Development regime

So the results do perhaps also pose a challenge to professional bodies as well as local housing authorities. They also demonstrate why it is necessary to provide tenants (in any sector) with a route of redress when the authority is unable to intervene on their behalf to secure remedies for unsafe and unhealthy housing conditions.

⁹ See: https://www.hud.gov/program_offices/healthy_homes/hhrs

¹⁰ See: <http://www.housinghealth.com/> also accessible to members of the Royal Society for Public Health

¹¹ DoE (1993) *Monitoring the New Housing Fitness Standard* HMSO

Annex 1 – Freedom of Information Request

14 September 2017

Dear Sir/Madam,

I am writing to request the information specified in the enclosed table under the 2000 Freedom of Information Act. The questions addressed to local authorities refer to housing standards enforcement.

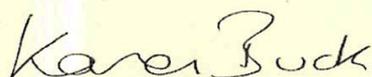
The answers are requested across the following financial years: 2014/15, 2015/16, 2016/17. If the information is/was held but is not available or accessible insert N/A in the appropriate cell. If the information is/was not kept insert N/K in the relevant cell. If questions cannot be answered because the cost of doing so is deemed to be unreasonable, please provide answers up until this point in the order they have been asked.

For Question 2, please provide the number of each type of hazard across the given categories of accommodation for all three years:

(e.g. 2a. *Social Housing, 2014/15: F: 25 EC: 10 DM: 13...etc.*)

Please send responses to Karen Buck MP, Member of Parliament for Westminster North. House of Commons, London SW1A 0AA. Alternatively, responses can be sent by email to james.mcgowan@parliament.uk. Wherever possible, please provide answers in the format provided.

Yours sincerely



Karen Buck MP

		2014/15	2015/16	2016/17
1	a. How many staff were employed (directly or indirectly) by the Local Authority to inspect properties?			
	b. Of these, how many were qualified Environmental Health Officers?			
	c. Of these, how many were other staff?			
2	In the following categories of accommodation (both single households and houses in multiple occupation/HMOs), identify the number of homes assessed as Category 1 hazards using the key: Fire=F, Excess Cold=EC, Damp and Mould=DM, Falling Hazards=FH, Carbon Monoxide (and products of Combustion)=CM, Crowding and Space=CS, Other=O			
	a. Social Housing	F: EC: DM: FH: CM: CS: O:	F: EC: DM: FH: CM: CS: O:	F: EC: DM: FH: CM: CS: O:
	b. Private Rented Sector	F: EC: DM: FH: CM: CS: O:	F: EC: DM: FH: CM: CS: O:	F: EC: DM: FH: CM: CS: O:
	c. Owner-occupied	F: EC: DM: FH: CM: CS: O:	F: EC: DM: FH: CM: CS: O:	F: EC: DM: FH: CM: CS: O:
3	How many of the following actions were taken under Part 1 of the 2004 Housing Act, whether for Category 1 or Category 2 hazards (s.11 &/or s.12)?			
	a. Improvement Notice (including suspended notices)			
	b. Prohibition Order (including suspended notices)			
	c. Emergency Remedial Action			
	d. Emergency Prohibition Order			
	e. Hazard Awareness Notice			
	f. Other			
4	In how many of the above instances (Q3) was the person having control a registered provider (Housing Association)?			
5	Of the actions at Q3, how many were related to single household dwellings?			
6	Number of Prosecutions for offences under Part 1.			
7	On how many occasions was 'work in default' of compliance with an Improvement Notice carried out (including by agreement)?			
8	a. Does the local authority have additional licensing or selective licensing for any of the years YES/NO.			
	b. Whether or not there has been additional or selective licensing, how many units of accommodation have been improved by conditions attached to licences under Part 2 or Part 3 of the Housing Act 2004?			

Annex 2 – HHSRS Hazards

A PHYSIOLOGICAL REQUIREMENTS

Hygrothermal Conditions

- 1 Damp and mould growth
- 2 Excess cold
- 3 Excess heat

Pollutants (non-microbial)

- 4 Asbestos (and MMF)
- 5 Biocides
- 6 Carbon Monoxide and fuel combustion products
- 7 Lead
- 8 Radiation
- 9 Uncombusted fuel gas
- 10 Volatile Organic Compounds

B PSYCHOLOGICAL REQUIREMENTS

Space, Security, Light and Noise

- 11 Crowding and space
- 12 Entry by intruders
- 13 Lighting
- 14 Noise

C PROTECTION AGAINST INFECTION

Hygiene, Sanitation and Water Supply

- 15 Domestic hygiene, Pests and Refuse
- 16 Food safety
- 17 Personal hygiene, Sanitation and Drainage
- 18 Water supply

D PROTECTION AGAINST ACCIDENTS

- 19 Falls associated with baths etc
- 20 Falling on level surfaces etc
- 21 Falling on stairs etc
- 22 Falling between levels

Electric Shocks, Fires, Burns and Scalds

- 23 Electrical hazards
- 24 Fire
- 25 Flames, hot surfaces etc

Collisions, Cuts and Strains

- 26 Collision and entrapment
- 27 Explosions
- 28 Position and operability of amenities etc
- 29 Structural collapse and failing elements

Annex 3 – Additional Tables and Figures

Table A1 – Category 1 Hazards in housing association dwellings

109 responses other than N/K or N/A for any year

		Fire	Excess Cold	Damp & Mould	All Falling hazards	CO etc	Crowding & Space	Other
2014/15	Total Cat 1 Hazards	21	85	74	54	12	40	107
	LHAs responding 0 (%)	89	76	81	85	94	84	81
	Average per LHA in year*	<1	<1	<1	<1	<1	<1	1
2015/16	Total Cat 1 Hazards	23	96	78	42	5	55	83
	LHAs responding 0 (%)	92	78	80	87	95	88.0	82
	Average per LHA in the year*	<1	<1	<1	<1	0	<1	<1
2016/17	Total Cat 1 hazards	20	89	71	48	3	67	60
	LHAs responding 0 (%)	93	79	83	88	97	86	88
	Average per LHA in the year*	<1	<1	<1	<1	0	<1	<1

No median is included as that is 0, with so many LHAs responded 0

* Included for comparison as not possible to have less than a whole number and rounded to nearest whole number as appropriate

Table A2 – Category 1 Hazards in owner-occupied dwellings

99 responses other than N/K or N/A for any year

		Fire	Excess Cold	Damp & Mould	All Falling hazards	CO etc	Crowding & Space	Other
2014/15 n=99	Total Cat 1 Hazards	98	349	94	86	1	5	257
	LHAs responding 0 (%)	86	63	75	81	99	97	74
	Average per LHA in year	1	4	<1	<1	0	<1	3
2015/16 n=102	Total Cat 1 Hazards	102	313	67	78	5	5	262
	LHAs responding 0 (%)	85	66	82	82	98	97	76
	Average per LHA in the year	1	3	<1	1	0	0	3
2016/17 n=104	Total Cat 1 hazards	112	295	108	104	3	7	268
	LHAs responding 0 (%)	87	64	82	83	97	97	81
	Average per LHA in the year	1	3	1	1	<1	<1	3

No median is included as that is 0, with so many LHAs responded 0

* Included for comparison as not possible to have less than a whole number and rounded to nearest whole number as appropriate

The figures are skewed further by a small number of local authorities identifying a substantial number of Category 1 hazards, for example one LHA alone identified 52 Category 1 falling hazards in 2014/15, in 2016/17 the maximum identified by a single authority was 69. For Excess Cold, similar maxima were 72 and 80 for those years.

Figure A1 Private Rented Sector over time

