

Landlord HMO Event
4th April 2019
Swiss Cottage Library

Disclaimer : These minutes are as accurate reflection as possible of the topics discussed at the event, but should not be taken as authoritative legal advice in case of error.

Chair - Rhys Makinson - Director of Housing Support Services, Supporting People

- Welcomed everyone and introduced the event
- Has responsibility for private sector housing, enforcement of licensing, temporary accommodation to homeless people and private sector accommodation for people seeking to avoid homelessness
- The purpose of the event is to share what the council are doing in the area, to advise best practice and consider current issues. It is also a chance for networking and asking questions about HMO's and private sector housing in general
- There are stalls at the rear including: HMO licensing and enforcement, information on grants available to landlords; trading standards and the Camden Letting scheme (if you have an empty property the council can act as a letting agent for a landlord).

Welcome + overview - Karen Swift - Head of Housing Supply Initiatives and Partnerships

- **Please see attached presentation for further details**
- Additional points to accompany presentation:
- The private sector housing team have been doing a lot of work to put the event together
- The event has a great number of attendees. It was decided we needed a bigger event as last time was oversubscribed. The LA would like to continue the important dialogue and are hoping to get an idea of other topics that landlords would like to be covered
- The last event was 6 months ago. Normally not much happens but we are currently faced with a fast moving agenda. There are lots policies, announcements and bills being considered.
- The London Landlord Accreditation Scheme (LLAS) is going from strength to strength. It appears to be a valuable resource offering Continued Professional Development. All who attend the group say it is great and have asked to spread it over 2 days, and stated that they need more information and practical advice. Most referrals are where people are told by another landlord to attend, which is a great endorsement. It is a great product that landlords like and want to shape
- LLAS had a big event Friday. They continually send out survey's to landlords accredited regarding how the services can be improved

HMO licensing review - Janet Wade - Principal EHO

- **Please see attached presentation for further details**

- Additional points to accompany presentation:
- Camden is reviewing the current HMO licence scheme.
- An invite was sent out to all landlords and managing agents who licence their properties so they are aware of the scheme.
- The mandatory scheme was amended in October 2018 after government brought in legislation that extended to a wider number of HMO's. Previously a HMO was five or more people/3 or more storeys and it was extended to include any number of floors.
- There is a technical differentiation with other properties under additional licensing schemes since December 2015. When in the additional licensing scheme it is 3 or more people with any number or storeys. It could be flat or house. This encompasses any HMO defined under the housing act
- There is another definition that some people have difficulty understanding regarding Section 257. This is a HMO converted into self contained flat that does not meet the 1991 building regulations standard. The legislation says that where there is a 3rd or more of the property rented out the LA licence 50% or more. Janet Wade is happy to talk more about this
- The scheme is borough wide. There is no London wide scheme for additional licensing and every borough is slightly different. They try to make clear what licensing is which is one reason for the event today
- The current scheme started in December 2015 and expires in December 2020
- Licensing activity:
- There are still a number of properties to inspect, or they are still waiting for applications to come in. They are constantly working to publicise. Some landlords are actively avoiding licensing and some are not aware of the scheme. They are now finding with landlords not applying there is a possibility of legal actions
- Review of Scheme:
- They are half way through and are reviewing. The legislation says to review from time to time and it is also about service improvement. They want to improve as they are going along and learn lessons to make short term and long term improvements. They will review in another year and half
- The review is a good opportunity to meet landlords and publicise the scheme
- With the tenant survey there was a disappointing response. They tried hard to engage but due to transitory nature it was quite difficult. They did Social media adverts.
- Key Points:
- Fire safety primarily looks at HMO minimum standards and also look at HHSRS. They send a form with a license list of works required eg energy efficiency works
- Lessons from review:
 - They were surprised, in the early days a lot people came forward, these would be more aware landlords. Inspections were carried out where they were at the mid-point in the license at 2 years old
 - One Management Agent (MA) came at the beginning to ask what properties they had that were licenced. They would encourage MA's to have a system in the office to know what properties have licenses and have a process for monitoring works on the license and be aware

- It is important to read the license from front to back including the schedule of work, standard license conditions, and read license at the back which includes room tables eg. if there are any undersized rooms that should not be used. They have not found a lot but they are finding them.
- If they are coming back it is more an exercise to find out more about what compliance is happening but in the future may be referred to the enforcement team
- There is a need to have a system in place look at work and the time period. Some works they give a timescale of 2 years where they are not life threatening. They give 2 years to give the opportunity to do work when tenants move out. If there is a reason why they are not done in 2 years they should let the Private Sector Housing Team know. They do give shorter time periods when there is a greater risk to safety
- It is important to let the team know when a property is sold and when the MA changes. The License applies to that license holder and they need a new application for a new owner. Letting the team know will help with liability for the property. Licenses can be revoked and new ones issued however it is their responsibility
- If a MA changes they need to know. They do vary free of charge but they need to know. If they are no longer responsibility it is important that it not their name and it is not their liability
- It is important to bring licenses to the attention of the tenants eg. like gas safety. They can give this to the tenant via notices, or when they are coming into the property, or in a handbook
- They will continue the landlord event every 6 months and there will be the landlord newsletter quarterly
- They want to look more initially at MA and Letting Agents (LA). The council have no resource to spend too much time pointing out work, and to keep coming back for snagging responsibility in properties managed by MA's. MA need to timely complete works and properly
- There are feedback forms on all seats. If anyone is interested in becoming involved in the initiative the team will contact them. They might look at a Service Level Agreement
- There is a concern regarding the time it is taking so they want to speed up the license process working in the short and medium

Rent repayment orders (RROs) - Robin Stewart – Anthony Gold solicitors

- **Please see attached presentation for further details**
- Additional points to accompany presentation:
- This is a topical area, awareness among tenants is growing rapidly and in the next few years it will be a big deal
- The top level summary is that RRO is a mix of civil and criminal law. It was initially in the 2004 act. The new scheme is much wider and more dangerous to landlords
- Which rules apply?
- Regarding which rules apply there are some cases with old rules still apply. Take separate advice if relevant
- When can a RRO be made?

- It is now a form of private prosecution the tenant can take against the landlord to get rent back. There is vast resource available for tenants to take actions
- The landlord must commit a specific offence, sometimes there will or won't be a conviction. If a tenant can prove the offence they can apply.
- Local Authority Application:
- The LA need to use discretion and sensibly think if they really have a case to make for a RRO and is it in the public interest.
- Tenant Application:
- The first thing a landlord may hear is a copy of the application from the tribunal, there is no obligation to negotiate.
- **Control or management of an unlicensed house**
 - Having control of or managing does not appear to mean what means. If you are the property owner, have an interest in a property or collect rent more likely than not you are the person that manages or has control. It can apply to the agent collecting the rent and passing it on. It is a straight forward offence but it can be difficult to try to work out who is managing
 - The other difficulty is keeping track of which properties need licences. In Camden it is straightforward, it can be more difficult in other boroughs. The website London Property Licensing (<https://www.londonpropertylicensing.co.uk/>) has information on what boroughs have what scheme.
 - With defence of reasonable excuse you may think it is reasonable but the council may disagree.
 - Don't use tactic of not licensing. There is the danger of a fine or paying more under RRO.
 - Camden is particularly active in enforcing this offence
- **Unlawful evictions and harassment**
 - With regard to persistently withdrawing or withholding services it can include stopping utilities. If it is a genuine accident where you are responsible for paying and they are cut off this is not an offence, but if you deliberately turning off utilities to get tenant to do things or move out this is an offence
- **Failure to comply with improvement notice**
 - Order from LA that works in a specific time frame. Notice can be appealed but if not and it comes into effect it is where the improvement notice is operative
 - Defence of reasonable excuse. It is for the landlord to prove they had a good reason for not complying with the improvement notice. If something goes wrong and they can't keep to the timetable it is important to keep records and show you have done something to make the defence work.
 - Improvement notices need to be followed more closely than was once the case
 - A lot of the time landlords are happy to do work. Sometimes something goes wrong and they have discussed with the council a new timetable, a few months later the work is not done and they have an argument about whether there was an agreement
- The presentation highlighted 3 offences but there are others

- Making the RRO
- It is like a trial standard but dealt with through more informational tribunal.
- Proving the offence
- If it is failure to license this offence is not difficult to prove
- Purpose of RROs:
- RRO is a fine but it is a civil debt in terms of how it can be enforced. It can be converted into a CCJ. The underlying purpose is not to compensate, it is a punishment.
- Until now the court has been dealing with it by looking at the profit of the landlord and assessing a % of that
- Review of recent tribunal decisions:
- Fairly new areas of law, not a lot of appeal cases so not a lot guidance from court about how they are meant to work
- Unrepresented applicants:
- It is possible to settle disputes. They may agree bits and not others. As tenants can't get Legal Aid many applications are made by tenants on their own. Some organisations are helping on a no win no fee basis
- Awareness is spreading and it is in a lot of guides. Tenant advisors are more clued up
- The law is complicated and when a tenant is first thinking of making the application it is unlikely they will know if there is an offence, some offences are complicated. As there is no lawyer they may misunderstand.
- It is only £100 to bring an application, it is a simple form and there are a lot of applications where the tenant is angry about something and perceive they have been treated badly. An RRO is a good way to fight back if they are on the receiving end
- It is better as a landlord to know you have a defence and it is a reason to focus on good customer care
- Some tenants will bring as a way of fighting back, if that happens it may be difficult to settle. They may read that they can get back up to one year's rent. In most cases that is not what going to happen, most are somewhere in the middle.
- For the LA when they prosecute they are meant to use it in line with the enforcement policy and if it is in the public interest. It is different with tenants if they are angry and want money back. They will not be interested in conversation, or any amnesty that a council may have
- This is tribunal not in court so legal costs function like a small claim, neither side pay the other parties cost unless it is unreasonable. If there is an application and it is unfounded, unless they lied, it is unlikely a tribunal will be ordering a tenant to pay the landlords costs

Homes (Fitness for Human Habitation) Act 2018 + Tenant Fees Act 2019 - Wendy Wilson - Head of Social Policy Research Section, House of Commons Library

- Please see attached presentation for further details
- Additional points to accompany presentation:
- The House of Commons Library is a research and information service for all members of parliament, and they publish briefing papers on the internet. The

vast majority of work is individual requests from members of parliament for research and information, much of which is the social policy section. They also cover housing policy in the library. Across the library there are 70 researchers

- **Fitness for human habitation requirement act 2018**
- Started as a private members bill by Karen Bucks and gained cross party support
- Guidance and slides to be shared afterward. The department issue guidance for tenants and landlords about what they should have been doing since the act and right now

- **Tenant fees act**
- Not in force but coming fast
- There has been a long run in to the legislation and a lot of coverage
- There was discussion in parliament regarding attempts to circumvent the restrictions e.g. increase rent in first quarter. This is prohibited
- In terms of penalties tenants can go to tribunal to recover any prohibited fee. Trading Standards are the enforcement body and have the power to help recover
- Just this week there is detailed guidance on fees. The department will publish the final guidance, it is a guide for landlords and tenant.

Criminal landlord case studies - Vincent Arnold – Operations Manager

- **Please see attached presentation for further details**
- Additional points to accompany presentation:
- Presentations on some case studies of what goes wrong to lead to enforcement. There are a whole swath of landlords who never do any of this so these are the very worst

- **Lifestyle Club**
- They promised 'members' they could move from property to property. When they moved in they were unlicensed and unsafe. When leaving they were told there was no other available
- They did classic partition straight down window/ radiators meaning a risk of fire and noise
- Lifestyle's tactic was to ignore from start and move on. They were systematic and calculated. They implicated themselves in not replying

- **Kings Cross, Somerstown**
- They partitioned kitchen off, there were no working smoke alarms, no fire door. Tenants would have to go through the kitchen to get out and it was 7 stories up
- There were wobbly plug socket and extensions, no PVC sheath around wiring. The wire could kill someone
- Last date fuse box inspection 2007
- Bathroom panel smashed
- Kitchen door hanging off

- Other agents involved in turning blind eye were fined
 - **Housing benefit RRO**
 - Originally divided in 2009, sub-dividing again without planning permission.
 - Application from tenant as leaking ceiling had fallen in. Sent improvement order and went to RRO. They now have to de-convert
 - **Camden tenant RRO**
 - Getting more common. Tenants are doing RROs and not necessarily letting council know so more than think. e.g. due to mice infestation, having no boiler and heating 2 months, window left broken
 - Other RRO's are out of court settlement
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Question & Answer

1. Landlord Accreditation Scheme - If a landlord is in another scheme will it be recognised?

- There are several accreditation schemes. LLAS is one and others are run by landlord organisations. Landlords only need to belong to one. They should approach the scheme directly to see if they will give CPD points for attendance today.
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2. Tenant Fees Act - With the 5 weeks deposit, if there is renewal and they have a 6 week deposit do you have to refund?

- Yes. The renewal requirement kicks in so it is capped at that point. As soon as you are caught by the Tenant Fees Act you are 'in'
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3. Tenant Fees Act - For deposits capped at 5 weeks are there rent variations if there are pets?

- No. there is absolutely no variation for that. There is departmental guidance and financial guidance this week and FAQ at the end. This is one thing that they cover
 - It is once you are 'caught'. If you already have a let pre-20th March until you are caught, or there is a renewal, or a fixed term ends periodically, that is when the cap on deposit kicks in and you would need to refund the difference
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4. Tenant Fees Act - When does the deposit cap apply?

- For tenants on AST (one small exception of student lets) also licences. Confusingly it does not say the type apart from housing. If doing something strange it needs a careful look at. Company let not in scope
- Returning holding deposits. There is a cap on holding deposit. If caught one week rent. It depends on the circumstances, if a tenant pays and does not take letting, it must be returned. Refer to guidance

- There was a lot of discussion in parliament. The guidance takes various scenarios when the holding deposit must be returned. The tenant is required to provide all the information within the time limit. If the landlord does just does not feel the reference is good enough they can't withhold. The guidance is clear and there is the option to withhold part. They would urge landlords to look at each case and hold a portion. They would urge not to withhold and look at the circumstances. It is in the guidance it states where you can and can't.

5. If a landlord rents to a company who hold the HMO licence on the property?

- Anyone can apply for a HMO licence and anyone for a temporary exemption notice. Everyone is liable if they receive rents
- The council look for the most appropriate person to be licence owner. It is usually the owner but anyone can apply for a HMO licence.
- If there is a long lease of 5 years or more it would be ok to apply for a licence.
- For companies that let for a couple of years it is debatable whether it is down to the landlord or company?
- The most appropriate person is in control of the property and has the funds to carry out works. It is does not work if the licence holder does not have funds or control to carry out the work. It is the person who can take full legal responsibility
- From a defence perspective it is what is described as a reasonable excuse. It is up to them to prove that they can show a real reason they genuinely believed to not be a HMO and have taken steps to monitor and are trying to comply with the law. The burden lies with the landlord to take all the steps they reasonably could

6. Camden have two minimum standards for bedroom space 6.5 square metres and 7.1 square metres. What is the difference?

- 6.5 square metres is the national minimum standard for all HMO rooms since October last year. The HMO legislation definition is 3 or more people sharing that are not related
 - Camden's own minimum standard is a floor area of 7.1 square metres (single room where there is a shared living room of 10 square meters or bigger). The government has clearly stated that local authorities have discretion over their own local minimum room size standard. Camden feel 7.1 square metres is reasonable as a minimum for bedroom accommodation. They apply it with a degree of flexibility and look at it case by case. It depends on the shape and size of the room and if furniture can fit. If there is no shared living room the minimum single room size is 9 square metres. For a double, the minimum room size where there is a suitably sized living room is 10.2 square meters and where there is no living room, 11 square meters. There are larger room sizes where kitchen facilities are inside the bedroom (a bedsit).
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7. If a landlord wants to regularise his building and the building is tenanted what is the process e.g. can he go through the tenant pre-exemption notice and how long would it last under the 1991 building regs?

- The regularising process is lengthy you need to ensure the conversion complies with building regs (consult with Building Control). If a s:257 HMO is empty would not need to license it, but if people are living there and it is an unlicensed s:257 there is a need to apply for a HMO license asap as you are committing an offence
 - Landlords are advised to go to the website and contact the LA Building Control. A building control officer will tell them what is necessary to improve the conversion to the 1991 building regs standard.
 - **Could enforcement work with a landlord to regularise it and if a licence is in place would it be rescinded?**
 - Yes. If a property is improved so that the conversion fully complies with the 1991 building regulation standard the licence can then be revoked on application. However, we would need proof from either the LA building control or an approved inspector.
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8. There is a disparity of the application guidance on the website. On page 7 for the HMO licence scheme it says apply where half or more are rented; On page 9 it says about conversions in 1991 (or later) and where more than 50% are tenanted.

- This is talking about section 257s. The definition of a section 257 HMO is where one third of units are rented out. However, for licensing purposes, as the government did not want properties predominately owner occupied to be licensed, the council only licenses those where 50% or more of the units are rented out. If there is a discrepancy in the guidance, this will be amended.
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9. If a landlord lets a single room to a single person can they apply with 6.5 square metres?

- You can still apply and the room will be dealt with within the HMO licence. The permitted number for the room will be detailed in the room tables at the back of the licence.
 - Once the draft licence is issued, the landlord can make a representation if they do not agree with any of the licence conditions. How to do this is detailed on the covering letter. It must be made within 14 days. You can put forward the reasons why you think a smaller room than 7.1 square metres should be allowed. The matter will be considered between the inspecting officer and their manager.
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10. Are Camden looking for more HMO spaces or to restrict them?

- Camden are not against HMO's in principle. A lot of people prefer self-contained properties and prefer flats and housing, but they have a number of young people that need housing across the borough. They would like the HMO market to exist and thrive
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11. Camden council need to be clear about the HMO definition when sending letters to mortgage providers

- Mortgage providers have differing conditions, and some prohibit HMOs or licensed HMOs (a general definition)
 - This has been raised before and the Council expected that landlord representatives e.g. NLA/RLA would have taken this up with the Council of Mortgage providers (now UK Finance). It is difficult for an individual council to influence policy at this level. Mortgage providers are likely to consider that HMOs are old style bedsit accommodation. Most rented accommodation in London is now occupied by sharers and are therefore HMOs so mortgage providers need to adapt to the changing housing market.
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12.

- a. There has been a lot of legislation recently regarding rogue landlord and agents, but I have heard nothing of rogue tenants. Several tenants are doing ‘moonlight flits’ and reducing profit. Are the government and council doing anything to support regarding this?**
 - b. There is confusion regarding the December 2020 thing that applied HMO’s. It was a year ago and they have not heard anything. It is presumed they have not got round to it. Will the license expire in 2020? They have already paid a high fee will they have to pay again?**
 - c. Regarding inspections in Camden they have heard they have a higher standard than the government. They are hearing they have put in a lot of double sockets. It is not disputed that it reduces fire risk but how do they know the boundaries of the statutory requirements and Camden requirements. With 3,800 flats to improve they are finding a problem where the number of contractors is not enough. Is Camden willing to be flexible?**
- a) issue of rogue tenant. There is legislation to which enables landlords to deal with rogue tenants. Landlords were consulted recently in a call for evidence re. housing courts. One aspect that they considered is how long it takes for a landlord to evict a tenant through the courts, whether that’s the best way to deal with it, and whether dedicated housing court would deliver. The outcome of the call for evidence has not been published yet.
 - The Government know there is a lot pressures to do away with the Section 21 notice, or no fault eviction as it is referred, to e.g. by Shelter, Generation Rent, Crisis etc. They have done away with it in Scotland for new tenancies. To date there is no evidence the government are prepared to go down that line. There are discussions about the barriers to long term tenancies. The government would like to see a 3 year period. There is no evidence to date that they will legislate to make this a requirement.
 - One thing being developed is to bring tenant payment, or rent and rent arrears, into credit scoring. This is an incentive to pay full rent and on time.
 - Generation Rent think that with tenants who are regular rent payers this does not assist in getting mortgages. This is an added incentive.
 - In terms of the question regarding whether the government is proposing anything to make it easier to deal with rogue tenants - at this point the answer is no. The view is if there is a dedicated housing court this would offer some

support. It is not the housing legislation that causes delays, it is the court itself. Letting properties is a business and there is a business risk. Landlords take deposits and, if there is due diligence, there is the option of no fault evictions. At this stage the current government has no plans to do away with section 21.

- There is a tenancy sustainment team in the council if there is an issue between a landlord and tenant - they will do their best to mediate in disputes
- Landlords can evict using section 8 during fixed terms of tenancies. During the consultation landlords wanted to retain section 21, but felt the use of section 8 could be streamlined. Landlords don't tend to use section 8 powers to evict as it is regarded as complicated and they are unsure of the end result. They use section 21 when they should be using other options. This is under review.
- b) issue of HMO licence term and payment
- The licence is always for 5 years. You will get 5 years from the date of issue of the final licence. The fact that a landlord has applied gives landlords protection from prosecution for being unlicensed.
- c) Camden HMO standard
- There is no national HMO minimum standards as such (only prescribed standards) and local authorities develop their own. Regarding the minimum standard required in terms of electric sockets, Camden are asking for a lesser number (x4 double) than new builds. It is thought that the standard is reasonable as officers see a lot of extension cables and adapters which can be a serious fire risk. When they review the scheme it is unlikely there will be much of a difference in the minimum standards.

13. Are they aware landlords are selling in droves. In 10 years there will be nothing but 'luxury' and 'rogue' landlords. They will be run down and they can't afford to run down housing on the market. It feels like they trying to do good but landlords are 'public enemy No 1'. With more and more regulations against landlords they are a small minority, does House of Common's know that the private rented sector will become smaller?

- There are loads of MP's who are landlords. The outgoing Labour party were ready to introduce national landlord regulations.
- In 2010 Grant Shapps came in and as the new housing minister he said he was not going to regulate the sector too much
- Regarding the resent increase in regulation, there is quite a bit of legislation that was not expected. What changed is that in 2011 the private rented sector was a small minority. Now they are the second largest tenure in the country and is far bigger than the social rented sector. There are more families than ever before. There is a likelihood that many will never move out of the sector, children will be in private rented accommodation for the whole of their education. And because of the ability of landlords to serve section 21 there is instability.
- There are also a lot of older people living in the sector

- Many landlords have properties they inherited that they had not expected and are therefore not professional landlords
- In that context you might think the government felt it might need to do something to ensure conditions are reasonable for people living their lives in the private rented sector.
- Ultimately government policy will decide what can and can't get through