



The Enforcement Lottery: Local authority inspections and notices

James Wood and Sam Watkin, February 2022

Working Paper Series

The NRLA's Working Papers is an occasional series highlighting policy development, and research in the Private Rented Sector (PRS).

The NRLA welcome contributions from policy makers, academics, and representatives of agencies with an interest in the PRS.

Executive Summary

Key findings

- More than half of local authorities were unable to provide accurate numbers for complaints about the PRS. Where local authorities could provide this information, they dealt with an average of 274 complaints about the PRS each year.
- Local authorities performed an average of 135 HHSRS inspections per year, significantly below the average number of complaints. Activity varied substantially, with 25 local authorities responsible for 50% of all HHSRS inspections.
- Local authorities do classify and record HHSRS inspections differently, making it difficult to accurately assess enforcement work around property conditions.
- 3,679 improvement notices are issued annually, with 9% of HHSRS inspections leading to an improvement notice. However, usage of this notice is concentrated, with 20 local authorities responsible for 50% of notices.
- Two local authorities performed most of the emergency remedial actions over the last three years. Over half performed no emergency remedial action at all.
- Follow-up enforcement is extremely low with around 1% of HHSRS inspections leading to criminal prosecution.

Key recommendations

- The Department for Levelling Up, Housing and Communities (DLUHC) should take the lead on standardising data collection on complaints and inspections rates. It should look again at a national benchmark scheme for local authorities, requiring them to report to DLUHC on the outcomes of all enforcement activities.
- DLUHC should work with local authorities to identify why inspections rarely lead to prosecutions or civil penalties being issued. In particular, they should look at the costs of enforcement, the complexity of the legislation, and the value of informal enforcement action. They should then use this information to develop a holistic strategy around enforcement in the PRS.
- DLUHC should identify high performing local authorities and ask them to share best practices with other local authorities to improve outcomes across England.

Contents

Executive Summary	2
1. Introduction	4
1.1 Aims and Objectives of this paper	5
1.2 About the evidence.....	5
2. Complaints to local authorities	6
2.1 Complaints by tenure	7
3. Housing Health and Safety Rating System inspection rates.....	8
3.1 Record keeping issues.....	9
4. Formal notices.....	10
4.1 Improvement notice rates	11
4.2 Hazard awareness notices	12
5. Emergency Remedial Action.....	13
6. Follow-up enforcement	13
7. Recommendations.....	15

1. Introduction

Since 2009, the condition of private rented sector housing stock has significantly improved. The proportion of properties with a category 1 hazard has declined from 28.2% in 2009 to 13.2% in 2019¹. Despite this, there are still a small proportion of properties in the PRS where conditions are potentially hazardous and need to be improved.

In these cases, local authorities have been provided with a wide range of powers they can use to raise standards in a property. Most notably, the Housing Health and Safety Rating System (HHSRS). This system allows local authorities to inspect a property to identify category 1 or 2 hazards, and then take action against the landlord where hazards are found. Failure to comply can lead to criminal prosecution or civil penalties.

However, previous research in this series has found that local authorities do not make widespread use of the HHSRS system to issue civil penalties or start criminal prosecutions. Only 16% of improvement notices were directly related to property conditions, with most issued for administrative breaches such as failing to hold a selective licence².

This does suggest that many local authorities are not aggressively enforcing the current property condition regulations, a point raised by the Communities and Local Government Select Committee in 2018³ when they recommended local authorities look at their existing strategies to promote better enforcement.

The Select Committee report also highlighted the need for better data gathering and sharing, recommending that a national benchmarking scheme be introduced, with local authorities publishing data on the number of complaints and how they were resolved. To date these improvements have not materialised and in December 2021, the National Audit

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945013/2019-20_EHS_Headline_Report.pdf

² <https://www.nrla.org.uk/research/special-reports/enforcement-civil-penalty-usage>

³ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44007.htm>

Office report highlighted the need for DLUHC to take the lead on improving data collection and sharing best practices amongst local authorities⁴.

1.1 Aims and Objectives of this paper

The purpose of this piece is to assess the work local authorities do prior to starting prosecutions or issuing civil penalties. Local authorities have significant powers to take legal action against criminal landlords but typically never reach this stage. This raises the question of whether local authorities are actively inspecting, allowing them to move on to taking further action.

In addition, this paper attempts to measure the way local authorities respond to complaints regarding the PRS. At present, local authorities are not required to report on the progress of their enforcement activity to the Department for Levelling Up, Housing and Communities (DLUHC). As a result, there is very limited publicly available data on local authority enforcement activities.

1.2 About the evidence

The evidence presented in this report is primarily based on a series of freedom of information requests sent to 308 local authorities.

This freedom of information request asked local authorities to provide –

1. The number of complaints received per year by tenants relating to private rented sector housing.
2. The number of complaints received per year by tenants relating to social housing
3. The number of Housing, Health and Safety Rating System (HHSRS) inspections carried out per year
4. The total number of formal enforcement notices served: Hazard Awareness Notices served on private rented sector (PRS) properties.

⁴ <https://www.nao.org.uk/wp-content/uploads/2021/09/Regulation-of-private-renting.pdf>

5. How many improvement notices have been served in relation to PRS properties.
6. The number of emergency remedial actions performed
7. The number of prosecutions commenced on notices served under Part 1 of the Housing Act 2004.

The response rate to this freedom of information request was high, with 290 respondents (94%) providing full or partial answers to the above questions.

2. Complaints to local authorities

As part of our research we were keen to understand how local authorities responded to complaints made by tenants in both the private and social rented sector.

The number of complaints made by tenants to a local authority is a potential indicator of poor property conditions or poor property management, regardless of tenure type. A significant number of complaints should also lead to a higher rate of HHSRS inspections or formal notices, as local authorities respond to tenant concerns.

However, for selective licensing schemes the number of complaints attributed to the PRS is important for an additional reason. Selective licensing schemes apply to PRS properties only and implementation is often justified on the basis of improving property conditions or the management of a property⁵ in the proposed licensing area. As a result, complaints are a justification for a scheme's existence, as well as a measure of progress made on improving property management.

Conversely, as selective licensing schemes do not apply to social housing, a high volume of complaints about that tenure type would make selective licensing inappropriate, as it would not apply to the social housing in the area.

⁵ As an example, page 1
<https://democracy.manchester.gov.uk/documents/s18586/Selective%20Licensing%20Schemes.pdf>

2.1 Complaints by tenure

Unfortunately, the majority of local authorities were unable to provide accurate information on how many complaints related to either the private rented sector or to social housing. A consequence of this is it is difficult to accurately assess or compare the ways that local authorities identify hazardous properties or how they choose to filter complaints.

165 out of 290 respondents (56%) could not provide an accurate breakdown for each sector. Most of these responses provided one total answer for all complaints as they did not distinguish by tenure (146 respondents).

Where local authorities included social housing and PRS complaints as one total figure, the average number of complaints was 35% higher than the PRS complaints for local authorities who tracked by tenure. This suggests that a substantial proportion of the untracked complaints relate to social housing.

Where complaints were tracked by tenure (127 respondents), each local authority received an average of 274 complaints per year about PRS housing. This figure rises to 418 complaints per year for local authorities who combined social and PRS complaints together.

The lack of consistent data around complaints is concerning but it is not surprising. Despite calls for standardised record keeping and reporting in the past⁶, local authorities are still not obligated to report on their activities to DLUHC. As a result, local authority record keeping develops in a silo without best practice sharing. This inconsistent data will hamper DLUHC's efforts in identifying and disseminating best practice.

The lack of a standardised format for recording complaints also calls into question the accuracy of data used to justify the creation of some discretionary licensing schemes. Only a minority of local authorities with a current selective licensing scheme were able to accurately identify the number of PRS complaints. Within the group that could not provide

⁶ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44007.htm>

accurate information, a majority over reported the number of PRS complaints by including social housing complaints.

Of the 41 local authorities with selective licensing schemes in force, 25 respondents were unable to provide an accurate breakdown of their PRS complaints –

- 13 provided a total figure that did not distinguish between social housing and private renting;
- 12 were unable to provide details on the number of complaints, regardless of tenure.
- 16 local authorities could provide an accurate number of complaints for both social and PRS housing.

The poor record keeping from these local authorities is particularly concerning. Given the substantial fees involved in applying for a selective licence, landlords have a reasonable expectation that these schemes provide evidence they are working to address issues with property management. However, more than half of schemes do not appear to keep accurate records. As a result it is unclear how these local authorities are identifying progress in improving property management.

3. Housing Health and Safety Rating System inspection rates

HHSRS inspections are a crucial component of any strategy to improve property conditions. Performing a HHSRS inspection not only identifies the presence of a hazard, it opens up a number of enforcement options for local authorities that could lead to fines or criminal prosecution. As a result, HHSRS inspections are the bedrock upon which local authority enforcement is built.

Across all respondent local authorities 98,858 HHSRS inspections were reported between 2018 and 2021 – equivalent to one inspection for every 46 households in the private rented sector⁷.

In previous research pieces in the series, the NRLA found that use of specific enforcement powers was concentrated heavily into specific local authorities. This does not appear to

⁷ Based on the Office for National Statistics estimate of 4.5 million households in the PRS

be as pronounced with HHSRS inspections. Most local authorities perform HHSRS inspections, though the frequency of these inspections does vary.

- 231 local authorities (80%) reported performing at least one HHSRS inspection over the period. 218 (75%) local authorities had performed at least ten inspections.
- Respondent local authorities performed an average of 135 HHSRS inspections per year, significantly below the number of complaints. However, the number of HHSRS inspections varied considerably and 25 local authorities were responsible for 50% of all HHSRS inspections.
- 45 respondents (16%) were unable to provide an answer to this question.
- 14 local authorities did confirm they had not performed any HHSRS inspections.

Overall, it appears that across England there are not enough physical HHSRS inspections to cover all complaints. However, it may be the case that some complaints are not related to property conditions or that local authorities are not classifying all of their physical inspections in a recordable format.

3.1 Record keeping issues

The FOI responses make it clear that many local authorities do define and record HHSRS inspections inconsistently, making it difficult to compile a true picture of the number of physical inspections that identify property conditions.

Many local authority responses provided additional context to their HHSRS inspection rate. Local authorities, such as Barnet, do not separate HHSRS inspections within their records. Instead, all property visits are reported. As a result, Barnet reported performing 3,290 HHSRS inspections, significantly more than the number of complaints they received⁸. However, less than 1% of inspections led to the service of an improvement or hazard awareness notice. Most other local authorities with high rates of HHSRS inspections had similarly low rates of follow-up action.

Others, such as Bassetlaw had a relatively small number of HHSRS inspections (10) in comparison to the number of complaints (412). However, 60% of these HHSRS inspections

⁸ Barnet do not record PRS and social housing complaints separately.

led to an improvement notice being served. Their FOI response explains this, confirming that complaints are dealt with via an informal visit, reserving formal HHSRS inspections for landlords who refuse to comply with the informal suggestions. Based on this it would mean that around 1% of property visits, whether formal or informal, lead to an improvement or hazard awareness notice being served.

This inconsistent approach to recording inspections, means that there are likely to be a substantial number of untracked informal inspections taking place across the country. These inspections would look at property conditions without classifying them as Housing Health and Safety Rating System inspections.

This makes a certain amount of sense, particularly if the property's hazard is relatively easy to identify without the need for a lengthy HHSRS inspection. For example, a property with no working smoke alarms could be identified easily and addressed without the need for a detailed HHSRS inspection or taking formal action against the landlord.

The difficulty with this approach is primarily one of improving the data on the private rented sector. The limited data collected through informal enforcement means DLUHC will not be able to accurately measure the progress or success of this approach until local authorities begin to standardise recording and reporting all their enforcement work.

4. Formal notices

Following on from a formal HHSRS inspection, if a local authority has identified that the property has a category 1 hazard in it, then they must serve one of a number of different notices on landlords. The type of notice served will generally depend on the severity or the nature of the hazard identified. The types of notice for the PRS are typically –

- Hazard awareness notice; a notice served where the local authority recommends that action be taken but does not formally require it.
- Improvement notice; a notice that compels the landlord to take action to improve hazards in the property. Failure to comply with the notice can lead to prosecution or the service of a civil penalty notice.

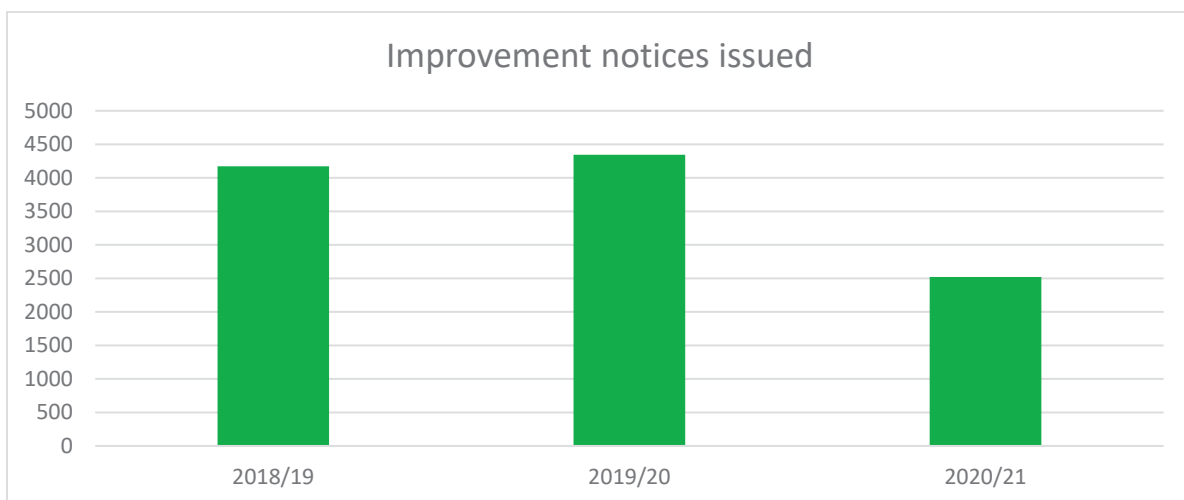
There are a number of other notices available, as well as the option to perform emergency remedial action if necessary. However, usage tends to be extremely low in comparison as other actions such as emergency prohibition or demolition orders are more complex and can result in the reduction of housing stock.

4.1 Improvement notice rates

Improvement notices should play a key role in local authority enforcement strategies. They can compel landlords to improve property conditions, but they can also raise funds for further enforcement. Service of an improvement notice also prevents landlords from using Section 21 possession for six months after the local authority serves the notice.

Taken together, this should mean that improvement notices are likely to be the most common form of enforcement once a serious hazard has been identified.

This is the case, with improvement notices being the most common type of notice served over the last three years. In total 11,039 improvement notices were served with 266 local authorities serving at least one improvement notice. As a result, around 9% of reported HHSRS inspections result in the serve of an improvement notice.



However, while improvement notice were served by most respondents, just twenty local authorities were responsible for the service of 50% of all improvement notices served over the last three years.

This suggests that aggressive enforcement of the HHSRS is still relatively concentrated, with other local authorities making relatively sporadic use of their enforcement powers.

As to why that is the case, there are a number of potential explanations for this provided by local authorities in their FOI responses. Some cited a shortage of resources, suggesting additional funding would help. Other local authorities indicated a preference for avoiding formal action unless absolutely necessary, suggesting the process itself was too complex.

4.2 Hazard awareness notices

Hazard awareness notices are significantly less common than improvement notices. In total 5640 hazard awareness notices were served over the three year period, equivalent to 6 hazard awareness notices per local authority, per year.

In addition to this –

- Hazard awareness notices were concentrated in relatively few local authorities. Ten local authorities were responsible for 47% of all notices served. These local authorities tend to use hazard awareness notices almost exclusively, with very few improvement notices served.
- 128 local authorities had served 1-10 hazard awareness notices over the three year period.
- 84 local authorities had served no hazard awareness notices over the three year period or did not keep records on service.

The small number of local authorities making use of the hazard awareness notice is likely to be a combination of two factors.

Firstly, the hazard awareness notice has a strange role in enforcing property conditions. It is a formal type of notice and it is an option where a category 1 hazard is present, however it places no formal requirements to comply on the landlord. As a result, many local authorities are likely to prefer to use the improvement notice as it does require compliance.

Secondly, a number of local authorities indicated a preference for informal enforcement where possible. For example, they only record visits as HHSRS inspections where the landlord refuses to comply with informal requests for property improvements. In these cases, a hazard awareness notice would be inappropriate as the local authority has

already suggested, but not recorded, ways to improve property conditions. Once again though, this informal work is not recorded meaning there is no data to evidence this work.

5. Emergency Remedial Action

Where local authorities feel that action must be taken immediately, they can choose to perform emergency remedial action to address the hazards in the property. As this comes at a significant cost to the local authority, this is expected to be relatively rare. However, if the aim is to improve property conditions it is quite a useful tool, as it allows the local authority to use qualified staff to ensure the works are done correctly.

As expected, emergency remedial action is rare. Across England –

- Emergency remedial action was taken 1,032 times in three years
- 2 local authorities (Wolverhampton and Hull City Councils) performed 57% of all emergency remedial action
- 153 local authorities (53%) performed no emergency remedial action
- 112 local authorities (39%) had performed between 1-5 emergency remedial works in the last three years
- 23 local authorities (8%) had performed emergency remedial action more than five times in three years.

It is clear that for most local authorities, emergency remedial action is rarely or never used.

Given the high usage by Wolverhampton and Hull City Councils, it may be worth DLUHC investigating how and why these local authorities make such extensive use of this power. By sharing their current practices, they may be able to identify how to make this cost-effective for other local authorities to do so.

6. Follow-up enforcement

Follow-up prosecution after formal action is extremely low across most local authorities, with around 200 prosecutions commenced across England each year following action under Part 1 of the Housing Act 2004.

As with other forms of enforcement, prosecutions do tend to be concentrated within a select few local authorities. Of the 290 respondents –

- 17 local authorities had prosecuted more than 10 landlords in the last three years.
- 83 local authorities had prosecuted between 1 and 10 landlords in three years following action taken after a HHSRS inspection.
- 189 local authorities had not commenced any follow up prosecutions relating to a HHSRS inspection in the last three years.
- The remaining seven local authorities had not served any formal notices or commenced any prosecutions.
- Less than 1% of HHSRS inspections led to follow up criminal prosecution.
- Similarly, just 4% of improvement notices led to a civil penalty being issued for not undertaking the works.

The low rate of prosecution suggests that, while not enough HHSRS inspections are taking place, relative to complaints, there is a further bottleneck after initial action is taken.

This may reflect the cost and complexity of the current legislation. Local authorities budgets have shrunk for housing enforcement, with spend reduced by 45% between 2009-19⁹. Follow-up enforcement is also costly, and recoverable costs generally do not match the amount spent to enforce¹⁰. As a result, prosecutions strain tight budgets even further, deterring local authorities from taking follow up action.

At the same time, the regulatory burden on landlords has grown more complex. There are currently 168 pieces of legislation that landlords must comply with¹¹, often cross-cutting with each other. The complexity of this legislation has been cited in the past as an impediment to local authority enforcement¹² and it does appear to be the case based on the small number of prosecutions.

⁹ <https://www.unchecked.uk/wp-content/uploads/2020/11/The-UKs-Enforcement-Gap-2020.pdf>

¹⁰ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44007.htm>

¹¹ <https://www.nrla.org.uk/campaigns/managing-tenancies/legislation-affecting-private-landlords-england>

¹² <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44006.htm>

7. Recommendations

Inspections

While most local authorities are performing some HHSRS inspections, the lack of standardised recording and monitoring is likely to hold DLUHC back in developing a strategy for the PRS.

With that in mind, local authorities should report annually to DLUHC on the true number of property inspections each year. This report should include -

- The number of physical property inspections performed;
- Whether formal or informal action was required as a result of this inspection;
- The type of action taken;
- Whether any follow-up inspections were required.

By focusing on the number of physical inspections, rather than HHSRS inspections, local authorities can evidence the value of informal enforcement.

Complaints

Similarly, data on complaints by tenure is also lacking and inconsistent across local authorities. Many local authorities overreported the amount of PRS complaints by including social housing figures, while others did not record any complaints data.

To improve this, DLUHC should revisit the idea of a national benchmarking scheme requiring local authorities to include complaints as part of the annual report to DLUHC¹³.

Any standardised record of complaints should require local authorities report on –

- The type of tenure the complaint is from;
- Whether the complaint relates to property conditions and whether that complaint led to a physical property inspection;
- Whether the complaint related to a property management issue and whether the complaint was resolved.

¹³ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44009.htm>

In particular, the poor data collected by selective licensing schemes need to be addressed. More than half of local authorities who have a selective licensing scheme did not record their PRS complaint figures accurately. Responsible landlords pay significant amounts as part of their licensing application; the least they should expect for this fee is that the schemes can evidence that the aims of the scheme are being met.

Use of formal powers

Given the relatively limited use of formal enforcement, DLUHC should investigate why local authorities do not use their powers in greater numbers. If the prohibitive cost and complexity of enforcement is the root cause, then DLUHC should increase funding to local authorities for enforcement and simplify existing regulations to promote ease of use before adding new ones.

The HHSRS is already under review¹⁴, with new minimum standards set to be introduced. The hope is this will reduce complexity, making it easier for landlords and local authorities to understand their obligations and reduce incidences where interpretations differ.

However, it is vital that DLUHC improves their data on enforcement before these changes come in so that any improvements can be measured. The legislation covering the PRS has developed in a piecemeal fashion previously, with limited data on outcomes¹⁵.

If a more strategic approach to the PRS is to develop, DLUHC needs to have baseline data on how local authority enforcement is working before changes are made. Legislation can then develop in a more holistic fashion based on evidence and assessing previous outcomes.

Best practice sharing

Using the data gathered via these reports, DLUHC should identify high performing local authorities and ask them to share best practices with other local authorities so as to improve outcomes across England.

¹⁴ <https://www.nrla.org.uk/news/the-hhsrs-review>

¹⁵ <https://www.nao.org.uk/wp-content/uploads/2021/09/Regulation-of-private-renting.pdf>