

## Comments on NSC Review of Housing Conditions in the Private Rented Sector

Please accept my comments in this form rather than as you invited them. I have no direct knowledge or experience of the private rented sector in North Somerset or elsewhere and while I hope you may find what I say relevant, it doesn't fit the questionnaire format. These comments are my own and represent no organisation nor tenants nor landlords.

My comments are against the background of hard experience delivering regulatory compliance in other sectors of the economy and of what I have read in the Review and elsewhere.

### The Review Document

The consultation document is clearly slanted towards the author's favoured scheme: involving self-regulation not mandatory regulation. The uninformed reader, in the absence of a coherent evidenced case, for the alternative will naturally support what is proposed. The bias in the consultation document will render any policy based upon the result susceptible to judicial review. This is made more likely in view of the fact that a significant number of respondents will be landlords. Landlord associations will galvanise their support and lobby on their behalf. Many will merely wish to minimise the red tape and, as they see it, the unnecessary extra cost of licensing. However "rogue" landlords will quickly and correctly see self-regulation as the means to avoid effective enforcement. If the consultation were to support other than what this Review proposes, it would be a surprise. Relying on it to inform policy is to invite Judicial Review.

I make the following points from my knowledge and experience in enforcement and delivery of regulatory compliance in other sectors. Many facets appear comparable.

### Accredited Agencies

This is an attractive mechanism to achieve compliance.

Central government uses the term "Earned Recognition" to allow those who are subject to regulation to avoid official inspections and enforcement, by joining and abiding by the rules of industry-based Assurance Schemes. The notion being that adherence to Scheme rules is adequate evidence of compliance. Where members are broadly compliant and, in good faith, follow advice or warnings to improve, they may be effective. Where there is a significant rogue element to the membership they are not.

From the Authority's perspective using Accredited Agencies ticks the boxes of resource efficiency and the political imperative to minimise "red tape". To the regulated, it reduces cost, red tape and the annoyance of inspections. However to the 'rogues', many of whom may be eminently respectable, even occupying responsible positions, it provides a ready haven from effective enforcement. They will be among the first to support and join such a scheme. Very few will not seek to join. Very few will be rejected. Agency members are of significantly reduced risk of meaningful sanction where it is appropriate.

In this case landlord associations exist *solely* to further the interests of subscribing landlords. Where these conflict with the public interest or the interests of tenants the landlord interest will *always* prevail.

Accredited Agency schemes are unlikely significantly to improve compliance because:

- Their core mission of protecting interests of landlords before all else.
- There is an intrinsic conflict of interest between building and retaining their membership (and subscriptions) and ensuring compliance or using effective sanctions – let alone the ultimate sanction of loss of membership.
- Inspections are often box-ticking exercises. Warnings and empty threats are normal.
- Inspectors are often untrained, unprepared or unwilling to gather or provide appropriate evidence in support of necessary civil or criminal proceedings in which the Authority may be engaged.
- Tenants with cause to complain will feel much safer in doing so (and are actually much safer to do so) to the Authority, an impartial body, than to an Agency of which their landlord is a member and who may, for all they know, exert direct or indirect influence over both the Agency's response and the complainant's ongoing tenancy.
- Tenant representation on the Agency Board can easily be – and, some claim, is likely to be – by-passed or their opinions disregarded.
- The inability to ascertain a '*fit and proper person*' matters. Are links between rogue landlords and criminality unusual?
- Agencies are 'left to get on with it' and inadequately supervised. In any event, and especially in circumstances where there is a significant rogue element, it is fundamental that they are effectively set up and monitored by, *inter alia*:
  - Clear definition of the Agency's role and responsibilities and the requirements member landlords must meet.
  - Clear criteria for suspension and removal of accreditation (Which requires a realistic contingency plan for the Authority to re-assume regulatory responsibility.)
  - Criteria to be met before re-accreditation.
  - Detailed unannounced audits of records of inspections undertaken, deficiencies detected, immediate and follow up actions with defaulting properties.
  - Access to Agency membership and financial details
  - Adherence to agreed training requirements of inspectors
  - Sanctions taken against defaulting member landlords
  - Frequent spot checks of suspect landlords and properties
  - Record of tenant complaints and protocol for protection of complainant tenants.
  - Landlord v. tenant dispute resolution policy
  - Etc.

### Action Area

On the facts presented and on the statutory 20% restriction the Action Area prescribed is most appropriate, for immediate attention. The attraction for the Council is that it focusses limited resource and is good PR, initially at least. On the other hand it will have a ghetto-ising effect on the Area. It will inevitably, just as drivers deliberately or carelessly speed up having passed a safety camera, give landlords outside the Area the freedom, deliberately or negligently, to let standards slip. If the discrimination persisted a gradual drift outwards of rogue landlords might result.

## Enforcement

The resource-sparing imperative, however, is a real one. One I am well familiar with. Enforcement of regulatory compliance is resource expensive. Prosecutions, incredibly so. Done as it always has been it is probably unsustainable.

Focussing of resource towards the non-compliant and full cost recovery from them are essential elements of a more cost-effective enforcement strategy. (It is also benign to the majority of landlords who are fully or broadly compliant.) Most effective of all however, is to use enforcement as a scalpel rather than a broadsword with the objective of ensuring that every enforcement penny spent is directed at maximising compliance across the region.

In my view

1. To achieve any significant improvement as things stand there is no alternative to selective licensing with a contemporaneous application to HMG to extend to full mandatory licensing. Broader research than appears in the Review clearly supports this.
2. Enforcement should be streamlined and aligned to deliver the maximum compliance across the NSC region at least cost and with least impact on conscientious landlords.