



Rogue landlord database reform

CIEH submission

October 2019

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Key messages in this submission:

- We welcome the proposals to open up the rogue landlord database to members of the public. The information on this database should be especially useful to prospective tenants in helping them to decide whether to rent a property from a particular landlord.
- The widening of the scope of the database is also welcome, as Annex B is more closely aligned to housing conditions than the current list of banning order offences. However, all offences leading to entry on the database should be sufficiently serious.
- Whilst the proposals set out in this consultation are positive, we believe that the introduction of a national registration scheme for all landlords and agents in England would be a better system for the effective enforcement of the private rented sector.
- Adding landlords and agents to the rogue landlord database involves an additional step for housing enforcement officers and this step is currently discretionary for local authorities. The limited use of the database to date shows that it might not be the most effective tool to protect tenants, as use of the database is varied and inconsistent. It therefore cannot provide reassurance to a prospective tenant if they do not find their landlord on the database.
- If the input onto the database were to be made mandatory, this should apply to all agencies and departments holding relevant information, including Trading Standards, the courts and the police.
- The database should also be equipped with a mechanism for prospective tenants to report where they believe a landlord who is on the rogue landlord database is still renting or attempting to rent property.

Widening Access

The following questions focus on widening access to allow existing and potential tenants access to the database.

3. Do you think that the database should allow tenants and potential tenants access to the details of rogue landlords and property agents contained within it?

- Yes

4. (If yes) Please give your reasons for allowing access to the database.



- Allows tenants to check they are not renting from a known rogue landlord or property agent
- Allows tenants to make an informed choice
- For tenant protection

5. (If tenant protection) Why do you think it is necessary for their protection (there is a limit of 750 characters)?

We consider all the options above to be related to tenant protection. When moving, tenants often may need to make quick decisions about entering into a contractual arrangement with a landlord without knowing anything about them. Having access to the database would give tenants information about serious offences. However, this is dependent on local authorities uploading information onto the database. If there is an obligation for all enforcing authorities to enter relevant serious offences on the database, then the tenants will have prior warning about safeguarding themselves. Information could also be loaded on by the Tribunals and the courts. For ease of use and for limiting the bureaucracy involved, an expiry date for the public facing information should be set when the information is first entered.

Furthermore, it should be noted that many tenants living in the private rented sector have vulnerabilities, whether these are financial, to do with their health, their age or for other reasons. These tenants cannot afford to lose their home, knowing that it might be difficult for them to move house or to find another property, which they can afford. These tenants would particularly benefit from knowing about any serious offences committed by a prospective landlord.

6. Do you think access to the database of rogue landlords and property agents would be a useful tool for tenants and potential tenants in making a decision on properties to rent?

- Yes

7. (If yes) Under what circumstances do you think a potential tenant would make use of the database prior to a tenancy?

- As a matter of course (due diligence)

8. Under what circumstances do you think a tenant would make use of the database during a tenancy?

- All of the above

9. Why do you think a tenant would not make use of the database?

- The information held on the database would not rectify the issue.
- Other - please provide further information (there is a limit of 750 characters).



The rogue landlord database might not be known to the tenant, so it depends on how widely publicised it is and how easy it would be for the tenant to check entries. Having to register or provide personal information before entries can be checked, might put some tenants off using the database.

Most importantly, there might be a perception that the database is not complete. At the moment, there are relatively few entries on the database so the chances of a tenant finding a rogue landlord would be very slim.¹ Even if the number of entries were to increase, information on the database would never be complete as local authorities can use their discretion on whether to apply for a banning order and to add landlords to the database. Whilst many local authorities are now beginning to use these powers, we know that there are some local authorities which are choosing not to or are not able to devote resource to this. Applying for a banning order is an optional extra step for a local authority and requires resources to be allocated to this function. As a result of the database only being a partial list of rogue landlords, a tenant would not be able to ascertain whether the absence of an entry for their landlord is because the landlord is good or whether the landlord has not been added to the database despite being 'rogue'.

To be truly useful, the rogue landlord database needs to deliver the following benefits:

1. To share information between enforcement authorities so that they can catch rogue landlords and agents before they have a chance do serious harm, especially to multiple tenants in multiple places
2. To act as a deterrent to rogue landlords and agents
3. To safeguard potential and actual tenants
4. To prevent vulnerable people from being placed, via housing options/homelessness prevention, in housing where agents or landlords are exploitative or dangerous.

In order for the database to satisfy the above, entry of landlords onto the database must be made mandatory for all agencies and departments holding relevant data, including the courts and the police. Some of the existing and proposed offences are not part of the information available to LAs. For example, prosecutions relating to sexual offences and modern slavery offences are dealt with by the police. The database would not be complete without this information being part of it, as these are serious crimes relating to a landlord's ability to directly manage property housing - in some case - vulnerable people. However, it must be recognised that combining the lists in Annex A and B makes up a significant number of offences and this could present a substantial additional administrative burden on LAs and other agencies, if entry onto the database were to be made mandatory.

We believe that the introduction of a national registration scheme for all landlords and agents, would provide a more effective tool for the regulation of the private rented sector. It would provide a complete picture for tenants and

¹ <https://www.thisismoney.co.uk/money/buytolet/article-7360733/Governments-rogue-landlords-database-registered-just-TWELVE-offenders-launch.html>



local authorities about who is operating in a particular area. For regulators, in particular, this information would enable them to better target their enforcement resources and set up local schemes more easily where poor conditions are widespread.

10. Who else might benefit from access to the database? Please also provide your reasons (there is a limit of 750 characters).

Department for Work and Pensions (DWP) should have access to the database for the purposes of paying Housing Benefit. Those tenants who are in receipt of housing benefit should be entitled to a decent and safe home. However, we know that due to having a relatively low income, the most vulnerable people sometimes end up in the worst accommodation. If the housing benefit is being paid directly to the landlord, it would be relevant for DWP to check the landlord has not been listed on the rogue landlord database.

Support agencies and anyone involved in supporting vulnerable people with finding appropriate accommodation should be using the database to ensure, as far as possible, that the vulnerable person is not placed into a dangerous home or with an exploitative, rogue landlord.

Education establishments may want access to the database in order to support and inform students moving out into independent accommodation.

HMRC might also want to use the database to check that no landlords are evading tax.

11. To meet data protection requirements the database would require an access portal, which of the following options do you think would be appropriate?

- Sign up with an email address

12. Should a redacted version of the landlord/agent's address be viewable to tenants, for example the local authority area, town, street and partial postcode?

- Yes

13. (If yes) Please provide reasons why a redacted version of the landlord/agent's address should be viewable to tenants (there is a limit of 750 characters).

A redacted address should enable a tenant to accurately identify their landlord, whilst protecting the landlord from attack or harassment. Many agencies and landlords will have similar names so enough information should be provided to give a tenant confidence in the accuracy of their findings. Moreover, if a landlord or agent happen to have a similar name to a 'rogue' landlord or agent on the database, their business might suffer if they are easily be confused with the rogue landlord or business. It should also be recognised that some agents and



landlords use registered addresses and corporate identities that may shield their identities.

14. (If no) Please provide reasons why a redacted version of the landlord/agent's address should not be viewable to tenants (there is a limit of 750 characters).

15. Should potential or existing tenants be able to view the landlord/agent's full name?

- Yes

16. (If yes) Please provide reasons why a potential or existing tenant should be able to view the landlord/agent's full name? (there is a limit of 750 characters)

The tenant needs to be able to search the database effectively and be sure of the result, if they get a match. This is key to the usefulness of the database.

17. Do you think a landlord or agent should be required to disclose to an existing or prospective tenant that they are included on the database?

- Yes

18. (If yes) Please give your reasons for why a landlord or agent should be required to disclose to an existing or prospective tenant that they are included on the database.

- Landlords are already required to provide other information such as energy performance certificates and gas safety certificates.
- Provides additional level of tenant protection.

Consumer protection law already requires that "consumers" (e.g. tenants) have full information to make an informed decision – omitting to disclose this would constitute a "misleading omission", so non-disclosure should not be considered an option in this consultation.

19. (If no) Please give your reasons for why a landlord or agent should not be required to disclose to an existing or prospective tenant that they are included on the database.

20. Should full details of the offence a landlord or agent has been convicted of, including nature of the offence be viewable?

- Yes

21. (If no) Which of the following options should be included?

22. How long should a landlord remain on the database?



- As long as the conviction remains unspent and in line with the Rehabilitation of Offenders Act.
- If there is there any reason to retain the information for less time than outlined in the Rehabilitation of Offenders Act, please provide further details in the comment box below (there is a limit of 750 characters).

It should be noted that not all of the proposed offences are convictions, so the answer to Q22 should not be an "either/or" answer linked to the Rehabilitation of Offenders Act. The proposals include widening inclusion to cover service of certain notices. If these are retained, then there should be careful consideration of whether the information should only be retained for as long as the notice is not complied with or for longer.

Widening the scope of the database

The following questions focus on widening the scope of the database. An annex containing a list of possible offences and infractions and brief overview has been included here.

23. Do you agree with the list proposed additional offences contained at in annex B? (there is a limit of 1000 characters)

We are broadly supportive of the list of offences contained in annex B, as this list is more closely aligned to breaches of housing conditions and failures in housing management systems. The list also encompasses some new legislation and regulations that have been introduced since the old banning order offences list had been drawn up. However, from the consultation document, it was not clear whether annex B offences were intended to be additional to or a replacement of the old banning order offences contained in annex A.

We are concerned that a number of 'offences' contained in Annex B are the service of notices rather than prosecutions or penalties. Whilst the serving of notices is a type of formal enforcement action, notices allow the landlord time to rectify a situation before he is prosecuted or fined using civil penalties. We consider that offences leading to entry on the database need to be sufficiently serious and therefore the service of notices would not be appropriate. Furthermore, entering a landlord being served a notice onto the database could mean that they may need to be taken off again after a short time, if the problem is rectified. This would add considerably to the administrative burden on agencies and local authorities.

Furthermore, some of the offences in Annex B seem to be less serious and we would question whether their inclusion is appropriate on a database intended to be a list of landlords banned from operating. This includes the provision of EPC certificates and the service of notice on blocked drains. Whilst these are both important obligations on the landlord, we are not convinced that these should become a reason to ban a landlord from operating. Banning order offences could lead to interim management orders – these are generally used for very serious offences where the health and safety of the occupier is at risk. We believe that



relevant offences for inclusion on the database should be serious and based on breaches where there is a consistency of approach between different areas.

Further to the comments made elsewhere in this consultation response, inclusion of a fit and proper person test as an offence might result in legal challenge by landlords who may have failed a test in one locality but would not have failed it in another. If the fit and proper person test is standardised across England, failing the test should be included as a banning order offence.

24. Do you think that landlords/agents who receive a single civil penalty notice should be included on the database?

- Yes

Where a property is not up to the required standard a local authority can issue an improvement notice. An improvement notice is issued when a property contains serious hazards such as a category 1 or 2 hazard/s under the Housing Health and Safety Rating System (HHSRS) requiring the landlord to take remedial action in relation to the hazard. The notice will detail what the hazard is, what is causing it and the action required to remedy the hazard.

25. Where a landlord/agent has been issued with an improvement notice, should they be included on the database?

- No – only when the notice is not complied with.

26. (If yes) Please give your reasons why a landlord who has been issued with an improvement notice should be included on the database (there is a limit of 750 characters).

The database is for rogue landlords who are banned from managing property. We therefore consider that all offences that lead to inclusion on this database should be sufficiently serious. Whilst the serving of a notice is a type of formal action, this can mean very different things in different areas. Some local authorities adopt a more informal approach when trying to resolve disputes between landlords and tenants. For these authorities, the serving of a notice would mean that informal routes have already failed. However, in other areas, with a more formal approach to enforcement, the serving of notice will be the standard response to finding a hazard or problem with the management of a property. A failure to comply with an improvement notice (not necessarily being prosecuted as this causes a time delay) should be the criteria for inclusion on the database.

However, we also recognise that the Homes (Fitness for Human Habitation) Act 2019, establishes a landlord's continual obligation to ensure properties they are letting are in a good state of repair as well as being safe for the tenant to occupy.

The annexes contain serious housing related offences. We are interested to know if minor housing related breaches should be included on the



database. This includes less serious hazards or defects where the local authority does not have a duty to take enforcement action, but that still may suggest poor management.

27. Are there any other offences not listed in the annexes that should be included? Please specify and give your reasons for inclusion (there is a limit of 750 characters).

Minimum Energy Efficiency Standard of Band E will apply to all privately rented properties from March 2020. Lower EPC Bands F and G are associated with increased levels of fuel poverty.² Given that it is much more expensive to heat these types of homes and they are much less insulated, this is likely to have a serious impact on the health of the occupiers. We would therefore like to see all landlords with properties not reaching this minimum standard or having a valid exemption be added to the rogue landlord database. This is due to the serious effect on health that living in a cold home can have on the occupier.

Homes (Fitness for Human Habitation) Act 2019 should also form part of the reasons why a landlord might end up on the rogue landlord database. If a tenant brings forward a successful case against a landlord on the basis of the safety of their accommodation, this should form a banning order offence. The courts should be responsible for entering this on the database as LAs are likely not to be involved.

A successful rent repayment order should also be a reason for a landlord to be included on the rogue landlord database. Whilst a rent repayment order may follow on from a successful prosecution by a local authority, it could also be initiated by the tenant or former tenant independently.

Five yearly electrical safety certificates are also due to become mandatory for landlords to provide, once this is brought into law. The absence of valid certificates should be included as a banning order offence once this becomes a requirement.

Use of the Regulatory Reform (Fire Safety) Order 2005 is sometimes used in particularly dangerous situations. Whilst other legislation might also be used, it would be good to include this on the list of offences in cases where this may be the primary tool to make a building safe.

Before granting a licence a local authority must carry out a fit and proper person test on the prospective landlord. A fit and proper test is not universal, and it is up to individual local authorities to decide upon the detail of the test.

28. Should landlord/agents who fail a fit and proper person test be included on the database?

- No

² [Annual Fuel Poverty Statistics Report \(2017 data\)](#), BEIS, Jun 2019.



29. (if yes) Please give your reasons why landlords/agents who fail a fit and proper person test should be included on the database (there is a limit of 750 characters).

If the fit and proper person test can be standardised across England and applied consistently, we would support the proposal to include landlords failing the test onto the rogue landlord database. However, in its current form, the fit and proper person test varies from area to area. The threshold for someone not being considered a “fit and proper” person may vary very widely from one geographical area to another so landlords failing the test in one area may not have failed it in another. This might be challenged in court and thus discourage local authorities from using this reason to enter landlords onto the rogue landlord database.

30. Should the reason for failing the fit and proper person test be included and viewable?

- Yes, please give reasons (there is a limit of 750 characters).

The reasons for failing a fit and proper person test currently vary from area to area so it would be useful to have the reason for failing the test included, in order to assess the seriousness of the failure. This information would be useful to a local authority if the landlord was found to be letting property in a different locality.

Local authorities currently have discretion on how they assess who is a fit and proper person. The functioning of the fit and proper person test will not be addressed directly as part of this consultation. However, we are interested in your views as they relate to the question of inclusion of failure of the test in the database.

31. Would it be helpful to introduce a standardised fit and proper person test?

- Yes

32. (If yes) Please provide further detail on why you think it would be helpful to introduce a standardised fit and proper person test (there is a limit of 750 characters).

It would be helpful to strengthen and standardise the fit and proper person test across England. Whilst some fit and proper person tests are robust and effective, the variation between the tests applied in different areas, might make it difficult to use these as a basis for a landlord being included in a national database. This is because a landlord who passes a test in one locality might fail this test in another. A standardised test should be well designed in close consultation with Environmental Health Practitioners working in housing enforcement to ensure that it is useful, effective and robust in identifying landlords and agents who are rogue or unfit to manage property directly.



33. (If no) Please provide further detail on why you think it would not be helpful to introduce a standardised fit and proper person test (there is a limit of 750 characters).

Selective Licensing Scheme

The following questions relate to landlords and agents whose properties are subject to a local authority's licensing scheme such as a house in multiple occupation, or selective licensing within a particular area.

34. Where a landlord/agent has a licence to let a House in Multiple Occupation, or a property subject to selective licensing denied or revoked, should the landlord or agent be included on the database?

- Yes

35. (If yes) Please give your reasons why a landlord/agent who has had a licence to let a House in Multiple Occupation or a property subject to selective licensing denied or revoked should be included on the database. (there is a limit of 750 characters)

From our research into selective licensing schemes,³ we found that licences are not often revoked or denied by local authorities. Some local authorities choose to work with the landlord, who was deemed unfit to manage property, in order to appoint a suitable management agent, thus removing the need to formally deny their licence application.

However, where a licence is denied or revoked, this is usually in relation to serious circumstances and therefore merits inclusion on the database. This also applies to additional HMO licensing schemes, where these are in operation. If the reasons for revocation or denial of a licence are serious, then this is important information for the tenant to know before choosing to enter into a tenancy. Serious offences include a poor state of property repair, over-occupation and crowding, poor safety standards, illegal evictions as well as others. Since HMOs often house more vulnerable tenants and present a greater risk to the occupiers, the same conclusion applies to licences revoked for all HMOs.

Furthermore, a tenant of a property is able to apply for a Rent Repayment Order, if their landlord does not possess a valid licence. Inclusion of this information on the database could therefore act as an additional deterrent for rogue landlords.

36. Should the reason for a licence being denied or revoked be viewable?

- Yes, to all users

³ A licence to rent, CIEH and CIH, Jan 2019.



37. In relation to question 34, please give further details (there is a limit of 750 characters).

At present, licences can be denied for a number of reasons. Our members tell us that when licences are revoked, the reasons are generally quite serious. Further detail would be useful for a prospective tenant to help them decide how serious the offence was and therefore whether they should enter into a tenancy.

Under the Housing Act 2004 a local housing authority can make management orders in respect of houses in multiple occupation and other privately rented property. These include certain conditions that need to be met that are linked to the conditions and management of a property.

38. Should a landlord or agent whose property is subject to a management order be included on the database?

- Yes

39. (If yes) Please give your reasons why a landlord or agent whose property is subject to a management order should be included on the database (there is a limit of 750 characters).

Management orders are used when dealing with properties, which present a higher risk to tenants (such as HMOs) and where the problems with the management of a property are serious and unaddressed for a long time. Management Orders are not entered into lightly because of the commitment required by the local authority. Poor management of a property is also closely linked to dangerous property conditions, which could impact on the health and wellbeing of tenants. For example, not fixing a boiler quickly in winter months will have a tangible impact on tenants' health, especially if there are vulnerable to the effects of cold due to their age or pre-existing condition. It would therefore be appropriate to include landlords and agents who are subject to management orders on the rogue landlord database to give tenants the information to make an informed decision.

Information about current and past management orders would also be useful information for other local authorities, where a landlord might have additional properties.

From 1 October 2014 all property agents have been required to be belong to a redress scheme. Government intends to make membership of a redress scheme mandatory for all private landlords when parliamentary time allows.

40. Should landlords and property agents who are expelled from a redress scheme be included on the database?

- Yes



41. (If yes) Please give your reasons why landlords and property agents who are expelled from a redress scheme should be included on the database (there is a limit of 750 characters).

The more landlords and property agents, who are convicted of offences or found to be unfit to manage property, are added to the rogue landlords database, the more effective it will be as a tool for both local authorities and for tenants to use. Being expelled from a redress scheme seems to suggest that a landlord has presented a risk to tenants or failed to fulfil their core duties. We believe that the reason for the landlord being expelled should be included on the database to provide more useful information to prospective tenants and to local authorities. It is also important that the person involved should be named, if a corporate body is expelled, as many rogue agents and landlords simply re-open for business under a different name.

We also believe that the ombudsman and redress schemes should be re-designed to be easier for tenants to use. At present, ombudsman services for letting agents require the tenant to prove that they have had a dialogue with the agent in question and that this has not resolved the problem. Whilst this might be appropriate for complex disputes, it is not appropriate for simple tip-offs, such as charging illegal fees and failure to provide information at the start of tenancies.

Local Authority Access

42. Should local authorities retain access to information held on the database after it is no longer available for tenant access, for specific purposes such as legal and/or audit?

- Yes

43. Please provide further detail for your answer to question 42 (there is a limit of 750 characters).

Information about a landlord's past offences would be very useful for local authorities, in order to assist with their intelligence gathering and for any legal processes, such as the fit and proper person test. This information would also help local authorities to decide on the most appropriate enforcement action and the level of a civil penalty. The use of civil penalties require local authorities take into account culpability of the landlord as a major factor when setting the level of the fine. Repeat offending is a major indicator of culpability, and knowledge of offending in other areas of the country must be available for local authorities to help them set appropriate fines and to discourage repeat offenders.

Any further comments

44. Is there anything else you would like to add? (there is a limit of 1500 characters)

Due to the fact that the database is an incomplete list of rogue landlords, we believe that the rogue landlord database is currently of limited value and



effectiveness for both tenants and regulators. It would benefit from being either accompanied or replaced by the national landlord register. This would bring a number of benefits.

Firstly, a national landlord register would be a complete picture of landlords, giving a list of those who are or are not registered. When the tenant does not find a landlord on the database, they can be reasonably sure that the landlord is rogue, as they are not meeting their legal duties. The national register would remove or flag any landlords who have been banned from renting property. With the rogue landlord database, local authorities have a discretion to make an entry. As a result, when the tenant does not find a landlord on the rogue landlord database, this is not necessarily reassure them that the landlord in question has not been convicted of serious housing offences. As a result tenant's decision would not always be informed by the best available information.

Secondly, we believe that a national landlord register, which is administered by a central body, would assist local areas in their housing enforcement duties and in the overall regulation of the private rented sector. Our research into the effectiveness of selective licensing schemes found that many local authorities lack complete information about the private rented sector in their areas. Having this information would not only assist local areas in having closer links and easier contacts with landlords in their areas, but also an present an opportunity for the local authority to plan their resources on housing enforcement more effectively by allocating adequate staff to this function relative to the current size of the sector in their areas.

Thirdly, we believe there is a precedent in national registers in other areas that affect public health. The DVLA database is 8 times larger than England's private rented sector and helps to regulate vehicles and drivers who have the potential to cause serious harm to the public.

Last but not least, a national registration scheme for landlords and agents is already in place in all nations of the UK except for England, thus showing that this is a tried and tested policy which works well.